

ONE STEP FORWARD, **ONE STEP BACK**

**An Assessment of Freedom of
Expression in Ukraine during its
OSCE Chairmanship**



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Background Information: Freedom House has been engaged on the ground with the Institute of Mass Information and others on the interrelated issues of freedom of expression and corruption. Together with the Institute of Mass Information, we have a unique vantage point into the challenges and opportunities for the freedom of expression in Ukraine, especially as they pertain to journalists and activists, gained through our support for training journalists and the establishment of an independent platform (Nikorupciji.org) to investigate and cover instances of corruption at the local level. Freedom House has consulted with the government of Ukraine to share our concerns about how gaps between laws and practice in protecting the freedom of expression have a corrosive effect on the prospects for democratic advancement. We look forward to continuing this engagement. Given the importance of this year for Ukraine we commissioned a special report to assess Ukraine's progress on freedom of expression commitments in the human dimension.

I. Summary & Recommendations: Ukraine, its Chairmanship of the OSCE, and Freedom of Expression

2013 is the first year Ukraine has held the Chairmanship in Office (CIO) of the OSCE since it became a participating state in the organization in 1992. The Chairman in Office, Ukraine's Minister of Foreign Affairs Leonid Kozhara, outlined the country's priorities for its CIO in November 2012, among which were the freedom of speech, resolving the frozen conflicts, and combating human trafficking,¹ and acknowledged that Ukraine's own record would be under the microscope during its CIO.

Little progress has been made on many of those questions as acknowledged by Foreign Minister Kozhara in a recent editorial² and in a bi-annual report issued by the Ukrainian Ministry of Foreign Affairs on the Ukrainian OSCE chairmanship. According to their assessments, special attention has been paid to resolving the frozen conflicts, but few results in strengthening the freedom of speech have been realized except for the "arrangement of necessary conditions for renewal of mandate of Representative on Freedom of the Media."³

Ukraine's progress in meeting its obligations to respect the freedom of expression, including to facilitate the dissemination of information and working conditions for journalists, has been mostly unsatisfactory in recent years lagging behind progress made in Moldova, Georgia, and Armenia while doing better than Azerbaijan and Belarus.⁴ In spite of the generally high quality of legislation, the reality of implementation is less impressive. Citizens may freely express their views, and collect and disseminate information, but access to free and pluralistic media and to public information held by the authorities is inadequate. Journalists' working conditions are not secure enough to work safely and remedies for violations of journalists' rights or attacks on journalists are ineffective.

The media, and especially television, is rife with hidden paid content, making it difficult for viewers to discern what news is real and what is not. Television stations are constantly juggling political and economic pressure. Adherence to journalistic standards is unsatisfactory as ethics boards are ineffective.

2013 has thus far included some meaningful efforts to improve Ukrainian media legislation following a 2-year delay in reform; the Verkhovna Rada (Ukraine's Parliament) enacted a law on ownership transparency of media and passed the laws on public service broadcasting and privatization of government-owned press in the first reading. Neither law has proceeded to the second reading though, raising concerns about their ultimate fate.

Access to the media for the ruling party and its allies is significantly easier, including during the electoral period, due to legislative privileges for officials and governmental bodies and their influence on government-owned media outlets. Nationwide TV channels often do not cover the opposition

¹ <http://turkey.mfa.gov.ua/en/press-center/comments/288-priorities-of-ukraines-osce-chairmanship-in-2013> and http://www.kmu.gov.ua/control/uk/publish/article?art_id=245972106&cat_id=244276429

² <http://www.day.kiev.ua/uk/article/den-planeti/leonid-kozhara-ukrayinskiy-rik-obsie-ekvator-golovuvannya>

³ <http://mfa.gov.ua/ua/press-center/comments/358-rezulytati-golovuvannya-ukrajini-v-obse-u-pershomu-pivrichchi-2013-roku>

⁴ <http://www.interfax.com/newsinf.asp?id=441696>

because of special relations between their oligarch owners and the ruling political forces. A lack of quality analytical reports on television, the Internet, and in the print press, as well as the proliferation of tabloid-style content, also limit access to good quality information and access to the media by the opposition.

Much of the local media is financially dependent on the government and thus on the ruling political forces. Ownership of TV channels is not transparent and the new law on media ownership leaves loopholes, allowing opaque ownership structures to persist across the sector. The National Council on TV and Radio Broadcasting is not an independent regulatory body. Moreover, nationwide TV channels show loyalty to the government as important political events and themes, especially those relating to the political opposition, are covered inadequately or not at all.

There have been improvements in the protection of journalists' sources. Since implementation of the new Code on Criminal Proceedings, there have been no reports of police pressuring journalists to disclose their sources. Despite this progress, journalists who work for Internet media are still vulnerable.

There has been little recent progress in meeting the obligation to guarantee transparency in public affairs. Progress in the sector of access to public information, made in 2011, has stalled. The preliminary passage in 2012 of a draft law that would bring Ukrainian laws in line with model laws on access to information is a step in the right direction, but the second reading has been inexplicably put off several times and the date of its adoption is unclear.

Conclusion and Recommendations

The Ukrainian government has taken few steps in 2013 to meet its commitments and obligations under OSCE in the area of freedom of expression. Overall, the situation in the area is unsatisfactory with only some isolated legislative changes that can be considered as progress in the last two years. It appears unlikely that there will be significant improvements in the situation in the near future because, while legislation in some cases improves, practice does not follow.

With the goal of improving Ukraine's progress in meeting its OSCE obligations in the area of the freedom of expression, Freedom House makes the following recommendations:

- Take all necessary steps to ensure that journalists can safely report free of arbitrary restrictions, by
 - implementing effective remedies for journalists and civil activists who are victims of violence or censorship by designating journalism as a protected activity rather than journalists themselves as protected;
 - equalize treatment before the law of journalists who work for traditional media outlets, Internet outlets, and independently by expanding the definition of the term "journalist;"
 - investigate and prosecute violations of journalists' rights to the fullest extent of the law by providing to local police information about best practices and establishing a special consultative group within the Ministry of Internal Affairs;
 - ensure that municipal development plans are freely accessible;
- Amend the law on media ownership transparency to improve adherence to the requirements on ownership declarations by broadcasting companies so that the identities of individuals

controlling directly or indirectly 10 or more per cent of company's equity capital are ascertainable;

- Grant broadcast licenses through public auctions and needs assessments conducted by the National Broadcasting Council;
- Amend the legislation so that the law “On Personal Data Protection” does not inappropriately interfere with access to information provided for by the law “On Access to Public Information” and bring subordinate legislation in line with latter.
- Improve the composition and appointment process of the National Council of Ukraine on Television and Radio Broadcasting to improve the membership's independence and representativeness;
- Implement cooperation between the Commission on Journalistic Ethics and the National Council on Television and Radio Broadcasting to establish independent ethical commissions within broadcast media outlets composed of delegates of journalistic staff, owners, and independent media NGOs;
- Improve (and introduce where they do not already exist) public councils at TV stations;
- Take measures to guarantee the editorial independence of media from their management, for example, by making editors of news services accountable to an independent supervisory board;
- Privatize print media and transform broadcast channels into Public Service Broadcasters;
- Strengthen enforcement of the law on advertising provisions requiring that paid content be identified and seek ways to work with media outlets and journalists to stigmatize and reduce the amount of *jeansa*, by, for example, cooperating with Commission on Journalistic Ethics.

