



**ARTICLE 19**

**GLOBAL CAMPAIGN FOR FREE EXPRESSION**

## MEMORANDUM

on the

draft Law of Kyrgyzstan on Broadcasting

London  
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# 1. Introduction

The draft Law of Kyrgyzstan “On Broadcasting” (draft Law) structures and regulates the emerging broadcasting sector. We understand that a number of draft laws on public broadcasting are circulating and that the version we are analysing here has been prepared by NGOs.<sup>1</sup>

The draft Law applies to both public and private broadcasters, in radio and television, and emphasizes the importance of adhering to Kyrgyzstan’s international and constitutional obligations regarding freedom of expression, including freedom of the press. Ideally, this area should be covered by two pieces of legislation – one regulating broadcasting generally and one dealing specifically with the establishment and functioning of the public service broadcaster. These are two quite different areas of law, each requiring a significant degree of detail. This Memorandum, however, deals with the draft Law as it is, rather than making recommendations for splitting it into two different laws.

Our most significant concern with the draft Law is its failure adequately to secure the independence of the Board, which is the main supervisory body for the public service broadcaster. Section 3.1 below outlines a framework to complement the existing provisions. Second, the draft Law puts in place only the most rudimentary system for private broadcasting. This should either be substantially developed or left to be elaborated in another law. Third, ARTICLE 19 doubts whether some of the working assumptions of the draft Law are consistent with the guarantee of freedom of expression. These include tendering for 30% of the public service broadcaster’s airtime rather than working with independent local producers for programming and some of the content restrictions on both public and private broadcasters.

This Memorandum describes the key international standards in this area, identifies ARTICLE 19’s main concerns with the draft Law and sets out recommendations on how to address these. It is based on international standards that are directly binding on Kyrgyzstan. It also cites international treaties from the various regional systems for the protection of human rights and authoritative international statements relating to the guarantee of freedom of expression. Although these latter are not directly binding on Kyrgyzstan, they offer authoritative interpretations of freedom of expression principles in various different contexts and hence provide good guidance as to the content of this right as it is binding on Kyrgyzstan. These standards are distilled in the ARTICLE 19 publication, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (ARTICLE 19 Principles).<sup>2</sup>

## 2. International Standards

### 2.1 The Guarantee of Freedom of Expression

The *Universal Declaration of Human Rights* (UDHR) is generally considered to be the flagship statement of international human rights, binding on all States as a matter of

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<sup>1</sup> It is dated 15 May 2005 and contains some 34 articles. Our comments are based on the translation, not the original, and it may be that certain nuances of the draft Act got lost in translation. We take no responsibility for errors based on translation. The translation is attached as Annex 1.

<sup>2</sup> (London: ARTICLE 19, 2002).

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customary international law.<sup>3</sup> Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.<sup>4</sup>

The *International Covenant on Civil and Political Rights* (ICCPR) is an international treaty, ratified by the Kyrgyz Republic in 1994, which imposes legally binding obligations on States Parties to respect a number of the human rights set out in the UDHR.<sup>5</sup> Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found at Article 19 of the UDHR. Guarantees of freedom of expression are also found in all three major regional human rights systems, at Article 9 of the *African Charter on Human and Peoples' Rights*,<sup>6</sup> Article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*<sup>7</sup> and Article 13 of the *American Convention on Human Rights*.<sup>8</sup>

The Constitution of the Kyrgyz Republic also guarantees freedom of expression at Article 16(2) as follows:

2. Every person in the Kyrgyz Republic shall enjoy the right:
  - to free expression and dissemination of ones thoughts, ideas, opinions, freedom of literary, artistic, scientific and technical creative work, freedom of the press, transmission and dissemination of information;

Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in underpinning democracy. At its very first session in 1946 the United Nations General Assembly adopted Resolution 59(I) which stated: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated." The European Court of Human Rights has stated:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'.<sup>9</sup>

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<sup>3</sup> For judicial opinions on human rights guarantees in customary international law, see *Barcelona Traction, Light and Power Company Limited Case* (Belgium v. Spain) (Second Phase), ICJ Rep. 1970 3 (International Court of Justice); *Namibia Opinion*, ICJ Rep. 1971 16, Separate Opinion, Judge Ammoun (International Court of Justice); *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit). For an academic critique, see M.S. McDougal, H.D. Lasswell and L.C. Chen, *Human Rights and World Public Order*, (Yale University Press: 1980), pp. 273-74, 325-27.

<sup>4</sup> Adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

<sup>5</sup> UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

<sup>6</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>7</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>8</sup> Adopted 22 November 1969, in force 18 July 1978.

<sup>9</sup> *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, Para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

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The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The Inter-American Court of Human Rights, for example, has stated: “It is the mass media that make the exercise of freedom of expression a reality.”<sup>10</sup> The European Court of Human Rights has referred to “the pre-eminent role of the press in a State governed by the rule of law.”<sup>11</sup> The media as a whole merit special protection under freedom of expression in part because of their role in making public “information and ideas on matters of public interest. Not only does [the press] have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of ‘public watchdog’.”<sup>12</sup>

### **2.2 Pluralism**

Article 2 of the ICCPR places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights, but that they must take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under an obligation to create an environment in which a diverse, independent media can flourish, thereby satisfying the public’s right to know.

An important aspect of States’ positive obligations to promote freedom of expression and of the media is the need to promote pluralism within, and to ensure equal access of all to, the media. As the European Court of Human Rights stated: “[Imparting] information and ideas of general interest ... cannot be successfully accomplished unless it is grounded in the principle of pluralism.”<sup>13</sup> The Inter-American Court has held that freedom of expression requires that “the communication media are potentially open to all without discrimination or, more precisely, that there be no individuals or groups that are excluded from access to such media.”<sup>14</sup>

One of the key rationales behind public service broadcasting is that it makes an important contribution to pluralism. The German Federal Constitutional Court, for example, has held that promoting pluralism is a constitutional obligation for public service broadcasters.<sup>15</sup> For this reason, a number of international instruments stress the importance of public service broadcasters and their contribution to promoting diversity and pluralism.

*A Resolution of the Council and of the Representatives of the Governments of the Member States*, passed by the European Union, recognises the important role played by public service broadcasters in ensuring a flow of information from a variety of sources to the public. It notes that public service broadcasters are of direct relevance to democracy, and social and cultural needs, and the need to preserve media pluralism. As a result, funding by States to such broadcasters is exempted from the general provisions of the Treaty of

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<sup>10</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

<sup>11</sup> *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, 14 EHRR 843, para. 63.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, 17 EHRR 93, para. 38.

<sup>14</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, note 10, para. 34.

<sup>15</sup> See *Fourth Television* case, 87 BverfGE 181 (1992). In Barendt, E., *Broadcasting Law: A Comparative Survey* (1995, Oxford, Clarendon Press), p. 58.

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Amsterdam.<sup>16</sup> For the same reasons, the 1992 *Declaration of Alma Ata*, adopted under the auspices of UNESCO, calls on States to encourage the development of public service broadcasters.<sup>17</sup>

*Resolution No. 1: Future of Public Service Broadcasting* of the 4<sup>th</sup> Council of Europe Ministerial Conference on Mass Media Policy, Prague, 1994, promotes very similar principles. This resolution notes the importance of public service broadcasting to human rights and democracy generally and the role of public service broadcasting in providing a forum for wide-ranging public debate, innovative programming not driven by market forces and promotion of local production. As a result of these vital roles, the Resolution recommends that member States guarantee at least one comprehensive public service broadcaster which is accessible to all.

### **2.3 Independence and Funding**

The State's obligation to promote pluralism and the free flow of information and ideas to the public, including through the media, does not permit it to interfere with broadcasters' freedom of expression, including publicly-funded broadcasters. This is clear from a case before the European Court of Human Rights which decided that any restriction on freedom of expression through licensing was subject to the strict test for such restrictions established under international law.<sup>18</sup> In particular, any restrictions must be shown to serve one of a small number of legitimate interests and, in addition, be necessary to protect that interest. Similarly, in the preamble to the European Convention on Transfrontier Television, States: "[Reaffirm] their commitment to the principles of the free flow of information and ideas and the independence of broadcasters."<sup>19</sup>

An important implication of these guarantees is that bodies which exercise regulatory or other powers over broadcasters, such as broadcast authorities or boards of publicly-funded broadcasters, must be independent. This principle has been explicitly endorsed in a number of international instruments.

