

# International Senior Lawyers Project

*Serving the World Community*

31 W. 52<sup>nd</sup> Street, New York, N.Y. 10019 Tel. 212.880.5836 www.islp.org

12 December 2010

Pavle Kublashvili, Chair of Parliamentary Legal Committee  
Chiora Taktakishvili, Deputy Chair of Parliamentary Legal Committee

Dear Chairman Kublashvili and Deputy Chair Taktakishvili:

On behalf of IREX and the International Senior Lawyers Project (ISLP), we are pleased to provide the following comments on draft amendments to the Law of Georgia on Broadcasting.

\* \* \* \* \*

At the outset, we wish to commend the Parliamentary Legal Committee for its commitment to greater transparency of broadcast media ownership in Georgia. As recognized in the Tbilisi Declaration adopted at the Sixth OSCE South Caucasus Media Conference (19-20 November 2009): “[M]edia ownership should be transparent ....as pluralism of ownership is a pre-requisite for pluralism of content.” It is clear that the notion of media pluralism includes, but is much broader than, media ownership.<sup>1</sup>

While the drafters have demonstrated a clear desire to “ensure transparency of broadcasting license ownership,” the overall effectiveness of the draft amendments is greatly undermined by weaknesses in the drafting. On one hand, vague terms and imprecise provisions create ample opportunity for selective enforcement. On the other hand, overly broad restrictions serve as obstacles to media pluralism, both in terms of ownership and content.

The draft amendments prohibit a “legal entity registered in off-shore zone” from holding a broadcasting license or a direct or indirect equity interest in any Georgian broadcasting company. The term “off-shore” is used in several provisions of the draft amendments and repeatedly referenced in the explanatory note of the Parliamentary Legal Committee. Yet nowhere in the draft amendments is the term “off-shore” ever defined. Use of the vague term “off-shore” and the concomitant imprecision of the draft provisions are a major weakness because they provide the regulatory authority with wide latitude in interpreting that term and those provisions to its own benefit.

---

<sup>1</sup> See, for example, the three-step “Reding-Wallstrom” approach to EU media pluralism at [www.ec.europa.eu/information\\_society/media\\_taskforce/pluralism/index.en.htm](http://www.ec.europa.eu/information_society/media_taskforce/pluralism/index.en.htm).

It may well be that the drafters intend to define the term “off-shore” in the final draft amendments that will be presented to Parliament. If the Committee is convinced use of that term is necessary, then inclusion of an adequate and accurate definition is essential to ensure that all foreign companies are not confused with so-called tax havens and certain other jurisdictions that provide financial confidentiality to corporate ownership.

We are not aware of any country in the world that draws a distinction, for purposes of regulating media ownership, between an “off-shore company” and a company registered in a foreign country. Countries regulating ownership tend to treat all countries equally, with the exception of EU member states which are sometime treated as domestic by other EU member states for purposes of regulation. As the regulating authority, the Georgian National Communications Commission should be able to demand the same ownership information from any company, whether registered in Georgia, in an EU country, or in an “off-shore” zone.

An expansive definition of “off-shore” companies for purposes of regulating media ownership would deprive new media outlets of the capital they may need to provide citizens with uncensored information and diversity of opinion crucial for the democratic process.

We are well aware of international criticism leveled at Georgia’s current regulation of its broadcasting sector. We recognize the legitimate concerns of civil society that insufficient media ownership transparency in Georgia has suppressed a competitive, pluralistic broadcasting environment. We appreciate as well that the Parliamentary leadership is firmly committed to enacting legislation that will establish “higher standards” of media ownership transparency. We do not believe, however, that barring “off-shore” interests will increase transparency in the absence of effective regulatory oversight and enforcement mechanisms. One need only look across the Black Sea to Ukraine, where some of the most restrictive laws in the region regulating “foreign” media ownership have not led to far greater transparency.

Experience has taught time and again that laws purporting to promote transparency can be easily circumvented through the use of a straw man or third-party conduit. Simply barring “off-shore” interests will not discourage continuation of this practice. What is needed is greater financial accountability of all broadcast licensees and stricter regulatory control. If a broadcast company is unwilling, or unable, to provide complete disclosure – or makes false disclosures – the regulatory authority can deny or revoke the license.

Should the Committee nonetheless decide to use the term “off-shore zone” in its final draft amendments, any ambiguity about which countries are to be considered “off-shore” is most easily solved by including a definitive list of the countries. To that end, the Appendix provides a list of jurisdictions which have been recognized internationally as authorizing practices that may result in a lack of transparency of ownership information.

\* \* \* \* \*

We hope these comments will be useful to your efforts. Please do not hesitate to contact us if we may provide you with any additional assistance.

Sincerely,

Barbara Swann (swann2002@msn.com)

Kurt Wimmer (kwimmer@cov.com)

Kerry Monroe (kmonroe@cov.com)

cc: Jochen Raffelberg, Chief of Party, IREX-Georgia  
Lia Chakhunashvili, Deputy Chief of Party, IREX-Georgia  
Linda Trail, Director, IREX Media Development  
Mark Whitehouse, Director, IREX Global Media Initiatives  
Richard N. Winfield, Chair, ISLP Media Law Working Group

# APPENDIX/1

The following jurisdictions have been recognized internationally<sup>2</sup> as authorizing practices that may result in a lack of transparency of ownership information. Accordingly, these jurisdictions could arguably be considered “off-shore zone” countries for purposes of the draft amendments to the Law of Georgia on Broadcasting.

The countries are:

- Andorra
- Anguilla
- Antigua and Barbuda
- Aruba
- Bahamas
- Bahrain
- Barbados
- Belize
- Bermuda
- British Virgin Islands
- Cayman Islands
- Cook Islands
- Costa Rica
- Cyprus
- Dominica
- Gibraltar
- Grenada
- Guernsey
- Hong Kong
- Ireland
- Isle of Man
- Jersey
- Jordan
- Latvia
- Lebanon
- Liberia
- Liechtenstein
- Luxembourg
- Macao
- Maldives

---

<sup>2</sup> This list of jurisdictions comes from a December 2008 report by the United States Government Accountability Office (“GAO”). The GAO compiled this list by combining lists from several sources.

## **APPENDIX/2**

- Malta
- Marshall Islands
- Mauritius
- Monaco
- Montserrat
- Nauru
- Netherlands Antilles
- Niue
- Panama
- Samoa
- San Marino
- Seychelles
- Singapore
- St. Kitts and Nevis
- St. Lucia
- St. Vincent and the Grenadines
- Switzerland
- Turks and Caicos Islands
- U.S. Virgin Islands
- Vanuatu