II. OSCE and the Domestic Legal Framework

Given Ukraine's commitment to the freedom of expression during its CIO of the OSCE, Freedom House has undertaken to consider the status of freedom of expression within Ukraine. The research presented here assesses the present status and dynamics of freedom of expression in Ukraine taking into account its CIO and stated goals, OSCE commitments and obligations in the area of the freedom of expression, and related bodies and commitments.

Ukraine's key political and legal obligations under the OSCE to ensure freedom of expression include obligations under:

- the Helsinki Final Act of 1975, in which states pledged to respect the freedom of expression,⁵ facilitate the freer and wider dissemination of information of all kinds including enhancement of the international exchange of information, and improve working conditions of foreign journalists, and
- the Copenhagen Document of 1990, in which states committed to respecting the freedom to receive and impart information and ideas without interference and regardless of frontiers, and to guaranteeing unimpeded access to the media for all political groupings and individuals wishing to participate in the electoral process.

⁵ This obligation has very broad meaning, so honoring it will be assessed with the help of the ECHR and ECtHR.

Additional commitments and policies related to the freedom of expression include the Concluding Document of the Vienna meeting (1989), Document of Moscow meeting on human dimension (1991), OSCE Strategy document for the economic and environmental dimension, and Decision No. 4/03 “Tolerance and Non-Discrimination” (2003) focused on, inter alia, respect of journalistic professional confidentiality, the importance of independent pluralistic media to a free and open society, establishing any restriction of freedom of expression by law only and in accordance with international standards..

Ukraine’s domestic legal framework provides robust guarantees for the freedom of expression. The Constitution guarantees the freedom of speech and expression of views and beliefs (art. 34), and also the right to collect, retain, exploit, and disseminate information. The list of exceptions from the above rights and freedoms in general is consistent with the list of exceptions in article 10 of the Convention on Human Rights and Fundamental Freedoms (ECHR).

According to the Constitution, censorship is prohibited and social life should be based on ideological, economic, and political pluralism (art. 15). The ECHR was ratified by the Ukrainian Parliament in 1997 and the jurisprudence of the European Court of Human Rights (ECtHR) was integrated into Ukraine’s domestic law when the law “On Execution of Decisions and Application of Practice of European Court of Human Rights” was passed in 2006.

Laws on journalists

The law provides for the rights of journalists. The law “On Information,” amended in 2011, defines censorship (art. 24 part 1), prohibits interference with journalistic professional activity (art. 24 part 2), guarantees the professional rights of journalists, including the protection of journalistic sources (art. 25), and defines the grounds for absolution from responsibility for the dissemination of some types of information, including value judgments (art. 30). According to Ukraine’s criminal code, impeding lawful journalistic activity is prohibited (art. 171).

Journalists may be required by a court to pay compensation for damages to a public official or a political party only when there is specific intent (art. 17, parts 4-6 of the law “On State Support of Mass Media and Social Protection of Journalist”). Also, the September 19 re-introduction of a progressive scale of fines for initiating defamation cases when the law “On Court Fees” was passed is a good step.⁶

Libel and slander are exclusively civil matters (art. 277 of Civil Code, 2003). In this area, the Supreme Court’s 2009 Decree #1 “On Judicial Practice on Cases of Protection of Physical Person’s Dignity and Honor and Reputation of Corporate and Physical Person” which touches upon the online media is also important; the decree regulates defamation cases dealing with information published on websites (which are not mass media outlets according to Ukrainian law) and concludes that website owners can be held liable for content on their sites, including content generated by users (paragraph 12). The decree also reinforces key principles, including that the scope of criticism towards public persons is wider (paragraph 21), and made it impossible for claimants to demand apologies in court (paragraph 26).

⁶ <http://zakon4.rada.gov.ua/laws/show/3674-17>

The 2003 law “On Public Moral Protection,” which contains several ambiguous terms, establishes control over some kinds of information products (arts. 8, 12, & 13). However this type of control – which would in fact be censorship – is practically impossible because of the large volume of content.

The protection of journalistic sources is provided for by the new Code on Criminal Procedures (arts. 65, 162, 275), which fortunately includes many provisions not included in the Soviet Code on Administrative Offences from 1984 which is still in force.

Regulation of media outlets

Each type of mass media outlet is regulated by a separate law: the law “On Television and Radio Broadcasting” (2006), the law “On National Council of Ukraine on Television and Radio Broadcasting” (2005), the law “On Print Media (Press) in Ukraine” (1992), and the law “On News Agencies” (1995). As noted above, media on the Internet is not regulated by law. The European Convention on Transfrontier Television (2002) was ratified by the Ukrainian Parliament in 2008.

Private and state or municipally-owned media outlets are regulated differently and journalists working for those outlets also work under several different rules. The law “On State Support of Mass Media and the Social Protection of Journalists” (arts. 12-16) regulates the rules concerning the benefits of journalists working for government-owned outlets. The law “On the Procedures for Covering of State Agencies’ and Municipal Governments’ Activities” (1997) obliges the National Television and National Radio companies to cover the activities of government bodies (art. 16); other state owned broadcasting companies are also required to cover the activities of government bodies, the positions and viewpoints of parliamentary groups and MP’s, and the Cabinet of Ministers’ agenda (art. 18).

A law “On the Public Service Broadcasting System in Ukraine” has never been enacted.

The law “On Access to Public Information” (2011)⁷ guarantees access to information and documents held by public authorities and some types of information and documents possessed by enterprises (art. 13) to any private party. These bodies are required to reply to requests for public information within 5 days (art. 20) and to regularly publish certain types of information (art. 15). The law prohibits the classification of information about state and municipal budget expenditures (art. 6 part 5). There is a conflict, however, with the law “On Personal Data Protection” (2010), which treats all personal data as classified information (art. 5 part 2), including some information which the law “On Access to Public Information” characterizes as non-classified information.