Perhaps the most important of these is Recommendation No. R(96)10 on the *Guarantee of the Independence of Public Service Broadcasting*, passed by the Committee of Ministers of the Council of Europe.<sup>20</sup> The very name of this Recommendation illustrates the importance to be attached to the independence of public service broadcasters. The Recommendation notes that the powers of supervisory or governing bodies should be clearly set out in the legislation and that these bodies should not have the right to interfere with programming matters. Governing bodies should be established in a manner which minimises the risk of interference in their operations, for example through an open appointments process designed to promote pluralism, guarantees against dismissal and rules on conflict of interest.<sup>21</sup>

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<sup>16</sup> Official Journal C 030, 5 February 1999, clause 1.

<sup>17</sup> Adopted 9 October 1992. Endorsed by the General Conference at its 28<sup>th</sup> session, 15 November 1995, Resolution 4.6. Clause 5.

<sup>18</sup> *Groppera Radio AG and Ors v. Switzerland*, 28 March 1990, Application No. 10890/84, 12 EHRR 321, para. 61.

<sup>19</sup> 5 May 1989, European Treaty Series No. 132.

<sup>20</sup> 11 September 1996.

<sup>21</sup> Articles 9-13.

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Several declarations adopted under the auspices of UNESCO also note the importance of independent public service broadcasters. The 1996 *Declaration of Sana'a*<sup>22</sup> calls on the international community to provide assistance to publicly-funded broadcasters only where they are independent and calls on individual States to guarantee such independence. The 1997 *Declaration of Sofia* notes the need for State-owned broadcasters to be transformed into proper public service broadcasters with guaranteed editorial independence and independent supervisory bodies.<sup>23</sup> The 1992 *Declaration of Alma Ata* also calls on States to, “encourage the development of journalistically independent public service broadcasting in place of existing State-controlled broadcasting structures”.<sup>24</sup>

*Resolution No. 1: Future of Public Service Broadcasting* of the 4<sup>th</sup> Council of Europe Ministerial Conference on Mass Media Policy, noted above, reiterates these principles, including the need for independent governing bodies, and for editorial independence and adequate funding. These recommendations, particularly the requirement of effective independence from government – including financial independence – are reiterated in a number of resolutions and recommendations of the Parliamentary Assembly and other Ministerial Conferences on mass media policy of the Council of Europe.<sup>25</sup>

Principle 34 of the ARTICLE 19 Principles notes the need to transform government or state broadcasters into public service broadcasters, while Principle 35 notes the need to protect the independence of these organisations. Article 35.1 specifies a number of ways of ensuring that public service broadcasters are independent including that they should be overseen by an independent body, such as a Board of Governors. The institutional autonomy and independence of this body should be guaranteed and protected by law in the following ways:

1. specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
2. by a clear legislative statement of goals, powers and responsibilities;
3. through the rules relating to appointment of members;
4. through formal accountability to the public through a multi-party body;
5. by respect for editorial independence; and
6. in funding arrangements.<sup>26</sup>

These same principles are also reflected in a number of cases decided by national courts. For example, a case decided by the Supreme Court of Sri Lanka held that a draft broadcasting bill was incompatible with the constitutional guarantee of freedom of expression. Under the draft bill, the Minister had substantial power over appointments to the Board of Directors of the regulatory authority. The Court noted: “[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought.”<sup>27</sup>

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<sup>22</sup> 11 January 1996, endorsed by the General Conference at its 29<sup>th</sup> Session, 12 November 1997, Resolution 34..

<sup>23</sup> Adopted 13 September 1997. Endorsed by the General Conference at its 29<sup>th</sup> session, 12 November 1997, Resolution 35. Clause 7.

<sup>24</sup> Note 17.

<sup>25</sup> For the former, see Res. 428(1970), Rec. 748(1975) and Rec. 1147(1991) and for the latter see Res. No. 2 (1<sup>st</sup> Conference, 1986) and Res. No. 2 (5<sup>th</sup> Conference, 1997).

<sup>26</sup> *Ibid.*, Principle 35.1.

<sup>27</sup> *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.

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Similarly, the Supreme Court of Ghana noted: “[T]he state-owned media are national assets: they belong to the entire community, not to the abstraction known as the state; nor to the government in office, or to its party. If such national assets were to become the mouth-piece of any one or combination of the parties vying for power, democracy would be no more than a sham.”<sup>28</sup>

Many of the standards set out above reflect both the idea of independence of governing bodies and the related but slightly different idea that the editorial independence of public service broadcasters should be guaranteed, both in law and in practice. This is reflected, for example, in Principle 35.3 of the ARTICLE 19 Principles, which states: “The independent governing body should not interfere in day-to-day decision-making, particularly in relation to broadcast content, should respect the principle of editorial independence and should never impose prior censorship.” The governing body may set direction and policy but should not, except perhaps in very extreme situations, interfere with a particular programming decision.

This approach is reflected in Article 1 of Recommendation No. R(96)10 of the Council of Europe, which notes that the legal framework governing public service broadcasters should guarantee editorial independence and institutional autonomy as regards programme schedules, programmes, news and a number of other matters. The Recommendation goes on to state that management should be solely responsible for day-to-day operations and should be protected against political interference, for example by restricting its lines of accountability to the supervisory body and the courts.<sup>29</sup> In a related vein, Articles 20-22 of the same Recommendation note that news programmes should present the facts fairly and encourage the free formation of opinions. Public service broadcasters should be compelled to broadcast messages only in very exceptional circumstances.

Similarly, true independence is only possible if funding is secure from arbitrary government control and many of the international standards noted above reflect this idea. In addition, public service broadcasters can only fulfil their mandates if they are guaranteed sufficient funds for that task. Articles 17-19 of Recommendation No. R (96) 10 of the Council of Europe note that funding for public service broadcasters should be appropriate to their tasks, and be secure and transparent. Funding arrangements should not render public service broadcasters susceptible to interference, for example with editorial independence or institutional autonomy.

ARTICLE 19’s Principle 36 deals with funding, stating: “Public broadcasters should be adequately funded, taking into account their remit, by a means that protects them from arbitrary interference with their budgets”. Similarly, the Italian Constitutional Court has held that the constitutional guarantee of freedom of expression obliges the government to ensure that sufficient resources are available to enable the public service broadcaster to discharge its functions.<sup>30</sup>

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<sup>28</sup> *New Patriotic Party v. Ghana Broadcasting Corp.*, 30 November 1993, Writ No. 1/93, p. 17.

<sup>29</sup> Articles 4-8.

<sup>30</sup> Decision 826/1998 [1998] Guir. cost. 3893.



### **3. Analysis of the draft Law: General Broadcast Regulation**

The draft Law contains very rudimentary provisions on the general regime for licensing of broadcasters. As noted above, it is generally good practice to separate out the rules relating to public broadcasting from those governing broadcasting more generally. Regardless, this regime needs far more detailed elaboration if it is to conform to international standards in this area.

#### ***3.1 Independent Regulation***

Article 8 of the draft Law states that broadcast licensing shall be performed by the authorising State bodies performing regulatory functions in the area of telecommunications. Article 6(3) provides that use of the radio frequency spectrum shall be in accordance with permission from the State Commission of the Kyrgyz Republic on Radio Frequencies or the authorised body. The definitions in Article 5 define a broadcasting licence as a permit issued by the authorised body, which is further clarified as a telecommunications broadcasting licence, issued by the body authorised in the area of telecommunications. Finally, Article 7(3) provides for registration of broadcasters, pursuant to a regulation.

As discussed above, at Section 2.3, it is well established under international law that bodies with regulatory or administrative powers over the media should be independent of government.<sup>31</sup> The issuing of broadcast licences, in particular, and the performance of other regulatory functions are critical to the ongoing protection of the guarantee of freedom of expression.

These provisions are confusing and we have not been able to study the telecommunications laws and regulations to assess what they say on this topic. However, we have some concerns as to whether the various bodies referred to are sufficiently independent to undertake this very sensitive work. Furthermore, inasmuch as the draft Law appears to envisage both licensing and registration for broadcasters, this is excessive and may provide undue opportunity for interference. Aspirant broadcasters should only have to undertake one administrative procedure to obtain a licence.

