

Media and digital rights

Regulation in Ukraine

DSLU monthly digest on media and digital rights regulation in Ukraine provides an overview of the proposed and adopted legislation in the spheres of freedom of expression, media regulation, privacy and data protection, Internet regulation in general, and the activities of the National Broadcasting Council in the area of Media Law implementation.

Events and Highlights

On 20 September 2023, Verkhovna Rada of Ukraine dismissed **Nestor Shufrych**, representing the “Platform for Life and Peace” faction, from the post of the Chair of the Parliamentary Committee on Freedom of Expression. His deputy, **Yevhen Brahar**, from the “Servant of the People” faction, now serves as an interim. This change **should not significantly influence any policymaking processes in the sphere of media regulation as the majority of spheres of responsibility in this area were vested in the Parliamentary Committee on Humanitarian and Information Policy**. The Committee consists of only three MPs and is practically powerless, failing to perform even its parliamentary control functions over abuses against journalists’ rights. Civil society organizations are calling for the appointment of the new chair belonging to one of the opposition factions as soon as possible and strengthening the Committee instead of its liquidation.

Freedom of Expression and Media Regulation

Draft Law #9610 amending the Law on National Minorities (Communities) of Ukraine was adopted in the second reading on 21 September 2023 and is awaiting the President’s signature. The relevant provisions on advertising in minority languages by local audio and audiovisual media remained unchanged. Thus, such media obtained the possibility to broadcast advertising in minority languages other than Russian if such advertisement in non-Ukrainian does not exceed the volume and font size of the Ukrainian ad. The MPs **failed to answer the concerns around how this specific norm will apply, for example, to ads not containing text or situations when translation in foreign languages takes more airtime than the original**

Ukrainian ad. It is, therefore, hard to predict whether the adopted decision will be considered as fulfilling the [recommendations by the Venice Commission](#).

On the topic of decriminalizing pornography, the MPs from the “Servant of the People” faction submitted an alternative [Draft Law #9623-1](#). In contrast to the primary [Draft Law #9623](#), analyzed in-depth in [the previous edition of the digest](#), this proposal enlarges penalties for various porn-related offenses such as the import, production, transportation, sale, or dissemination of pornographic materials in Ukraine. It suggests introducing an exemption from liability for persons performing the aforementioned actions for personal use without the aim of obtaining any benefits from these activities. An exception from this exemption is **the non-consensual pornographic materials**, any actions related to which shall nonetheless remain punishable by the Criminal Code. The alternative draft **may conserve the situation with excessive enforcement of the respective provisions** of the Criminal Code. The Parliamentary Committee on Law Enforcement Activities currently reviews both initiatives.

Another initiative submitted to the Verkhovna Rada of Ukraine in September was [Draft Order #9677 on the Specificities of Reporting on the Verkhovna Rada of Ukraine’s Activities](#). While **it was dismissed by the Parliamentary Committee on the Rules of Verkhovna Rada, MP Ethics and Parliament’s Management** and will not be adopted, it suggested the imposition on the “Rada” TV channel of the obligation to objectively report on parliamentary activities, taking into account the principle of proportional representation of MPs from different factions. Another proposed norm was the obligation to broadcast open plenary parliamentary sessions’ records in the “United News” marathon on the day of such sessions in a timeslot between 16:00 and 24:00.

There was no progress on other initiatives described in the digests in the previous periods, namely [Draft Law #9547](#) supplementing the Code of Ukraine on Administrative Offenses (CUAO) with a new provision establishing administrative liability for public performance, display or demonstration in trade, dining, or service places of prohibited video clips, music, or other works of art, [Draft Law #9519](#), aimed at strengthening the liability for publishing the movements of the Armed Forces of Ukraine and their supplies from international partners during the martial law, and **the Draft Law on the Use of English Language in Ukraine** ([#9432](#)).

Privacy and Data Protection

No progress on [Draft Law #9396](#), eliminating prosecutorial discretion in temporary access to sensitive personal data and analyzed [in the July digest](#), was reported in September. Both drafts aimed at amending Article 301 of the Criminal Code on pornography and described in the previous section of the digest are reviewed by the Parliamentary Committee on Law Enforcement Activities.

Internet Regulation

No progress on [Draft Law #9463](#), analyzed in the [July digest](#) and carrying the potential to implicitly legalize [website blocking by the sanctions orders](#) by including the requirement of compliance with these orders as a prerequisite to providers' keeping their general authorization and introducing monetary penalties for non-compliance, was reported in September. Due to its potential harmful effects, **it has to be monitored further.**

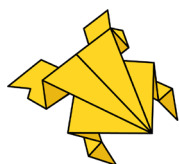
National Broadcasting Council

On 20 September 2023, [the Law of Ukraine on Lawmaking Activities](#) entered into force after the signature of the President of Ukraine. On the second reading stage, a norm returning the obligatory registration of the National Broadcasting Council's acts with the Ministry of Justice was added to the Law. While some players in the media market see this norm as an additional safeguard from abuse, in practice, it allocates the Ministry of Justice the right to veto any act adopted by the NBC if it considers these acts' provisions to be contrary to Ukrainian legislation and/or human rights requirements. **The application of this procedure, which will enter into force one year after the martial law is lifted, can damage NBC's independence and stall its regulatory activities.**

The National Broadcasting Council itself held two meetings in September. The highlights of this period are the addition of four more services (Premier, Start, More.tv, Okko) to [the List of aggressor state non-linear audiovisual media services](#), the adoption of [the List of territories with the special broadcasting regime](#) (controversially including the entire territory of Ukraine solely for the media established by the Ministry of Defense), [registration of channels on Viber and WhatsApp](#) as online media, and the publication of the Draft NBC Strategy for public comments stage (the Draft was approved on 28 September but hasn't been published as of the end of the month).

Digital Security Lab Ukraine is a non-government organization aiming to create a human-rights-centered digital environment in Ukraine. We work toward achieving this goal by providing digital security support for high-risk Ukrainian human rights and media organizations and by contributing to policy development in the field of human rights on the Internet through conducting legal monitoring, research and analysis, advocacy, and awareness-raising campaigns.

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