The jurisprudence of Ukraine’s Constitutional Court is somewhat ambiguous on the freedom of expression. For example, as a result of one judgment (#1-rp/99), it is unclear if legal persons such as registered mass media outlets and NGOs enjoy the same constitutional rights as individuals. Moreover, a judgment (#2 -rp/2012) interpreting constitutional articles on the right to privacy (arts. 32 and 34) broadly defines personal information and finds that collecting, retaining, exploiting, and disseminating of private information is interference in the right to privacy without mentioning many exceptions established by law.





⁷ <http://stop-x-files-ua.org/?p=5125>

Freedom of Expression: Broadcast & Print Media

Television – a dominant position with opaque ownership

Television is the most influential medium in Ukraine; according to InMind survey for U-Media project, television is the main source of news for 87% of Ukrainians. The survey notes that other popular types of media include the Internet (42% penetration), the print media (40% penetration), and radio (30% penetration).⁸

There are 30 nationwide TV-channels in Ukraine according to official data,⁹ but only a dozen have real nationwide viewership with Inter, 1+1, Ukraine, STB, and ICTV on the top.¹⁰ All of these top TV channels are owned by media groups that belong to other large business holdings¹¹ where media is not the primary business. For example:

Media Group	Media Assets	Holding (owner)
	TV: Inter, NTN, Enter-film, K1, Mega and others	Chemical business conglomerate Group DF (Dmytro Firtash) ¹²
	TV: 1+1, 2+2, TET News agencies: UNIAN	Financial, aerospace, and petroleum concern known as Privat (Igor Kolomoysky) ¹³
	TV: Ukraine Newspapers: Segodnya ¹⁴	Steel and energy business SCM (Rinat Ahmetov) ¹⁵
	TV: STB, ICTV, Novy Newspapers: Fakty	Steel and tube production concern Interpipe Company (Victor Pinchuk) ¹⁶

Opaque TV Ownership

It is often difficult to tell who actually owns or controls TV stations in Ukraine. Equity in nationwide TV-channels in Ukraine is usually controlled by companies and not by individuals,¹⁷ which are often spread among several entities held in off-shore and other foreign jurisdictions.¹⁸ Until amendments to the law “On Television and Radio Broadcasting” which came into effect in July 2013, foreign entities were prohibited from founding broadcasting companies, but not from buying them (art. 12 parts 1-3).¹⁹ As a result of the situation before the amendments came into effect, the ultimate owners of outlets held by opaquely organized holding companies were often officially unknown.

⁸ <http://www.slideshare.net/umedia/surveymediaconsumers2012internewsinmind>

⁹ Report of National Council of Ukraine on Television and Radio Broadcasting at <http://www.nrada.gov.ua/userfiles/file/2013/Zvitna%20informacia/zvit2012.pdf>

¹⁰ <http://www.telekritika.ua/ratings/2013-03-11/79872>

¹¹ <http://ua.interfax.com.ua/news/general/158695.html> and <http://real-economy.com.ua/infographics/42686.html>

¹² <http://groupdf.com/en/>

¹³ <http://www.telekritika.ua/rinok/2013-03-28/80343>

¹⁴ See note 12

¹⁵ <http://www.scmholding.com/en/about-us/structure/>

¹⁶ <http://forbes.ua/company/2351>

¹⁷ <http://www.nrada.gov.ua/ua/derzhavniyreestr/Movniki/ZagaljnonacionaljniTelemovniki.html>

¹⁸ <http://www.medialaw.kiev.ua/Analytics/319/>, <http://www.kyivpost.ua/business/article/ukrayinski-telekanali-raj-dlya-imidzhu-i-peklo-dlya-gamanciv-oligarhiv-27982.html>

¹⁹ For example, for September, 2013, ownership structure of popular Channel 1+1 officially contains 1 Ukrainian company, 2 companies from Cyprus and more 1 Ukrainian company founded by external body (the last and companies from Cyprus control 58 % of equity capital); the sole owner of “TET”-channel is a Cyprus-based company; 99% of equity capital of Channel 2+2 also belongs to company from Cyprus; Media Group “Ukraine” is controlled by Cyprus-based company.

Efforts to introduce transparency to media ownership have not been successful. On July 4, 2013, the Ukrainian Parliament passed a law²⁰ on media ownership transparency which most experts criticized²¹ for not introducing real reforms. For example, the law prevented non-residents of Ukraine from owning broadcasting companies, however this provision is easy to evade by creating a chain of 3 or more shell companies with a Ukrainian broadcasting company on one side and an offshore company on the other. Indeed, offshore companies have not been removed from corporate structures of Ukrainian TV channels as a result of the law's enactment.

The First National Channel is owned and controlled by the Ukrainian government, and 27 regional and dozens of municipal channels are owned by government bodies. All of these channels are financed from state or municipal budgets, the second of which are usually in part financed by the central government through inter-budgetary transfers.

According to Ukraine's OSCE commitments, the number of state-owned regional channels should be reduced and an independent public service broadcaster should be created. In July 2013, the Parliament passed in the first reading a law on public service broadcasting²² which was submitted by the Cabinet of Ministers and was criticized by several experts.²³ An alternative, though unsuccessful, draft law proposed by the opposition provides not only for the creation of a public service broadcaster but for the merging of local state-owned channels into a national public broadcasting system.²⁴

Quality of TV Coverage

Ukrainian media tends to be increasingly tabloid²⁵ in nature, ignoring or avoiding news stories of social, economic, or political import. According to monitoring of journalistic standards by Telekritika, among TV stations in June 2013, an average of more than 100 topics, facts, and key background details were ignored by TV channels in their reporting.²⁶ For example, none of the national TV channels covered the refusal by the leader of the Communist Party's to release his income declaration on June 5th; the June 3rd 2013 demand by Aresniy Yatsenyuk, a leader of the political opposition, that the Cabinet of Ministers publish its agenda; and Yulia Tymoshenko's October 3rd request that constitutional changes in the draft law on strengthening judicial independence guarantees be rejected unless they were amended. The amount of significant news ignored by TV stations differs from channel to channel with the First National Channel being the worst and TVi being the best. Over the period of January-June 2013, the quality of coverage deteriorated, as the number of missed news stories was around 70 to 80 at the beginning and around 100 at the end of the period. The situation slightly improved between August and October 2013, when there were only 50-60 "forgotten" stories a month.²⁷

Media experts observe that the media avoids criticism of the governing Party of Regions.²⁸ The Telekritika monitoring²⁹ illustrates how the government and opposition are covered differently by the