Finally, broadcast regulation should not simply be allocated to a general telecommunications regulatory without some thought being given to the expertise required for this. The broadcast regulator is required to take into account and to promote the policy objectives underlying broadcast regulation – promoting respect for freedom of expression, diversity, accuracy and impartiality, and the free flow of information and ideas – and to act in the public interest at all times. While the general trend is to merge telecommunications and broadcasting bodies, this needs to be done with full recognition of the particular needs of broadcast regulation, including expertise in this area.

#### ***3.2 Licensing***

6(3) provides some rudimentary rules for licensing, stating that the allocation of radio frequencies is to be determined on a competitive basis. Otherwise, the draft Law appears to envisage this matter being dealt with entirely by government regulation.

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<sup>31</sup> ARTICLE 19 Principle 10.

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The primary legislation should establish the basic ground rules for the licensing system. It should require licensing processes to be open and fair,<sup>32</sup> and provide that licence application hearings are public and that decisions are subject to either judicial review or appeal.<sup>33</sup> Licensing should be based on clear criteria for deciding between competing applications, which should include, among other things, promoting a wide range of viewpoints which fairly reflect the diversity of the population and preventing undue concentration of ownership.<sup>34</sup> In accordance with the principle of promoting diversity, ARTICLE 19 believes that it is neither in the public interest nor not the most effective or appropriate use of a scarce public resource to provide for frequencies to be allocated on a competitive basis if this solely means giving them to the highest bidder. Rather, in accordance with international standards, a frequency plan should be developed, in order to promote the optimal use of the airwaves as a means of promoting diversity.

### **3.3 Foreign Investment**

Article 7(2) of the draft Law prohibits foreigners from having a majority share in a broadcaster or from having any interest which “could predetermine broadcasters decision-making”.

It is recognised that restrictions may be imposed on the extent of foreign ownership and control over broadcasters but these restrictions should take into account the need for the broadcasting sector as a whole to develop and for broadcasting services to be economically viable.<sup>35</sup> We note that, given the costs inherent in broadcasting, foreign investment is likely to play a significant role in the establishment and growth of broadcasting institutions. ARTICLE 19 suggests that with a strong broadcasting regulator, foreign investment in broadcasting institutions can be properly monitored and managed and that strict measures against foreign involvement will be more detrimental than beneficial to the broadcast sector. In particular, the broadly-worded test outlined in Article 7(2), prohibiting foreign persons from predetermining the broadcaster’s decision-making in any way, is inappropriate. Any significant investor will seek to have influence over the use of his or her investment; Article 7(2) may be read as precluding that.

### **3.4 Content Issues**

The draft Law includes a number of vague rules relating to content. Article 2(2) seeks to ensure that the information transmitted by broadcasters is “full and trustworthy”. Article 12(1) requires broadcasters to act in the public interest, to respect diversity of opinions and to protect the idea of an independent, democratic and lawful State, as well as internationally recognised human rights. Furthermore, Article 15 requires all broadcasters to provide airtime immediately for official statements by the President or authorised by him, in the event of a state of emergency or of war. Such announcements are limited to three minutes every hour.

ARTICLE 19 submits that imposing these vague obligations upon broadcasters is an onerous burden which is inconsistent with the guarantee of freedom of expression and which may be abused. The meaning and scope of these provisions is unclear and ARTICLE 19 queries whether a broadcaster would be able to comply with them. It may also be

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<sup>32</sup> ARTICLE 19 Principle 21.1.

<sup>33</sup> ARTICLE 19 Principle 21.3.

<sup>34</sup> ARTICLE 19 Principle 21.2.

<sup>35</sup> ARTICLE 19 Principle 20.2.

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questioned whether it is the responsibility of broadcasters to do some of these things in the first place. Perhaps more specific, related obligations of this sort could legitimately be imposed on the public broadcaster, whose independence is protected by its Board and which benefits from public funding.

The rationale for the state of emergency or wartime rule is understandable, but it is both unnecessary and open to abuse. It is unnecessary because any responsible broadcaster will carry information of public importance without a specific requirement to do so. Experience in countries all over the world shows that both public and private broadcasters provide ample coverage of emergencies and natural disasters, even in the absence of formal obligations to do this.

Such provisions are open to abuse because officials may use them in circumstances for which they were not intended. This rule potentially applies to an extremely broad range of circumstances and could effectively be used by officials to get free access to broadcasting to present their views. What is important is that the public gets the information it needs regarding the emergency, not that it hears statements made by State bodies. While it is welcome that the extent of such access is limited to three minutes in 60, we believe they are simply unnecessary.

#### **Recommendations:**

- Broadcast regulation should be undertaken by an independent body with sufficient dedicated expertise for this function. Simply allocating these functions to an existing telecommunications regulator is unlikely to satisfy these standards.
- The law governing general broadcasting should set out in some detail the guiding rules for licensing, which may then be further clarified in a regulation. Key to the licensing system is the idea of promoting diversity in the airwaves and, to this end, diversity should be recognised as a criteria for deciding between competing licence applications and a frequency plan should be developed, in order to promote the optimal use of the spectrum as a means of promoting diversity.
- Article 7 should be amended to clarify the restrictions on the involvement of non-citizens in broadcasting.
- The vague content rules in the draft Law, in particular at Articles 2(2) and 12(1), should either be removed or redrafted in much more precise terms.
- Article 15, dealing with states of emergency or war, should be removed from the draft Law.

### ***3.5 Miscellaneous Provisions***

#### ***3.5.1 Anti-Monopoly restrictions***

Article 9 of the draft Law outlines a number of restrictions to prevent the development of anti-competitive concentration of ownership within the broadcasting sector. The first sentence of Article 9(1) limits ownership to two television channels and three radio channels. The article goes on to prohibit ‘monopolistic practices’ and abuse of a ‘dominating position’.

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The first sentence of Article 9(1) strikes an appropriate balance between preventing undue concentration of ownership in the sector and the State's obligation to promote diversity, the need for the sector as a whole to develop and for broadcasting services to be economically viable.<sup>36</sup> The remainder of Article 9(1), however, is unduly vague and could be interpreted in a manner that would unduly prohibit the growth of the sector, given the uncertainty regarding its scope of application, which may deter potential investors. It is more appropriate that a law of general application regulating trade practices in the Kyrgyz Republic be relied upon. Furthermore, monopoly issues can be included as a criterion for deciding licence applications, as suggested above.

#### *3.5.2 Listeners with Hearing Abnormalities*

Article 12 imposes an obligation on all broadcasters to disseminate information and materials for persons with hearing abnormalities. ARTICLE 19 proposes this provision be amended to require only the public service broadcaster to fulfil this role as a matter of law. It is an onerous obligation which is most appropriately funded and performed by a public service broadcaster.

#### *3.5.3 Broadcasters' Access to Information*

Article 13 recognises broadcasters' right to receive information from State authorities, municipal authorities and non-government organizations, in line with established legislation in the Kyrgyz Republic. This is a provision of general application and does not need to be included or repeated in the draft Law. It is most appropriate as part of general and detailed access to information legislation. Such legislation needs to be far more detailed than this single provision, setting out, for example, the exceptions to the right of access and the manner in which requests for information should be processed.

#### *3.5.4 Non-Commercial Broadcasters*

Article 18 of the draft Law seeks to define non-commercial, or community, broadcasters. While it is welcome that the draft Law recognises this important third tier of broadcasting, a more detailed definition, which goes beyond the simple requirement of non-profit status, should be considered. One possible definition is as follows:

A "community broadcaster" is a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community.

#### **Recommendations:**

- Article 9(1) should be amended so that it consists only of its current first sentence.
- Article 12 should be limited in scope to the public broadcaster.
- Article 13 should be removed from the draft Law. At a minimum, it should not be seen as a replacement for a fully-fledged access to information law.
- Consideration should be given to amending the definition of a non-commercial broadcaster in Article 18 in line with the suggestion above.

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<sup>36</sup> ARTICLE 19 Principle 3.3.

