

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.

Freedom of Expression and Media Regulation

Draft Law #10141 amending the Law of Ukraine “On Media” was submitted to the Parliament in October. The proposal’s provisions cover **the production and broadcasting of what the draft’s author defines as a “social product”**, namely any audiovisual works containing socially helpful information for the development of the individual and society, popularisation of the ideas of humanity and justice, a healthy lifestyle, an inclusive society, crime prevention and corruption prevention, nature and environmental protection, etc. In accordance with its provisions, every year and at their own expense, the radio- and television broadcasters with a broadcasting license are obliged to produce at least 10 items of audiovisual works lasting at least 2 minutes duration each and broadcast these items at least 24 times each, being distinguished during broadcasting accordingly. The breach of this norm for the broadcasters would constitute a significant violation of the law and may result in a fine in the amount of 10% of the license fee. The Draft Law is currently being processed by the Parliamentary Committee on Humanitarian and Information Policy; however, **there is only a minimal possibility that these amendments will be adopted**, given that it remains unclear how this social product differs from social advertising and the shift of the burden on this content production on the media, which are already suffering from financial hardships arising from the full-scale Russian-Ukrainian war.

Several submitted proposals intended to influence **the broadcasting of the “Rada” Channel**, a parliamentary broadcaster, thus continuing the September developments [described in the last digest](#). **Draft Law #10107**, as well as its short-lived predecessor, recalled from the Verkhovna Rada of Ukraine, [Draft Law #10102](#), suggests putting **an obligation on “Rada” to broadcast** the

recordings of plenary sittings of the Parliament and other parliamentary programming on the day of such sitting **solely online during the martial law**. Another proposed norm aims at eliminating “Rada” from the universal program service - an obligatory list of channels to be broadcast by the audiovisual service providers. In practice, this is another attempt of the MPs from the opposition factions **to limit “Rada” Channel’s influence and stop its perceived capture** [by the Office of the President](#). While the initiative can help sustain pluralism among Ukrainian media, it is unlikely to be adopted. The Parliamentary Committee on the Rules of Verkhovna Rada, MP Ethics and Parliament’s Management is currently reviewing the draft.

[Draft Order #10156](#), also submitted to the Parliament by some opposition MPs, intends to open up Verkhovna Rada to journalists. The authors propose to allow accredited journalists’ presence on the 3rd floor of the Parliament on the days of the plenary sittings in the amount of no more than 150. One media will only be allowed to delegate 3 journalists. The publications from the Parliament will remain prohibited until after the plenary sitting. The Parliamentary Committee on the Rules of Verkhovna Rada, MP Ethics and Parliament’s Management is responsible for pushing this draft forward and has not yet decided on it.

Other initiatives submitted in October aimed at amending the Criminal Code provisions on crimes against the foundations of national security of Ukraine. **[Draft Law #10136](#)** enhances the list of the activities which may be classified as “collaborationism” under Article 111-1 of the Criminal Code, including anti-Ukrainian propaganda in health and recreation institutions and places used for educational, sports and cultural events under its scope. It also establishes the sum of the fines for the commission of these crimes in the amount of 85,000-119,000 UAH (roughly 2,212-3,097 EUR). In turn, the alternative **[Draft Law #10136-1](#)** proposes to consider the transmission of the information to the aggressor state regarding the movement or location of weapons as “collaborationism”. The text also suggests adding such activities as propaganda in favour of the occupying forces, including during teaching, educational and pedagogical activities, into the scope of the offence. Both proposed drafts, however, only deepen the problem of possible double jeopardy with the prohibitions established in the current Criminal Code under [Article 436-2](#) and [Article 114-2](#). The Parliamentary Committee on Law Enforcement Activities currently reviews both initiatives.

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, **the Draft Law on the Use of English Language in Ukraine (#9432)**, and two pornography-related drafts ([#9623](#) and [9623-1](#)). [Draft Law #9610 amending the Law on National Minorities \(Communities\) of Ukraine](#), prescribing 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, was not signed by the President in October despite the constitutional requirements to do so during 15 days after its adoption and has thus not become law yet.