²⁰ <http://zakon4.rada.gov.ua/laws/show/409-18>

²¹ http://www.uapp.org/legal_news/12741.html, http://gazeta.dt.ua/business/beneficiarniy-vlasnik-_html

²² http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45014

²³ <http://www.nam.org.ua/news/?type=news&idn=4826>

²⁴ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=45039

²⁵ <http://imi.org.ua/analytics/41240-nastup-media-bastardiv.html>

²⁶ <http://osvita.mediasapiens.ua/material/20667> (Tables 5-12)

²⁷ <http://osvita.mediasapiens.ua/material/24787>

²⁸ <http://m.ukrainian.voanews.com/a/1593736.html>

media, mainly that the government is generally presented in a positive or neutral light without balancing points of view. In September and October 2013, there appears to be a slight reverse in the downward trend; during the period Inter, 1+1, Ukraine, and 5th channel reduced the amount of unbalanced coverage. According to other monitoring conducted by the Academy of Ukrainian Press and the Institute of Sociology, Ukrainian channels gave twice as much coverage to the government than to the opposition in June 2013;³⁰ in September they gave 2.8 times as much.³¹

In protest, several prominent journalists have resigned,³² sometimes resigning in groups as a sign of solidarity; several have also been fired.³³ The end result is that most of the content on TV channels is approved by the management and owners; editorial policy is also negotiated by the management and owners. There are also some signs that the presidential administration plays a role in predetermining editorial policy, such as with Inter.³⁴

The law “On National Council of Ukraine on Television and Radio Broadcasting” defines the National Council as an independent regulatory body (arts. 1, 3) where one half of the members are appointed by President and the other half by Parliament (respectively art. 106 part 1 par. 13 and art. 85 part 1 par. 20 of Ukrainian Constitution). In fact, the independence of the Council is in question as the President and the ruling parliamentary group are from the same party and conspire to block opposition candidates from being named to the Council.³⁵ Other important developments include the annulment by President Yanukovich of former President Yushchenko’s decree on re-appointment of members of the Council in 2010 which calls the body’s independence into question.³⁶ None of the present members of the National Council are in any way representative of opposition groups and some are believed to be corrupt. In June, 2013, criminal proceedings were begun against two members of the Council, Yevgen Baranov and a member of the Council’s Public Board Andriy Solomaha, under suspicions of bribery.³⁷

Many media experts and journalists believe that the most influential media outlets in Ukraine are not run as businesses but rather as tools for political machinations.³⁸ Recent history shows how big Ukrainian businesses are very sensitive to the desires of the governing political party, likely out of actual or fears of political pressure. There are several recent examples of political pressure driving decision-making: the former owner of Inter, Valery Khoroshkovsky, sold the station to Dmytro Firtash and emigrated from Ukraine at the beginning of 2013 following reports that his efforts to stimulate more independent media were not appreciated by the government;³⁹ Firtash almost lost his gas-trading business because of a conflict with former Prime Minister Yulia Tymoshenko.⁴⁰ Igor Markov’s station in Odessa, ATV, was also deprived of its broadcast license. On the other hand, the richest businessman

²⁹ See note 27 (tables 3.1 and 3.2)

³⁰ <http://osvita.mediasapiens.ua/material/20132>

³¹ http://www.aup.com.ua/upload/1380746020Monitoring_sept_2013.pdf

³² For example <http://blogs.pravda.com.ua/authors/sokolenko/502e238f0ef4c/>, <http://qha.com.ua/14-journalists-quit-at-forbes-ukraine-129904en.html>

³³ For example <http://www.pravda.com.ua/news/2010/11/18/5583955/>

³⁴ <http://www.pravda.com.ua/articles/2013/07/5/6993661/>

³⁵ <http://www.telekritika.ua/pravo/2013-07-04/83024>, http://www.telekritika.ua/news/2010-06-29/53938?theme_page=4560&

³⁶ <http://zakon3.rada.gov.ua/laws/show/276/2010>

³⁷ <http://www.telekritika.ua/pravo/2013-06-11/82437>

³⁸ <http://osvita.mediasapiens.ua/material/17893>

³⁹ <http://www.interfax.co.uk/ukraine-news/khoroshkovsky-was-forced-to-sell-inter-says-political-analyst/>

⁴⁰ <http://www.kyivpost.com/opinion/op-ed/firtash-led-party-of-war-in-charge-114892.html>

in Ukraine Rinat Ahmetov and owner of the Ukraine channel has twice been elected to Parliament on the Party of Regions list.

Public councils at TV stations have been seen as one effective way of exercising control over TV station coverage and quality. For example, the popular station Inter experienced a brief period of pluralism in the fall of 2012 and beginning of 2013 when there was a public council working at the station which monitored compliance with journalistic standards. In March 2013, after the channel's ownership changed, the public council was dissolved and the station's coverage quality promptly dropped.⁴¹

Control Over TV Frequencies

Control over TV transmission frequencies and the means for broadcasting is one way that broadcast content is manipulated by the authorities and other powerful players. The cases of 5th Channel and TVi are indicative; both stations lost their nationwide broadcasting frequencies in 2010⁴² following a lawsuit by Inter, which, at that time was under the control of the State Security Service chief Valery Khoroshkovsky. After losing their frequencies, they were among the most critical media outlets of the government.

Today, both stations' editorial independence is under question. The owner of 5th Channel, Petro Poroshenko, held a post in the Cabinet of Ministers for some time last year; though at the current time he is an independent MP.

In April, a major conflict broke out among several stakeholders within TVi, including its staff, broke out. The station's previous owner Konstantin Kagalovsky characterized the new management and owner, the opposition MP Mykola Knyazhytsky and Alexander Altman, respectively, as corporate raiders; the old management was thrown out unexpectedly and locked out of the building.

Indeed the corporate structure of TVi is opaque and includes entities in Cyprus. Kagalovsky claimed that Altman used forged proxies to assume control of the TV channel.⁴³ The station's shocked staff expressed a desire to protest on air, with journalist Mustafa Nayem proposing to discuss the conflict on his talk-show on TVi, but the new management balked. Most of the station's journalist staff of about 30 people went on strike and then quit a week later.⁴⁴ Around the same time, there were rumors of negotiations on selling TVi between Kagalovsky and the head of the president's administration, Serhiy Liovochkin.⁴⁵ In response, TVi's new management argued that the ownership change had "saved" TVi from being sold to Liovochkin. Currently, TVi is believed to be controlled by Knyazhytsky and Altman, though it has lost a large proportion of its qualified staff. TVi's former director, Mykola Knyazhytsky, is also now creating a new TV channel called EspressoTV.