## **4. Analysis of the draft Law: The Rules Governing Public Broadcasting**

### **4.1 Independence**

The draft Law provides for a Board to function as the oversight body for the public broadcaster. Specifically, Article 25(2) of the draft Law stipulates that the higher managing body of the public broadcaster is its Board, and the remainder of Article 25, and Articles 26 through to 30 are concerned with its remit, powers and functions.

#### **4.1.1 Express Guarantees**

The draft Law includes a number of general provisions on broadcasting independence and prohibiting interference or censorship. It does not, however, provide specifically for the independence of the Board of the public broadcaster. ARTICLE 19 advises that, to promote its independence, the law should include an explicit guarantee of the independence of the Board in the law.<sup>37</sup> The following form of wording is one possibility:

The Board shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies. This autonomy shall be respected at all times and no person or entity shall seek to influence the members or staff of the Board in the discharge of their duties, or to interfere with the activities of the Board, except as specifically provided for by law.

A similar guarantee should also be provided for members of the Board and for the managing director.

In addition, the law should state expressly that the Board is required to take into consideration and promote the policy objectives of broadcast regulation (as outlined in Articles 2 and 19 of the draft Law) in all of their work, and to act in the public interest at all times.<sup>38</sup> This is a mechanism for both accountability and independence.

#### **4.1.2 Appointments to the Board**

Article 25(3) provides for appointments to the Board. Members are appointed for five years on a staggered basis (one-third shall be appointed every two years). The 15 members are appointed as follows: one by the President, two by the Parliament, two by the government, one by the judiciary and nine by civil society. No details are given as to how these various appointments are to be made, how the staggering is to occur, or for the appointment of the President or the Secretary of the Board. Article 25(3) states simply that the Board will "...be composed in compliance with the Charter". Article 46 stipulates that the Charter will be developed by the government. Pursuant to Article 26(6), the Managing Director has the right to attend meetings and to exercise a 'consultative vote'.

Simple guiding principles and rules of incompatibility are set out at Articles 25(5) and (7). The former directs members of the Board that they should not represent partisan interests or "adhere to radical political views" while exercising their authority as members of the Board. Following appointment, members should not be subject to any interference with the proper performance of their role. Article 25(7) provides that members may not work at the public broadcaster or be in the pay of any other broadcaster.

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<sup>37</sup> ARTICLE 19 Principle 11.

<sup>38</sup> ARTICLE 19 Principle 12.

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Article 25(4) outlines the circumstances justifying termination of a member's position prior to the end of his or her tenure, which include by request, death or incapacity, absence without valid reason from three successive meetings and having committed an illegal act.

### Analysis

These provisions are, in many ways, very positive. At the same time, they suffer from a number of omissions and weaknesses. It is well recognised in international law that members of governing bodies exercising regulatory functions in the area of broadcast regulation should be appointed in a manner which minimises the risk of political or commercial interference.<sup>39</sup> Ideally, figures and bodies that normally have clear party-political links, such as the president and government, should not have the power to appoint members of governing bodies of public broadcasters.

The law should set out as clearly as possible the full process for appointments, leaving little to subsequent regulation. At a minimum, the law should provide an outline of how civil society should select its members and how the President and Secretary of the Board are to be appointed. The law should also specify what weight is to be attached to the vote of the Managing Director, and when his or her vote may be exercised. Given that the Charter is to be developed by the government, it is not appropriate to leave these matters to that document or, indeed, any other form of subsequent regulation.

All appointments should be required to be made in a manner that is fair and transparent. Members should be required to possess some expertise, to avoid patronage appointments.

In accordance with these standards, 13.2 of the ARTICLE 19 Principles states:

The process for appointing members should be open and democratic, should not be dominated by any particular political party or commercial interest, and should allow for public participation and consultation. Only individuals who have relevant expertise and/or experience should be eligible for appointment. Membership overall should be reasonably representative of society as a whole.

The rules of incompatibility in the draft Law are minimal and relate only to commercial conflicts of interest, not political ones. They should be supplemented by rules prohibiting elected officials, senior members of political parties and so on from being appointed as members.

One model for appointments that has been recommended by ARTICLE 19 is where parliament is responsible for appointments but civil society nominates members. Splitting roles in this way provides some balance between the need for independence while maintaining accountability. The following provisions reflect this approach:

#### Board of Directors

- (1) The Public Broadcaster shall be governed by a Board of Directors (hereinafter called "the Board") with overall responsibility for the Public Broadcaster's accountability, through the Parliament to the people of the Kyrgyz Republic.

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<sup>39</sup> Note 20 and ARTICLE 19 Principle 13.1.

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- (2) The Board shall be composed of nine (9) members who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting, policy, law, technology, journalism and/or business.

#### Appointment of the Board

- (1) Members of the Board shall be appointed by Parliament, in accordance with the following:
- a. the process shall be open and transparent;
  - b. only candidates nominated by civil society and professional organizations shall be considered for appointment;<sup>5</sup>
  - c. a shortlist of candidates shall be published in advance and the public shall be given an opportunity to make representations concerning these candidates;
  - d. a candidate shall be appointed only if he or she receives two-thirds of the votes cast;
  - e. membership of the Board as a whole shall, to the extent that this is reasonably possible, represent a broad cross-section of the Kyrgyz Republic society;
- (2) No one shall be appointed to the Board if he or she: –
- a. is employed in the civil service or any other branch of government;
  - b. holds an official office in, or is an employee of, a political party;
  - c. holds an elected position at any level of government;
  - d. holds a position in, receives payment from or has, directly or indirectly, significant financial interests in broadcasting or telecommunications; or
  - e. has been convicted, after due process in accordance with internationally accepted legal principles, of a violent crime and/or a crime of dishonesty or theft, for which he or she has not been pardoned, unless five years have passed since the sentence was discharged;
- provided that individuals who have been short listed pursuant to sub-section (1)(c) shall be given an adequate opportunity to take any necessary steps to remove a barrier to their appointment under this sub-section.

We note that protection against dismissal is a fundamental element of the independence of the Board. 13.4 of the ARTICLE 19 Principles states that a member should not be subject to dismissal unless he or she:

- no longer meets the rules of incompatibility;
- commits a serious violation of his or her responsibilities, as set out in law, including a failure to discharge those responsibilities; or
- is clearly unable to perform his or her duties effectively.

The existing grounds for termination are overly broad inasmuch as the commission of any illegal act formally serves as grounds for termination. Instead, the law should make it clear that only serious crimes, or crimes of dishonesty, could justify termination of membership of the Board. The following is a possible alternative drafting for Article 25(4):

The Parliament may remove a member from the Board only after a hearing and where that individual: –

- a. becomes, by virtue of section X [ie rules of incompatibility listed above], ineligible for appointment to the Board;
- b. is no longer able to perform his or her duties effectively; or
- c. fails, without valid excuse, to attend meetings of the Board for a period of more than six (6) months.

Where a Board member has been removed pursuant to sub-section (3), he or she shall have the right to appeal such removal to the courts.

### ***4.1.3 Rights and Authority of the Board***

Article 27(2) provides, *inter alia*, for the Board to approve the Regulation on the Board. It also gives the Board the power to discharge managers of the public service broadcaster and to recommend the discharge of managers of subdivisions to the Managing Director. Article 30 provides that the Board appoints the Managing Director. The functions of the Managing Director are to be specified in the Charter.

As with other parts of the draft Law, ARTICLE 19 recommends that more detail be included rather than left to subsequent elaboration. The outline procedures of the Board should be set out clearly in the draft Law rather than left to the determination of the Board itself. Any changes to the Board's powers and responsibilities should only be effected through amendment of the relevant legislation.<sup>40</sup>

The powers of the Board with respect to appointments are not quite clear from the draft Law but the Board should appoint the senior management, not just the Managing Director.<sup>41</sup> The provisions of the draft Law as regards discharging management require further elaboration. Members of management should have a right to written reasons for serious disciplinary action against them and to judicial review of such actions.<sup>42</sup> The draft Law should also clearly set out the appointment process for senior management, which should embody the same principles as for the appointment of Board members, including detailed rules of incompatibility.<sup>43</sup>

### ***4.1.4 National Television and Radio Broadcasting Committee***

Article 46 (which should be Article 34, consecutively numbered) calls on the Parliament to introduce a draft provision "On National Television and Radio Broadcasting Committee of the Kyrgyz Republic". It is quite unclear what this is or what its purpose is, and this should be clarified in the draft Law. Regardless, if it is to have powers over the public broadcaster, its independence should be clearly protected.