Privacy and Data Protection

In the context of privacy, [Draft Law #10190](#), which supplements the Criminal Code with new articles, was submitted to the Parliament. The draft suggests criminalising **“electronic communication fraud”**, which the text defines as the “illegal collection, storage, processing and use of personal data, information that contains banking secrets for the purpose of acquiring someone else’s property or acquiring the right to property by deception or abuse of trust by using the means of electronic communication”. Proposed sanctions include the deprivation of liberty from 3 to 8 years, accompanied by the deprivation of the right to hold certain positions or conduct certain activities for up to 3 years. The existence of aggravating circumstances may lead to the extension of prison term for up to 12 years. Proposed amendments may have a positive effect on investigating personal data breaches, including via phishing, and are now under review by the Parliamentary Committee on Law Enforcement Activities.

Concerning previously registered porn-related draft laws highlighted in the [September digest](#), namely [Draft Law #9623](#) and [#9623-1](#), MPs took no further steps in adopting them. Similarly, there has yet to be progress on [Draft Law #9396](#), which excludes prosecutorial discretion in temporary access to sensitive personal data.

Internet Regulation

Draft Law #10101 amending the Laws of Ukraine on the Improvement of Legislation in the Field of Organization and Conduct of Gambling and State Lotteries slightly touches upon the questions of Internet regulation. It empowers the Commission on Gambling and Lottery Regulation to monitor the Internet for identification of websites and mobile applications that provide access to online gambling without the appropriate license. This power of the Commission will be necessary to identify websites for future blocking, [a provision established in the legislation in 2020](#). The Parliamentary Committee on Finance, Tax and Customs Policy processes the Draft Law.

Draft Law #9463, which legalises website blocking by sanction orders, was analysed in-depth in the [July digest](#) and did not undergo any legislative steps. **This proposal requires further monitoring** due to the harmful consequences the provisions entail.

National Broadcasting Council

The National Broadcasting Council's work in October [focused](#) mainly on the development of media reforms. In particular, NBC amended [the forms of applications regarding the licensing and registration of media](#) and updated [the regulations on the functioning of the Register of Subjects in the Field of Media](#). Moreover, the media regulator adopted [three documents necessary to reform communal media into public media](#).

NBC has also issued decisions by which it **kickstarted the procedure of creation of co-regulatory bodies in three spheres** – [online media](#), [audiovisual media services](#) and [audio media services](#). Only in the sphere of audiovisual media, the initiative group consisted of the representatives of large media holdings such as 1+1 Media and Starlight Media. The applications for inclusion in the working groups working on the creation of co-regulatory bodies in all three spheres from the licensees and registrants **are open until 16 November 2023**. After this, all the applicants will have to form working groups consisting of 12 members to draft the Statute of the respective co-regulatory body.

NBC also collected submissions from civil society organisations and other stakeholders on its **Draft Strategy for 2024-2026**. The document encapsulates the vision, mission and strategic aims of the regulator's mid-term activities. The Draft focuses on the regulator's role in ensuring a pluralistic media environment, safeguarding the interests of national security in the wake of the

ongoing war, and assisting in media development. The most ambitious ideas are the enhancement of international cooperation on the EU and Council of Europe levels, the creation of the Media Support Fund, and NBC's role as a mediator between media and other state authorities. The Strategy will likely be adopted by the end of the year.

In the regulatory sphere, the most notable decision by the regulator was the completion of the competition on building the MX-7 network for digital broadcasting. It was won by the state-owned **RRT Concern**, which was the only competitor. The network can contain up to 12 TV channels. In October, NBC also registered Megogo and Sweet.tv as audiovisual on-demand media services and Megogo as an audio on-demand media service providing access to podcasts, the first of its kind in Ukraine.

Digital Security Lab Ukraine is a non-government organisation 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 organisations 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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