⁴¹ <http://www.telekritika.ua/news/2013-03-07/79798>

⁴² <http://www.kyivpost.com/content/ukraine/court-cancels-frequencies-of-feisty-tvi-channel-5-80893.html>,
<http://www.kyivpost.ua/politics/news/yanukovich-zvilniv-horoshkovskogo-zi-skladu-radi-yusticiyi.html>

⁴³ <http://www.pravda.com.ua/articles/2013/05/28/6990865/>

⁴⁴ http://tvi.ua/new/2013/04/29/z_tvi_zvilnylysy_30_pracivnykiv

⁴⁵ <http://www.pravda.com.ua/articles/2013/04/24/6988835/>

After Igor Markov, a pro-Russia MP who publicly criticized the government's policy on European integration, was kicked out of the Parliament, a court took away the broadcast license of the regional TV station he owned, ATV.⁴⁶

Local TV channels, which position themselves or are perceived to be opposition-affiliated, often experience technical problems with the transmission of their signal⁴⁷ because the transmission is often reliant on capacity controlled by the local or regional authorities. There are a few examples of local TV stations' broadcast being rejected for transmission by all providers in the city, such as occurred with ATN in Kharkiv region.⁴⁸ The license of TVA, a regional channel in Chernivtsi with ties to opposition MPs, was not renewed by the National Broadcasting Council based on alleged violations of the law "On Advertising."⁴⁹

There are also restrictions on the broadcast of foreign TV channels. For example, regulations on the rebroadcasting of foreign TV channels are not in line with the law "On Television and Radio Broadcasting" (art. 42) according to which there should be no restrictions on foreign programs; the law is also inconsistent with the European Convention on Transfrontier Television. However, in 2008 in violation of these norms the National Council on TV and Radio Broadcasting created a closed list of foreign programs which are allowed to be rebroadcasted.⁵⁰

Print Media

While less popular than television, the print media landscape is also less concentrated than television. On the national level both tabloid and analytical newspapers are distributed; on the regional level, many municipal papers have a strong position in some markets, though usually they are under joint control by a municipal council and the local state administration with financing from the municipal budget. Since the municipal elections of 2010, a majority of local governments have been controlled by the ruling Party of Regions and its allies.⁵¹ In 2012, there were 667 municipal newspapers in Ukraine.⁵²

Privatization of state-owned newspapers is one of Ukraine's OSCE commitments, but in spite of numerous draft laws on privatization of the press being considered over the past few years, none have been adopted by the Parliament.

One of the biggest press holdings is Ukrainian Media Holding (UMH), which includes Ukrainian Forbes, Korrespondent, Argumenty & Factly, Komsomolskaya Pravda and also several popular websites and radio stations; UMH was sold in June 2013 to the young businessman Serhiy Kurchenko.⁵³ Kurchenko, who has risen quickly and has surprised experts with the swift development of his business empire, is believed to be closely connected with the new generation of President Yanukovich's confidants.⁵⁴ As a result, the chief editor of Ukrainian Forbes resigned complaining that the sale of

⁴⁶ <http://un.ua/eng/article/476544.html>

⁴⁷ For a recent example, see the situation with Chernivtsi channel TVA <http://www.telekritika.ua/rinok/2013-07-25/83608>

⁴⁸ <http://www.telekritika.ua/news/2011-09-13/65698>

⁴⁹ <http://www.telekritika.ua/rinok/2013-10-23/86964>

⁵⁰ http://search.ligazakon.ua/l_doc2.nsf/link1/FIN37153.html, <http://www.telekritika.ua/rinok/2013-05-29/82057>

⁵¹ <http://www.pravda.com.ua/articles/2010/11/8/5552584/>

⁵² http://comin.kmu.gov.ua/control/uk/publish/article?art_id=98943&cat_id=61321

⁵³ <http://www.unian.ua/news/579042-boris-lojkin-pidpisav-ugodu-pro-prodaj-umh-group.html>

⁵⁴ <http://www.pravda.com.ua/articles/2013/07/17/6994415/>

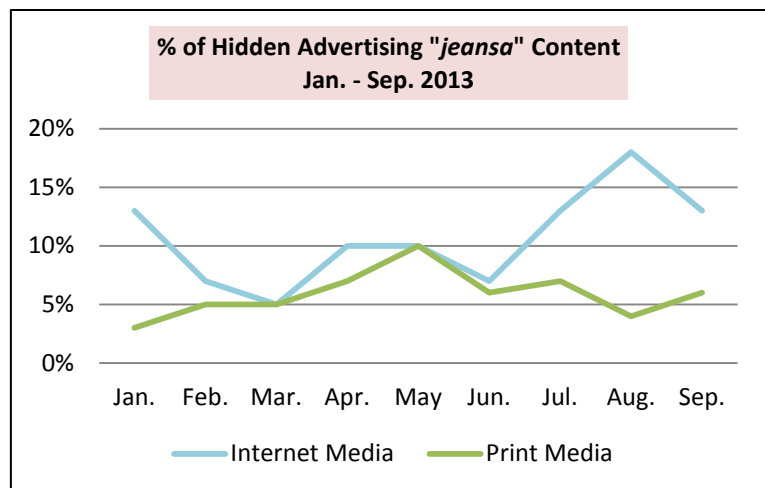
UMH to Kurchenko meant the end of the magazine in its present form;⁵⁵ in November a group of 14 journalists also quit in protest of alleged censorship.⁵⁶ On the other hand, the managers of Korrespondent announced that they didn't anticipate any changes in editorial policy until 2014, the editor in chief of the magazine quit after the November 2013 resignation of 14 of its journalists.⁵⁷

Ethics of the Media

All of Ukrainian press is plagued by the serious problem of *jeansa*, which refers to content disguised as news content but paid for by political or business interests. The 2003 law "On Advertising" obliges publishers to distinguish between advertisements and other content and to identify prepaid materials (art. 9). However, according to monitoring by IMI, approximately 6-7% of press content in Kyiv is *jeansa*.⁵⁸ In local press, the situation is even worse; in July 2013, political *jeansa* made up 8.1% of content and commercial *jeansa* made up 7.4% of content while in September 2013 those numbers were 10% and 6.3%, respectively, according to monitoring by the Ukrainian Educational Centre of Reforms.⁵⁹ The monitoring shows that the share of *jeansa* content has been stable throughout 2013; however in the 3 months leading up to the October 2012 elections, the number of hidden advertisements grew several-fold with *jeansa* purchased by political forces dominating.⁶⁰