### ***4.1.5 Funding***

Article 31 of the draft Law deals with funding, providing for government grants, advertising, grants and sponsorship, while Article 31(3) also refers to a public broadcasting subscription levy.

True independence for a public service broadcaster is only possible when the broadcaster has ongoing adequate and stable funding to achieve its mandate. A public service broadcaster should have a stable source of funding which adequately protects it from arbitrary cuts to its budget. As a key Recommendation of the Committee of Ministers' of the Council of Europe states:

The rules governing the funding of public service broadcasting organisations should be based on the principle that member states undertake to maintain, and where necessary, establish an appropriate, secure and transparent funding framework which guarantees

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<sup>40</sup> ARTICLE 19 Principle 14.1.

<sup>41</sup> ARTICLE 19 Principle 35.2.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*



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public service broadcasting organisations the means necessary to accomplish their missions.<sup>44</sup>

The funding provisions, and particularly the reference to the fee, require further elaboration. In particular, clarification is required regarding how the fee is to be levied – for example whether it will be a uniform fee or whether it will be charged on a ‘user pay’ basis – and who will set the rate and how it will be set. A levy can make a very significant contribution towards guaranteeing stable revenues for a public broadcaster. It is thus welcome in principle but will only be effective in practice if more detail is provided as to its functioning.

#### **Recommendations:**

- Express guarantees of independence for both the Board and individual members of the Board should be included in the draft Law.
- The Board should specifically be required to take into consideration and to promote the policy objectives of broadcast regulation (as outlined in Articles 2 and 19 of the draft Law) in all of their work, and to act in the public interest at all times.
- The government and President should not have the power directly to appoint members of the board.
- The nature of the Managing Director’s ‘consultative’ vote should be clarified.
- Stricter rules of incompatibility should be adopted for Board members and their tenure should be better protected.
- The law should include more detailed provisions relating to Board processes.
- Article 27 should be amended to provide for the appointment by the Board of senior management, as well as the Managing Director.
- Article 46 should be amended to clarify the function and powers of the National Television and Radio Broadcasting Committee of the Kyrgyz Republic.
- Article 31(3) should be amended to clarify various aspects of the subscription levy.
- Article 2(2) should be amended to include a provision noting that providing sufficient funding for the public service broadcaster is one of the purposes of the draft Law.

## ***4.2 Accountability Mechanisms***

### ***4.2.1 Annual Report***

Article 29(1) requires the Board to submit an annual activity report to the President and the Parliament. Very few details are provided as to what this report should contain, although it is required to be published in the media.

This provision could be enhanced by providing for inclusion in the report of a more detailed list of contents, thereby restricting the discretion of the Board as to what to include. The

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<sup>44</sup> Note 20, Guideline V.

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report should also include a summary of audited accounts and these should be made available to the Parliament for review purposes.<sup>45</sup> An indication of the detail that might be included is in the following:

- (1) The Board shall provide to the President and the Parliament of the Kyrgyz Republic, and publish and distribute widely, an Annual Report, along with externally audited accounts, for the Public Broadcaster. Each Annual Report shall include the following information: –
  - (a) a summary of the externally audited accounts, along with an overview of income and expenditure for the previous year;
  - (b) information on any company or enterprise that is wholly or partly owned, whether directly or indirectly, by the Public Broadcaster;
  - (c) the budget for the following year;
  - (d) information relating to finance and administration;
  - (e) the objectives of the Public Broadcaster for the previous year, the extent to which they have been met and its objectives for the upcoming year;
  - (f) editorial policy of the Public Broadcaster;
  - (g) a description of the activities undertaken by the Public Broadcaster during the previous year;
  - (h) the Program Schedule and any planned changes to it;
  - (i) a list of programs broadcast by the Public Broadcaster that were prepared by independent producers, including the names of the producers or production companies responsible for each independent production;
  - (j) recommendations concerning public broadcasting; and
  - (k) information on complaints by viewers.
- (2) The Board shall formally place the Annual Report and externally audited accounts before the Parliament for its consideration.

#### *4.2.2 Public Review and Complaints Procedure*

In line with international standards, ARTICLE 19 submits that a public review mechanism, based on a Code of Broadcasting Practice, is an appropriate mechanism to promote ongoing public accountability of a public service broadcaster. ARTICLE 19 suggests that consideration be given to including the following provisions in the draft Law:

##### Public Review

In order to ensure transparency and to improve its service in the public interest, the Public Broadcaster shall make an effort to ensure that it remains under constant review by the public, including by holding public meetings and seminars to look at ways it might better serve the public interest.

##### Complaints Procedure

- (1) The Public Broadcaster shall develop a Code of Broadcasting Practice in consultation with interested stakeholders which shall govern its broadcasting practices and program content.
- (2) The Code referred to in sub-section (1) shall, among other things, address the following issues: –
  - (a) accuracy, balance and fairness;
  - (b) privacy, harassment and subterfuge;
  - (c) protection of children and scheduling;
  - (d) portrayal of sexual conduct and violence, and the use of strong language;
  - (e) treatment of victims and those in grief;
  - (f) portrayal of criminal or anti-social behaviour;
  - (g) advertising;

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<sup>45</sup> Article 19 Principle 15.1.

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- (h) financial issues such as payment for information and conflicts of interest;
  - (i) discrimination; and
  - (j) leaked material and the protection of sources.
- (3) Individuals may lodge a complaint against the Public Broadcaster for breach of the Code referred to in sub-section (1) and such complaints shall be dealt with by the Public Broadcaster in a fair and balanced manner.
- (4) To give effect to sub-section (3), the Public Broadcaster shall establish an internal procedure for processing complaints.
- (5) The procedure provided for in sub-section (4) shall provide for a range of remedies appropriate to any breach including rectification of any false statements of fact, a right of reply and apologies.
- (6) Lodging an internal complaint shall not preclude an individual from pursuing any other remedies which may be available.

#### **Recommendations:**

- The draft Law should be amended to provide a detailed list of contents for the annual report, in accordance with the above.
- The public broadcaster should be required to keep itself under ongoing public review and to establish a code of practice and complaints procedure to implement the code.

### **4.3 Mandate**

#### **4.3.1 Mission or Guiding Principles**

Articles 19 and 20 seek to describe what the public service broadcaster will achieve and how its programming will contribute to this. On the one hand, these provisions are not very detailed, although they do include some important provisions. On the other hand, some of these provisions are extremely vague. The use of qualifiers such as ‘balanced’ and the need to ‘respect’ the interests of all the regions of the country, for example, render the objectives ambiguous and create scope for interference. ARTICLE 19 suggests that consideration be given to expanding the scope of these provisions to cover some of the following objectives:

- (1) The Public Broadcaster has an overall mandate to provide a wide range of programming for the whole territory of the Kyrgyz Republic that informs, enlightens and entertains, and that serves all the people of the Kyrgyz Republic, taking into account ethnic, cultural and religious diversity.
- (2) The Public Broadcaster shall provide innovative and high quality broadcasting, which reflects the range of views and perspectives held in society, satisfies the needs and interests of the general public in relation to informative broadcasting, and complements programming provided by private broadcasters.
- (3) The Public Broadcaster shall strive to provide a broadcasting service that: –
  - a. is independent of governmental, political or economic control, reflects editorial integrity and does not present the views or opinions of the Public Broadcaster;
  - b. includes comprehensive, impartial and balanced news and current affairs programming;
  - c. contributes to a sense of national identity, while reflecting and recognizing the cultural diversity of the Kyrgyz Republic;
  - d. strikes a balance between programming of wide appeal and specialized programs that serve the needs of different audiences;
  - e. includes programs that are of interest to different regions;
  - f. ensures the diffusion of important public announcements;
  - g. provides a reasonable proportion of educational programs and programs oriented towards children;

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- h. promotes program production within the Kyrgyz Republic ; and
- i. contributes to informed debate and critical thought.

#### *4.3.2 Promotion of Local Content Production*

Article 22 of the draft Law provides that 30% of all of the public broadcaster’s airtime will be allocated to the winner of a tender for non-commercial cultural and educational programs. The airtime will be provided to the winner of the tender at no charge.

It is unclear from Article 22 whether it is intended to be just one tender for the entire 30% or separate tenders with more than one organization gaining access to the block of airtime. If it is the latter, then the objective of the tender process is more comprehensible within the policy objective of public service broadcasting.

In either case, ARTICLE 19 believes Article 22 in its current form constitutes a significant departure from the overall responsibility of the public broadcaster to provide quality, diverse programming. This is an unstructured method of promoting the production of local programming. A better approach, which has proven successful in other countries, is to require the public broadcaster to purchase a minimum percentage of programming from independent producers. This achieves the objective of promoting more diverse sources of local content but avoids the winner-take-all approach currently found in the draft Law, which does not include any systemic guarantee of quality. The following is one approach to be considered:

To encourage and promote program production within the Kyrgyz Republic, and to ensure that its programs reflect a wide variety of views and perspectives, the Public Broadcaster shall work towards the goal of obtaining 20% of its total broadcasting from independent producers based in the Kyrgyz Republic.

This maintains the public service broadcaster’s control over its program content, while enabling it to select programs which fulfil the objectives of providing programming that is of interest to different regions and that responds to specialised programming needs and, at the same time, supporting local program production by independent producers.

#### *4.3.3 Content Rules*

Article 23(1) requires advertising carried by a public service broadcaster which is addressed to children or includes images of children to “avoid anything that might harm their interests”. Article 20(5) also prohibits programming that may be harmful to children or teenagers being broadcast between 21:00 and 07:00. Article 20(4) prohibits the use of pornographic material in programs, as well as material “that propagates violence...”. Neither of these terms are defined.

It is recognised that public broadcasters may, indeed should, be placed under more onerous content obligations than other broadcasters and certainly than other means of communication. However, some of the phrases used in the draft Law impose burdens that are onerous and lack sufficient clarity. Language such as this can create a range of discretion that can be misused to stifle the activities of a broadcaster. More sensitive or standard-setting content issues should be left to be elaborated in the code of conduct noted in Section 4.2.2 of this Memorandum.

<b>Recommendations:</b>
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- Consideration should be given to providing for more detailed objectives and programme obligations for the public broadcaster, in accordance with the suggestions above.
- Consideration should be given to replacing the currently independent production scheme as set out in Article 22 with one more along the lines suggested above.
- The content restrictions in the draft Law should be amended to make it clearer exactly what is being prohibited.

**LAW OF KYRGYZ REPUBLIC**  
**«ON BROADCASTING»**

**SECTION I. GENERAL PROVISIONS**

***Article 1. The Scope of the Law***

1. This Law regulates the relations emerging in the sphere of broadcasting in the Kyrgyz Republic.

The scope of this Law shall apply to all broadcasters registered in the Kyrgyz Republic according to the effective legislation and to the broadcasters established outside the Kyrgyz Republic with regard to the content of audio, audiovisual and visual mass information broadcasted in the Kyrgyz Republic.

***Article 2. The Purpose of the Law***

This Law shall in accordance with the Constitution of the Kyrgyz Republic and the regulations of international law:

*1. establish:*

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- legal foundations and principles of the operation in the sphere of broadcasting;
- the basics of public regulations in the sphere of broadcasting;
- the procedure of information transfer through broadcasting;
- rights, obligations and liabilities of the broadcasters.

#### *2. ensure:*

- implementation of state policies in the sphere of the broadcasting;
- receiving by citizens of full and trustworthy information about all the spheres of life of the society as well as the satisfaction of various informational needs of the society.
- reflecting the opinions of the political, religious, national, social, age groups and other groups of society when observing public and state interests;
- providing with the appropriate conditions for storing, development and dissemination of national culture and customs of the people, residing in the territory of the Kyrgyz Republic;
- dissemination of cultural, ethical and moral values in the society that ensure intellectual and esthetical education of the society.

#### *3. guarantee:*

- the freedom and the independence of broadcasting, inadmissibility of censorship;
- the right of every person to freedom of expression, freedom to hold opinions, freedom to seek, receive and impart information, to public and free discussion of public issues.

#### **Article 3. Legislation on Broadcasting**

1. The legislation of the Kyrgyz Republic on broadcasting rests upon on the Constitution of the Kyrgyz Republic, the law of the Kyrgyz Republic “On the media”, the law of the Kyrgyz Republic “On guarantees and the freedom of access to information”, the law of the Kyrgyz Republic “On electric and mail service” and other regulations of the Kyrgyz Republic.

2. The international legal instruments which the Kyrgyz Republic is a party shall supersede the provisions of this Law.

#### **Article 4. Freedom and Independence of Broadcasting**

1. The right to freely hold and disseminate thoughts, ideas and opinions, the right to freely transmit and disseminate information in the Kyrgyz Republic shall be guaranteed by the Constitution of the Kyrgyz Republic.

2. Every citizen of the Kyrgyz Republic shall have the right to seek, receive and impart information through broadcasting.

3. The broadcasting in the Kyrgyz Republic shall be free and independent except restrictions envisaged in the Constitution and the laws of the Kyrgyz Republic.

4. Censorship in the sphere of broadcasting shall not be allowed.

5. Interference in the creative activities of broadcasters by state authorities, their officials, political parties, public and religious organizations as well as individuals shall be prohibited.

6. The broadcasting in the Kyrgyz Republic shall be allowed in any language.

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#### *Article 5. Terms and definitions*

The following terms are used in this Law:

- **broadcaster** – legal entity registered in accordance with the effective legislation as a mass media and broadcasting pursuant to the broadcasting license;
- **additional information** – audio, visual and audiovisual mass information not relating to the content of television program and transmitted as a part of a television signal;
- **broadcasting channel** – total of technical means and fixed band of the radio frequency range allocated for broadcasting;
- **broadcasting license** – permit to perform broadcasting issued by the Authorizing Body. In the Kyrgyz Republic the broadcasting license is the telecommunications broadcasting license issued by the regulatory Authorizing Body in the area of electric communication.
- **logo** – broadcaster’s emblem that is a trademark of a certain broadcaster intended for distinguishing its television programs from the programs of the other broadcasters;
- **program** – the entire content of broadcasting of a certain broadcaster, broadcasted or rebroadcasted on one television or radio broadcasting channel;
- **producer** of television and radio products – any natural body or legal entity carrying out the production of audio, visual or audiovisual information assigned for dissemination through broadcasting;
- **rebroadcasting** – receiving and further transmission - performed using the technical means of communication - of complete and invariable television and radio programs transmitted by the broadcaster for the receiving by population;
- **sponsorship** – participation of a natural person or legal entity not involved in the broadcasting or production of television and radio products in direct or indirect funding of television and radio programs in order to promote publicity of its name, firm name or trademark;
- **broadcasting** – transmission using the electromagnetic waves of audio, visual and audiovisual mass information as well as additional information received by any number of television and radio sets;
- **television or radio program** – audio, visual and audiovisual information of a certain name and volume assigned for dissemination through broadcasting;
- **technical means** of broadcasting – set of radio-electronic means and technical devices assigned for broadcasting;
- **cross-border** broadcasting – broadcasting when the coverage area expands into the territory of the other state or states;
- **broadcast** – initial transmission of television and radio programs received by population through technical means of communication;
- **corporate name** – stable full or contracted broadcaster’s name distinguishing it from the other broadcasters.

## SECTION II. ORGANIZING THE OPERATION IN THE SPHERE OF BROADCASTING

#### *Article 6. Broadcasting*

1. Broadcasting in the Kyrgyz Republic is performed pursuant to a broadcasting license, except instances envisaged in the effective legislation of the Kyrgyz Republic.

2. In the Kyrgyz Republic a separate record of all radio frequencies that are used or that may be used for broadcasting shall be kept in the “Unified register of radio frequencies that are used, or that may be used for broadcasting” (hereinafter the “Register”). The Register shall include information on each radio frequency developed for the corresponding potential broadcasting area, within the range (subrange) of the radio frequency spectrum allotted for broadcasting purposes. Access to the Register shall not be limited.