Publishing *jeansa* is generally not perceived as shameful in Ukrainian media, indeed *jeansa* content often does not look much different from other content due to an overall problem with the quality of press coverage. Other monitoring by IMI of 6 newspapers shows that only 65-75% of socially important content reflects a balanced point of view and considers all relevant facts and issues.⁶¹ In addition, for the television sector, the lack of a distinction between facts and value judgments is also a problem.⁶²

International standards or principles of journalistic ethics⁶³ are not well known in Ukraine. There are two codes of journalistic ethics followed in Ukraine: the Code of Ethics of Ukrainian Journalists⁶⁴ and the Code of Professional Ethics of



⁵⁵ <http://www.telekritika.ua/rinok/2013-06-21/82688>

⁵⁶ See note 32 (2nd link)

⁵⁷ <http://www.telekritika.ua/rinok/2013-06-21/82697>

⁵⁸ http://imi.org.ua/jeance_monitoring/41413-zvit-z-monitoringu-djinsi-lipen-2013-roku.html

⁵⁹ <http://osvita.mediasapiens.ua/material/21958> (July), <http://osvita.mediasapiens.ua/material/23993> (September)

⁶⁰ The 2012 Parliament campaign is a good example. See http://imi.org.ua/jeance_monitoring/39616-pislya-viboriv-kilkist-politichnoji-djinsi-zmenshilas-vpyatero-zvit-za-listopad-2012.html

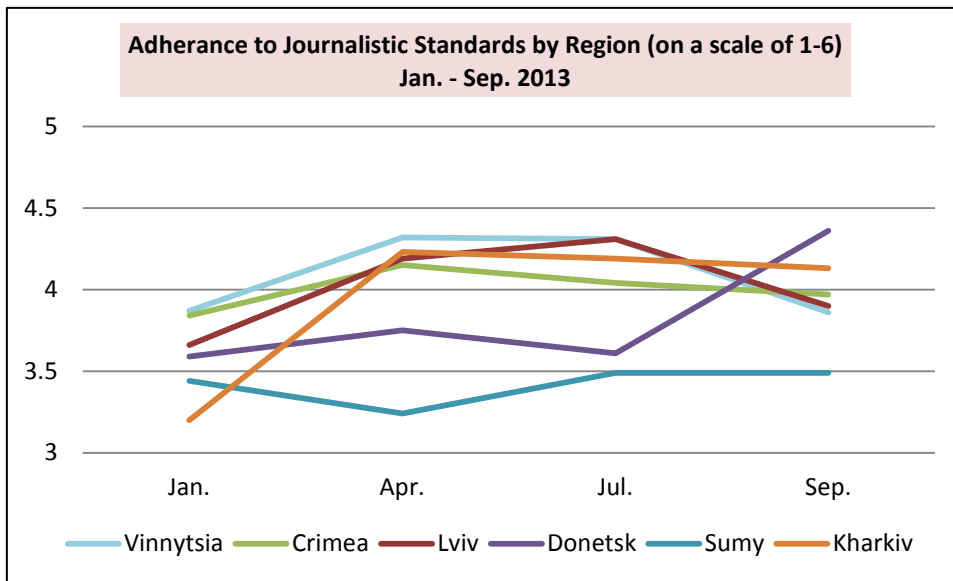
⁶¹ http://imi.org.ua/journalist_monitoring/40177-zvit-z-monitoringu-jurnalistskih-standartiv-sichen-2013.html

⁶² See note 28 (tables 4.1-4.3)

⁶³ For example http://ethicnet.uta.fi/international/international_principles_of_professional_ethics_in_journalism

⁶⁴ <http://www.cje.org.ua/documents/5/>

Ukrainian Journalists.⁶⁵ Neither of these codes is obligatory for Ukrainian journalists. A Commission on Journalistic Ethics⁶⁶ exists, but it is essentially a regulating NGO without real tools to influence journalists as its decisions are only recommendatory in nature.



There are no nationwide journalist organizations that officially set or enforce ethical norms. Anyone may work as a journalist in Ukraine and there is no special education required for such work. Essentially, the journalistic community does not have any effective or formal ways to influence those whose behavior contradicts ethical norms.

According to the law “On Television and Radio Broadcasting” (art. 57) the editorial policy of every TV channel should be regulated by its editorial statute and any disagreements should be resolved by an editorial council, one half of which is appointed by the owner and the other half by the staff. Practice, however, has shown that these requirements are not effective in enforcing basic ethical standards.⁶⁷

Violation of Journalists’ Rights

Physical attacks on journalists and bloggers are common in Ukraine; according to monitoring by IMI conducted between January and October 2013, there were 43 attacks. In July alone there were 10 attacks on journalists;⁶⁸ fortunately, those numbers dropped to 4-5 per month after July. Monitoring by Telekritika identified 179 facts of physical pressure on journalists during the same period⁶⁹ and 14 attacks in July 2013. Both monitoring reports, which differ in results because of their somewhat differing methodological approaches, registered an increase in attacks through March 2013. The May-July 2013 period showed a continuous decline; according to the IMI monitoring there were 5 or more attacks per month and there were 8 or more incidents according to Telekritika’s monitoring. Through the fall the situation improved, likely because of the slow summer news cycle, the low number of public demonstrations during the period, and the public’s overwhelming focus on the EU association negotiations which served as a distraction from political jockeying and strife.

⁶⁵ http://ethicnet.uta.fi/ukraine/the_code_of_professional_ethics_of_ukrainian_journalist

⁶⁶ <http://www.cje.org.ua/documents/119/>

⁶⁷ See note 3, recommendation 23.

⁶⁸ <http://imi.org.ua/barametr/41460-freedom-of-speech-barometer-july-2013.html>, <http://imi.org.ua/barametr/41409-barometr-svobodi-slova-za-lipen-2013-roku.html> (infographics in Ukrainian), <http://imi.org.ua/barametr/41881-press-freedom-barometer-for-september-2013.html>

⁶⁹ <http://pravo.mediasapiens.ua/> (map in Ukrainian, select the lowest category leftward)

The authorities frequently do not investigate attacks on journalists or begin investigations only after public pressure has mounted. The most notorious recent attack happened on May 18, 2013, in Kyiv when two journalists, Olga Snitsarchuk (5th Channel) and a photographer Vladyslav Sodel (Kommersant newspaper) were brutally beaten while they were taking photos of a public rally.⁷⁰ They were photographing what appeared to be a group of thugs beating up members of the opposition Svoboda Party when they were also attacked by unknown assailants.