3. Use of the radio frequency spectrum for broadcasting shall be performed in accordance with the permission of State commission of the Kyrgyz Republic on Radio frequencies *or* the authorized body. The allocation of the radio frequencies shall be performed on competitive basis. Public Broadcasting shall be performed mainly in metric waveband. The procedure of competition



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is regulated by corresponding Regulation on the competition for the allocation of broadcasting frequencies adopted and ratified by the Government of the Kyrgyz Republic.

4. Technical process of dissemination of information through broadcasting shall be performed by:

- broadcaster, through the use of its own, rented, or used on any other legal basis, technical means of broadcasting;
- telecommunications provider in compliance with its agreement with the broadcaster.

5. Rebroadcasting of television and radio programs of a broadcaster by another broadcaster or telecommunications provider shall be allowed merely by consent with the broadcaster performing the broadcasting.

6. Cross-boarder broadcasting shall be performed in accordance with the intergovernmental agreements of the Kyrgyz Republic.

7. When disseminating audio, visual or audiovisual information produced by another media, reference to such media shall be obligatory.

#### ***Article 7. Establishment of Broadcasting Institutions***

1. The right to found broadcasting institutions in the Kyrgyz Republic shall belong to the citizens of the Kyrgyz Republic as well as to the legal entities registered in the Kyrgyz Republic in accordance with the effective legislation.

2. It shall not be allowed to found or operate broadcasting institutions with foreign investment where foreign natural persons or legal entities by having a major interest or in accordance with its agreement with the broadcaster or by any other means could predetermine broadcaster's decision-making.

3. State registration of broadcasting institutions shall be performed pursuant to the order of registration of media established by the effective legislation of the Kyrgyz Republic.

#### ***Article 8. Broadcasting Licensing***

Broadcasting licensing shall be performed by the authorizing state bodies performing regulating functions in the area of electric communication in compliance with the effective legislation of the Kyrgyz Republic on licensing.

#### ***Article 9. Antimonopoly Restrictions***

1. No single broadcaster as well as its departments with the rights of legal entity shall have right to broadcast on more than two television broadcasting channels and three radio broadcasting channels. Broadcaster as well as its structural subdivisions having the status of legal entity and economic agent should not allow monopolistic activities limiting or eliminating competition and abuse of once dominating position on the market.

2. Natural person or legal entity providing electric communication services through its own network or network belonging to other natural person or legal entity shall never be a founder or a cofounder of a broadcaster.

#### ***Article 11. International Cooperation***

1. International cooperation in the area of broadcasting shall be carried out in accordance with the legislation and the international agreements of the Kyrgyz Republic as well as in accordance with the agreements between the broadcasters of the Kyrgyz Republic and foreign broadcasters.

2. Broadcasters of the Kyrgyz Republic shall freely cooperate with foreign broadcasters and television and radio programs producers and, in particular, exchange, sell, purchase and co-produce television and radio programs as well as rebroadcast television and radio programs in compliance with agreements.

### **SECTION III. PRINCIPAL RULES OF BROADCASTING**

#### ***Article 12. Obligations of Broadcasters***

Broadcasters shall be obliged:

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- to act in public interests, respecting diversity of opinions and protecting the idea of independent, democratic and lawful state as well as internationally-recognized human rights;
- to observe technical standards in the area of broadcasting;
- to disseminate information and materials for persons with hearing abnormalities.

#### ***Article 13. The Right of Broadcasters to Information***

Broadcaster shall have the right to receive information from state authorities, municipal authorities and the non-government organizations in the order envisaged in the legislation of the Kyrgyz Republic.

#### ***Article 14. Output Data***

1. When carrying out the television broadcasting the screen shall always display the corporate name or logo of the broadcaster registered in accordance with the legislation of the Kyrgyz Republic on corporate names and trademarks.

2. When carrying out the radio broadcasting the broadcaster should announce at least every hour its name and broadcasting frequency.

#### ***Article 15. Emergency broadcasting***

1. In the event of state of emergency or of war all broadcasters shall immediately provide air for official statements to the President of the Kyrgyz Republic or the authorized by the President of the Kyrgyz Republic persons as well as to the Head of the Parliament of the Kyrgyz Republic or his deputy.

2. Time of the emergency broadcasting at each television or radio channel shall not exceed 180 seconds per one hour of broadcasting.

3. All broadcasters shall broadcast the emergency official statements specified in this article free of any charge.

## SECTION IV. BROADCASTERS

#### ***Article 16. The Structure of Broadcasting of the Kyrgyz Republic***

1. The structure of the broadcasting the Kyrgyz Republic is comprised of commercial, non-commercial and public broadcasters established in compliance with the effective legislation of the Kyrgyz Republic.

2. All the broadcasters of the Kyrgyz Republic regardless the form and legal status or organization shall have the equal rights and liability in compliance with the legislation of the Kyrgyz Republic.

#### ***Article 17. Commercial Broadcasters***

1. Commercial broadcasters may be established in any structural and legal form in accordance with the legislation of the Kyrgyz Republic and operate for profit.

2. Financial activity of commercial broadcasters shall be based upon the sales of broadcasting time for advertising purposes, sponsorship receipts and revenues from the other forms of economic activity, not prohibited by the Laws of the Kyrgyz Republic.

#### ***Article 18. Non-Commercial Broadcasters***

1. Non-commercial broadcasters shall be established to meet the informational, spiritual, cultural and other non-material demands of the society.

2. Profit making shall not be the primary aim of activities of non-commercial broadcasters and the revenues received shall not be shared between the founders.

3. Public broadcasters shall be non-commercial broadcasters.

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#### SECTION V. PUBLIC BROADCASTING

##### *Article 19. The Mission and Objectives*

Public Broadcasting shall ensure:

- diverse and balanced programs for all the levels of society.
- efficient informing of customers on social and political events in the Kyrgyz Republic and abroad.
- production and dissemination, at high professional, artistic and technical level, of economical, journalistic, cultural, educational, artistic, teaching, entertainment and sports TV and radio programming as well as TV and radio programs for children and youth.

##### *Article 20. Public Broadcasting Programs*

1. Public Broadcasting programs shall serve the interests of the society.
2. Public Broadcasting programs shall reflect a wide range of opinions and trends existing in the areas of politics, philosophy, religion, science and art. They shall not unilaterally serve the interests of a single party, group, association, corporation, religion or ideology.
3. When producing programs the interests of all the regions of the country shall be respected.
4. Programs shall not contain:
  - pornographic matter;
  - materials that propagate violence or incite interethnic hatred.
5. Programs that may be harmful to physical, intellectual and moral development of children and teenagers shall be broadcasted in the period of time from 21.00 to 07.00.
6. News shall be impartial and unbiased, any comments shall be clearly separated from the news.

##### *Article 21. Access to Information; Confidentiality of Journalistic Sources*

1. The Public Broadcaster shall have the right to broadcast the parliamentary sessions live as well as recorded.
2. The Public Broadcaster shall have the right to access to archives, documentation and information disposable by state authorities.
3. The Public Broadcaster shall have the right to freely access to cultural, sports and other events widely available to the public and of common informational interest.
4. Confidentiality of sources of information (including data unearthed by journalists). The disclosure of sources shall only be in compliance with the court decision as may harm the public interests.

##### *Article 22. Air time for third parties*

1. The Public Broadcaster shall hold tender and name the winner thus awarding free of any charge 30% of all Public Broadcaster's air time for broadcasting products (non-commercial cultural and educational programs) of external broadcasting organizations.

##### *Article 23. Advertising*

1. Advertisements addressed to children or using the images of children shall avoid anything that may harm their interests.
2. Dissemination of advertisements shall be restricted in the following way:
  - The public broadcaster shall limit the volume of broadcasted advertising in accordance with the amount defined by the Board that shall not exceed 10% of daily broadcasting.
  - Total amount of commercial inserts during allotted one hour period shall not exceed 6 minutes per one hour.
  - The Public Broadcaster shall not place advertisements in the creeping line.
  - Advertisements affecting the subconscious shall not be allowed.

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- Advertisements shall not use visual or voice images of the persons presenting the news and current events.
- Advertising of tobacco shall not be allowed.
- Advertising of alcohol shall not be allowed.
- Advertising of drugs, medicines, medical products and medical equipment, which production and distribution are not allowed pursuant to the effective legislation shall not be allowed. Advertising of treatment modes, preventive measures, diagnostics and rehabilitation that are not allowed by the corresponding authority, shall not be permitted.