The identity of some of the assailants quickly became public, yet the authorities did not pursue them vigorously. One of the aggressors was identified on a social network as Vadym Titushko, a member of a sports club not far from Kyiv. The news website *Ukrainska Pravda* reported that the attackers were security guards for a pro-government rally⁷¹ also taking place, a claim which the Minister of Interior and Titushko himself denied.⁷² As the *Kyiv Post* reported, Titushko trains in a fighting club owned by a member of the Party of Regions.⁷³ Six days after incident a Party of Regions MP Olena Bondarenko claimed that Snitsarchuk from the 5th Channel was in fact at the rally as a demonstrator and not covering it as a journalist.⁷⁴ However, later, the victims of the attack and the attackers came to an agreement under which Titushko and his coconspirators admitted their guilt and accepted a sentence of 2-3 years imprisonment with probation.⁷⁵

Policemen are also aggressors against journalists. IMI registered four such incidents in July 2013, two in October and one each in January, August, and September 2013. There have also been a few attacks on activists of the Road Control Civic Movement who consider themselves journalists and write for a newspaper with the same name. While the behavior of the Road Control Civic Movement activists is sometimes provocative, these attacks are not investigated so it is hard to establish the true details of the events.

The most wide-spread type of violation of journalists' rights is direct interference in their work and the most common method for interfering in their work is preventing journalists from photographing or recording video of public events. IMI monitoring registered between 8 and 15 incidents every month in 2013 with an average of 11.5. This is actually a decrease compared to the average of 15 a month in 2012. If censorship is included, interference in journalists' work fluctuates between 11 to 24 incidents per month.

For example, on April 8, 2013 the Mykolayiv police tried to prevent a journalist from taking photos of road repairs in the city center.⁷⁶ At first, an unidentified person approached the journalist and demanded that the photos be deleted; later, two policemen arrived, one of whom suggested that there may be classified information on the camera and demanded that the journalist wait in a car. When the journalist's editor arrived at the scene the policemen did not detain the correspondent and let them go.

⁷⁰ <http://imi.org.ua/en/news/40816-journalists-beaten-to-blood-at-rally-in-kyiv.html>

⁷¹ <http://www.pravda.com.ua/news/2013/05/20/6990287/>

⁷² <http://khpg.org/en/index.php?id=1372690354>

⁷³ <http://www.kyivpost.com/content/ukraine/hitmen-324621.html>

⁷⁴ <http://www.telekritika.ua/pravo/2013-06-19/82634>

⁷⁵ <http://en.interfax.com.ua/news/general/165997.html>

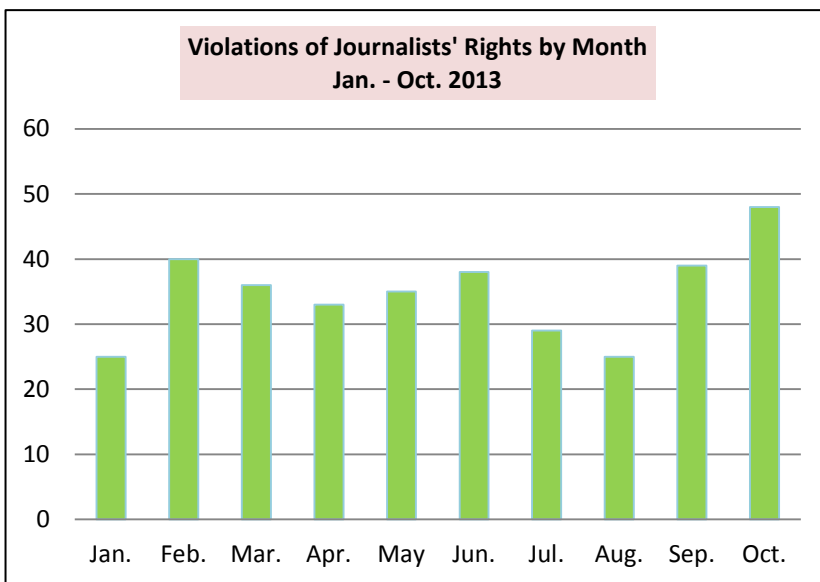
⁷⁶ <http://imi.org.ua/barametr/40763-freedom-of-speech-barometer-april-2013.html>

Censorship, usually by the management of media outlets in order to avoid criticism of public authorities, takes place on average 5 times per month, according to IMI monitoring, though has decreased some recently.

Outside forces can also seek to censor information, as was illustrated on numerous occasions in 2013 by the scuttling of screenings of a documentary film in the series Open Access, which, among other things, uncovered an opulent presidential residence. On several occasions, mysterious bomb threats at screening locations effectively led to the cancellation of the Open Access screenings.⁷⁷

Journalists often demand that the police investigate and prosecute those who impede the professional activity of journalists, which is prohibited by Ukraine's Criminal Code (art. 171). The police often refuse because, for example, they do not consider journalists who work for Internet media to be journalists⁷⁸ or because the offender declares that he was not aware that the victim was a journalist and it is difficult to prove otherwise. As IMI has reported,⁷⁹ only 3 of the 117 criminal proceedings on art. 171 that were initiated in the first 6 months of 2013 were actually heard in court.

Another tactic, hacking and defaming of journalists and activists critical of the government, emerged in August 2013, as exemplified by the spoof online newspaper *Ukrainska Kryvda*. The website is made to look like that of the respected news site *Ukrainska Pravda* and at first published investigations on *jeansa*. It then set its sights on journalists, publishing private correspondence between prominent journalists (some in which they discuss colleagues) and modified versions of files stolen by hackers from IMI aimed at disparaging the organization's leadership. On *Ukrainska Kryvda*'s site, nearly all media-related NGOs (*Telekritika*, *Independent Media Trade-Union*, *Center.UA*, *IMI* etc.) have been accused of misusing grant funds. Similar tactics have been used to disparage the political



opposition. IMI began monitoring cyber-attacks on journalists and the media which numbered approximately 3 a month at the beginning of the year but increased to 14 in October.⁸⁰

Economic pressure, such as the firing of disloyal managers, violation of contractual terms, and refusal of broadcasting licenses, is also brought to bear on journalists and media outlets. IMI registered 21 incidents of political or economic pressure on journalists in January-July 2013, while *Telekritika* found 22 for the same

⁷⁷ <http://imi.org.ua/barametr/41182-barometr-svobodi-slova-za-cherven-2013-roku.html>

⁷⁸ For example, Maxim Lazebnyk, a photoreporter from *Tochka.Net*, was beaten while filming a conflict in Kyiv, but the police investigated the attacker under hooliganism (art. 296) and not under art. 171, and later changing him under art.125 (minor injury) <http://www.telekritika.ua/kontekst/2013-07-07/83100>

⁷⁹ <http://imi.org.ua/news/41470-lishe-tri-spravi-po-171st-skerovano-do-sudu-za-pershe-pivrichchya-2013-dani-gpu.html>

⁸⁰ <http://imi.org.ua/barametr/42082-press-freedom-barometer-for-october-2013.html>

period. According to the IMI monitoring, there is a clear downward trend in this type of pressure (4 incidents in January versus only 1 in July). The Telekritika monitoring has found the opposite, registering only one incident in January but four incidents in June and one in July.