#### ***Article 24. Sponsorship***

1. Sponsorship in the sphere of broadcasting shall meet the following conditions and requirements:

sponsor shall not have the right to influence the content of broadcasted television and radio program or set up the time and the terms of its broadcasting;

sponsored television or radio program shall contain clear and comprehensible subtitles, indications or announcements broadcasted only in the beginning and/or in the end of television and radio program;

sponsored television or radio programs shall not encourage sales, purchase or rent of goods or services of the sponsor or the third party, particularly by mentioning these goods or services in such television or radio programs;

2. The performance of sponsorship activity shall be prohibited:

- to producers whose main activity is the production of the goods, works and services which advertising is forbidden by the legislation of the Kyrgyz Republic;
- to religious organizations, political parties, other political associations and persons who are professionally engaged in political activity

Charity and patronage in the sphere of the television and radio broadcasting shall be performed in accordance with the legislation of the Kyrgyz Republic on philanthropy and charity. The dissemination by the broadcaster of the information about the goods, works and services produced by the benefactor shall not be allowed.

3. Charity, philanthropy and sponsorship as to informative, political and religious television and radio programs shall not be allowed.

#### ***Article 25. Managing Bodies of Public broadcasting***

1. The bodies of Public Broadcasting are:

- The Board
- The General Director

2. The higher managing body of Public Broadcasting is its Board.

3. The Board shall be a collegiate body consisting of its President and fourteen Members elected for a term of five years and shall be composed in compliance with the Charter.

4. The Board shall be approved by the Parliament of the Kyrgyz Republic for a term of five years. Every two years the Board shall be renewed by one third and shall be nominated by:

- a) the Parliament – two representatives;
- b) the President of the Kyrgyz Republic – one representative;
- c) the Government – two representatives;
- d) the Judicial power – one representative;
- e) the civic society (NGO, media, business, political parties) – nine representatives (including three experts in the sphere of broadcasting).

5. Activity of the Board shall proceed from the Constitution of the Kyrgyz Republic, this Law and other regulations on the activities of the media.

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6. The Board Members when executing their authority shall not represent the interests of the parties, associations, organizations, authorities and business entities and shall not adhere to radical political views.

7. Tenures of the Board Members shall be terminated at the expiration of the period of appointment.

Early termination of tenures of Board members shall be executed:

- on own request;
- in the event of decease or incapacitating illness of the Board member;
- in the event of absence for not valid reasons three times successively at the Board Meetings.
- in the event of commitment of illegal act envisaged in the legislation of the Kyrgyz Republic.

8. The Board Members shall not work at the Public Broadcasting Body or to have business relations with any television and radio corporation and get remuneration.

#### ***Article 26. Activity of the Board***

1. The Board shall be called at least four times a year, at that not later than on March 30 of every year. The Annual Meeting shall review the balance of work during the past year in compliance with the regulations defined in the Charter of the Public Broadcasting Body.

2. Extraordinary Board Meeting shall be called on request of the President of the Board or if demanded by at least one third of the Board Members.

3. A Board Meeting shall be of authority if attended by at least two thirds of Board Members. In the absence of quorum the Meeting shall be postponed.

Decisions of the Board shall be passed by simple majority of votes of the Board Members, except instances envisaged in the Charter and the regulations.

4. The President of the Board shall direct the Board's activity. The President of the Board shall perform the following functions:

- to determine time, venue and agenda of the Board Meeting;
- to ensure preparation of the Meeting in accordance with its agenda;
- to chair the Board Meetings;
- to appoint, in case of own absence, one of the Board Members as a chairman of a Meeting;
- to check the execution of decisions of the Board.

5. Minutes of the Meetings shall be kept by the Secretary of the Board elected by the Board members. The functions of the Secretary shall also include:

- to arrange annual, regular and special meetings; to prepare all the appropriate materials for meetings and documents for the Board members; to process and record the presented materials.
- to notify the Board about the meeting, agenda, time and venue not later than 30 days before the annual and regular meetings and not later than 10 days before the extraordinary meeting;
- to maintain the documentation of the Board.

6. The Managing Director of the Public Broadcasting Body shall have the right to attend the meetings of the Board with the right to consultative vote.

#### ***Article 27. Rights and Authority of the Board***

1. Public Broadcasting Body shall act in compliance with the Charter and the regulations on Board activities and determine the broadcasting policy;

2. Within the framework of its responsibilities the Board shall have the following rights:

- to approve the Regulation on the Board, to make amendments and annexes to other documents regulating activity of the Public Broadcasting Body;

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- to receive credits, grants and other funds for the needs of Public Broadcasting, in accordance with the procedures established by the legislation of the Kyrgyz Republic and with the objectives and tasks of the Public Broadcasting Body;
- to consider and approve cost estimates (budgets), planning documents and financial reports of the Public Broadcasting Body;
- to hear reports of the Public Broadcasting Body's officials on the use of funds, assets and another property of the Public Broadcasting Body;
- to request, according to the established procedure, any documents related to the financial and economic activities of the Public Broadcasting Body, from its relevant officers;
- to create commissions and working group of the Board members as needed to accomplish the tasks, determined by the Charter;
- to conduct public hearings with regard to the activity of the Public Broadcasting Body;
- to engage consultants and to create working groups for independent verification of documents, auditing or consultancy as to the Public Broadcasting Body's operation;
- to request, in accordance with the established procedure, and to obtain from government authorities and institutions the necessary information as to the activities of the Public Broadcasting Body;
- to initiate proposals on holding liable officers Public Broadcasting Body for breaches of financial discipline;
- to consider applications and petitions addressed by citizens and organizations to the Board with regard to the activity of Public Broadcasting Body;
- to decide by majority vote of three quarters on discharge of the managers of the Public Broadcasting Body;
- to hear reports on work of producers and managers of subdivisions of the Public Broadcasting Body and to recommend to the Managing director of the Public Broadcasting Body on their discharge and appointment by the majority of votes of the membership of the Board.

#### ***Article 28. Providing for the operation of the Board***

1. The Board shall operate on the voluntary basis.
2. Administrative, methodological, financial and other support of the Board shall be provided by Public Broadcasting Body in accordance with the established order.

#### ***Article 29. Activity Report of the Board***

1. The Board shall annually, and not later than on April 30 of the year after the reporting year, submit to the President and the Parliament of the Kyrgyz Republic its yearly activity report.
2. Such yearly report shall be published in the state media and covered by the Public Broadcasting Body.

#### ***Article 30. The Managing Director***

1. The Managing Director shall be the executive authority of the Public Broadcasting Body and shall be responsible for programming and ensure that the programming complies with the principles of programming as set out in this Law and does not violate any other laws.
2. The Managing Director shall manage the Public Broadcasting Body on the independent basis and shall carry responsibility for all its operations and activities.
3. The Managing Director shall be appointed by the Board by the majority of votes, at that he shall receive more than 51 of votes of the membership. The Managing Director shall be elected on competitive basis.
4. Functions of the Managing Director shall be clearly regulated in the Charter of Public Broadcasting Body.

#### ***Article 31. Funding Public Broadcasting***

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1. Funding of Public Broadcasting shall be provided at the expense of government grants, advertising and other means not prohibited by the laws of the Kyrgyz Republic.
2. Funding may be provided at the expense of grants and sponsorship.
3. Levying of payment of Public Broadcasting subscribers shall be carried out in accordance with the procedure established in the legislation.

### SECTION V. FINAL PROVISIONS

#### *Article 32. Liability for Breach of the Provisions of This Law*

Breach of provisions of this Law shall result in legal liability established in the Laws of the Kyrgyz Republic.

#### *Article 33. Effect of the Law*

This Law shall come into effect as of the date of its publication.

#### *Article 46. Harmonization of Regulations with the Law*

1. The Government of the Kyrgyz Republic shall, within three months:
    - harmonize its regulations with this Law;
    - develop and approve the Charter of the Public Broadcasting body;
    - introduce to the Parliament of the Kyrgyz Republic the draft provision “On National Television and Radio Broadcasting Committee of the Kyrgyz Republic”.
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