For example, in March 2013 the Tyasmin publishing house refused to print Nova Molod' Cherkaschyny newspaper in the Cherkasy region based on the alleged absence of necessary documents. The issue was supposed to include an announcement of a picket by the local opposition at the end of the month. Two other local publishing houses, the Zvenygorodsky municipal printing house and Republic publishing house also refused to print the newspaper.⁸¹ There are also several issues with the working conditions of foreign journalists in Ukraine, who, following changes in 2011, are supposed to have the same rights as Ukrainian journalists. But this change also complicated foreign journalists' status by removing provisions providing for their accreditation.⁸²

Not only journalists experience challenges to their freedom of expression. Billboards with content critical of the government were damaged in June 2013.⁸³ The human rights activist Dmytro Groysman was accused of "desecration of state symbols" (art. 338 part 1 of the Criminal Code) and dissemination of pornography (art. 301 part 1) for his post on the Internet, and was acquitted only after his death.⁸⁴ In January 2013 in Sumy, a student was sentenced for painting graffiti which depicted a murdered President Yanukovich.⁸⁵

Access to Public Information

While the law "On Access to Public Information" gives citizens several instruments to monitor and control government activities, it is not fully implemented at the current time. As noted above, conflicts between this law and the law "On Personal Data Protection" hinder their implementation. Moreover, supplementary regulations do not adequately spell out procedures. For example, the "Procedure for recording, storing, and using of documents, cases, titles, and other material data storage devices containing confidential information for official use," approved by regulation of the Cabinet of Ministers (#1893, 1997), does not prescribe usage of the three-part test for releasing information required by the law "On Access to Public Information" (art. 6 part 2).

Monitoring of transparency of local state administrations and municipal bodies, provided by Center for Political Studies and Analysis,⁸⁶ demonstrates a decline in transparency during the period January-September 2013. In January, the average mark was 4.33 (out of 5); the averages were 3.88, 3.89, and 3.23 in March, July, and September 2013, respectively.

One area where transparency is particularly lacking is in the openness of municipal development plans. The availability of general construction plans of Ukrainian cities and towns is low⁸⁷ due to their

⁸¹ <http://imi.org.ua/barametr/40563-press-freedom-barometer-march-2013.html>

⁸² <http://www.telekritika.ua/news/2012-02-28/69970>

⁸³ <http://www.pravda.com.ua/news/2013/06/28/6993196/>

⁸⁴ <http://khp.org/index.php?id=1375825863>

⁸⁵ <http://ua.korrespondent.net/ukraine/politics/1476777-sud-pokarav-sumchanina-za-grafiti-iz-zobrazhennyam-yanukovicha-iz-prostrelenoyu-golovoyu>

⁸⁶ <http://access-info.org.ua/map>

⁸⁷ <http://helsinki.org.ua/index.php?id=1362645875>

classification as secret even though they should be publicly available by law. There are likewise problems with accessing government archive documents from the Soviet period.⁸⁸

Judicial practice on access to information cases usually does not end in favor of transparency.⁸⁹ The Ukrainian Helsinki Human Rights Union estimated that 65% of court judgments do not comply with the substance of the law.⁹⁰

Conclusion

Ukraine has taken some positive steps to improve the legal framework which enables the freedom of expression and the work of journalists and the media. Nonetheless, we find that implementation of previously made reforms is lacking and that additional reforms are necessary.

During Ukraine's CIO, attacks on journalists, including those covering public events, and hacking attacks on journalists and activists, have increased. Weak investigation and prosecution of these attacks sends the signal that attacks on journalists and violations of their rights will not be taken seriously. As the government does not do enough to protect journalists, it maintains strong control over a large proportion of media outlets, either through direct government ownership or control of outlets, or via censorship by editors who do not want to upset the government or the ruling party. Media in Ukraine will be better able to serve the public when it is free of government control and influence. Privatization, the creation of Public Service Broadcasters, and actual transparency in media ownership would be good first steps to reform. Journalists and news outlets can also take steps to increase the quality of their news by labeling advertising appropriately and taking ethical standards seriously, among other things.

While its Ukraine's leadership of the OSCE is nearly over, we urge the Ukrainian government to lead by example in a region where many countries experience the same challenges to the freedom of expression, and to encourage other OSCE participation states to take the necessary steps towards creating the conditions for the free enjoyment of this vital freedom.

This assessment was prepared for Freedom House by Roman Golovenko, a media lawyer at the Institute of Mass Information in Ukraine, and edited by Matthew Schaaf, a program officer at Freedom House.

⁸⁸ <http://helsinki.org.ua/index.php?id=1362645447>

⁸⁹ <http://imi.org.ua/news/41014-sud-vidmoviv-jurnalistu-u-pozovi-pro-dostup-do-minkultu.html>, <http://medialaw.kiev.ua/news/2260/>

⁹⁰ See note 88

About Freedom House

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Freedom is possible only in democratic political systems in which governments are accountable to their own people; the rule of law prevails; and freedoms of expression, association, and belief are guaranteed. Working directly with courageous men and women around the world to support nonviolent civic initiatives in societies where freedom is threatened, Freedom House functions as a catalyst for change through its unique mix of analysis, advocacy, and action.

Analysis: Freedom House's rigorous research methodology has earned the organization a reputation as the leading source of information on the state of freedom around the globe. Since 1972, Freedom House has published *Freedom in the World*, an annual survey of political rights and civil liberties experienced in every country of the world. The survey is complemented by an annual review of press freedom, an analysis of transitions in the post-communist world, and other publications.

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Action: Through exchanges, grants, and technical assistance, Freedom House provides training and support to human rights defenders, civil society organizations, and members of the media in order to strengthen indigenous reform efforts in countries around the globe.

Founded in 1941 by Eleanor Roosevelt, Wendell Willkie, and other Americans concerned with mounting threats to peace and democracy, Freedom House has long been a vigorous proponent of democratic values and a steadfast opponent of dictatorships of the far left and the far right. The organization's diverse Board of Trustees is composed of a bipartisan mix of business and labor leaders, former senior government officials, scholars, and journalists who agree that the promotion of democracy and human rights abroad is vital to America's interests.

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