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MEDIA LAW: REVIEW OF MAJOR PROVISIONS

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Executive Summary

On January 1, 2011, the Hungarian Law on Media Services and Mass Media entered into force. The Law has been criticized by members of the country's media, other European governments, and intergovernmental organizations for its severe restrictions on print and online media.

I. Introduction

The Law on Media Services and Mass Media (Act CLXXXV) was passed by the Hungarian national legislature on December 20, 2010, and entered into force on January 1, 2011.¹

The law applies to all publicly and privately owned media content and media providers, whether broadcast, print, or web-based, located in Hungary or outside if a Hungarian audience is addressed. The law introduces a registration system for all media outlets, and defines the legal status of the National Media and Infocommunications Authority, a government institution established in October 2010 that is charged with the duty to oversee all media production and the dissemination of media products. The Law also sets forth the rules and procedures that are mandatory for media operators and specifies penalties for noncompliance and violations.

II. Major Concerns Regarding the Law

Major concerns expressed by the critics of the Law relate to the broad powers it confers on the National Authority and its Media Council and the dependence of those entities on the government; content control; extraterritorial application of the Law; vague definitions used in the Law, which allow for its broad interpretation; and the requirement that media outlets provide access to secrets and disclosure of sources.

The broad powers of the Media Council are seen in its right to authorize registration of all media outlets (art. 41), and to impose fines (up to US\$1 million) or suspend or cancel registration (art. 187) in cases of infringement on the basis of vague concepts such as “public interest” (art. 38), “public order” (arts. 177, 178) or “unbalanced reporting” (arts. 12, 181). The Media Council has broad investigative authority, and may punish media outlets if the interests of a

¹ An English translation of this Law was published on the website of the National Media and Infocommunications Authority (NMHH), <http://www.nmhh.hu/dokumentum.php?cid=25694> (last visited Jan. 23, 2011).

viewer, listener, or subscriber were damaged, even if there was no violation of the Law (art. 140). The Council may also access any data, even secrets protected by law (art. 153). If the information demanded is not provided, fines may be imposed on media companies and individuals (art. 156).

The appointment of members of the Media Council by Parliament for a nine-year term with the possibility of unlimited reappointment (art. 125) is viewed as a limitation on the Council's independence.

Extraterritorial application of the Law (art. 1) is a subject of concern. The Law apparently applies to media firms established in other EU countries, or even outside of the EU if they address a Hungarian audience.

Several major human rights and media watch organizations have expressed concerns regarding this Law, as follows:

A. Amnesty International

- Broad application of law to all providers of news regardless of their location, ownership, and legal status.
- Punishments that can be imposed by the National Media and Infocommunications Authority (hefty fines and termination of registration) are based on vaguely defined concepts, such as “common morality,” “public interest,” and “public order.”
- Procedure to appoint the Authority does not ensure plurality.
- “Facing the possibility of fines or even closure, many journalists and editors are likely to choose the ‘safe’ option of modifying their content.”²

B. Bloomberg News

- Overly extensive registration rules.
- Influence of the ruling parliamentary party and Prime Minister on appointments to the National Media and Infocommunications Authority, which undermine the Authority's independence.
- Lack of clarity in what is required under the “obligation of balanced reporting.”³

² *Protests Over Restrictive Hungarian Media Law*, AMNESTY INTERNATIONAL (Jan. 14, 2011), <http://www.amnesty.org/en/news-and-updates/protests-over-restrictive-hungarian-media-law-2011-01-14>.

³ Zoltan Simon, *EU Says Hungary Media Law Probe Will Extend to Other Countries*, BLOOMBERG (Jan. 17, 2011), <http://www.bloomberg.com/news/2011-01-17/eu-says-hungary-media-law-probe-to-extend-to-other-countries.html>.

C. Human Rights Watch

- Denial of registration can be used as an instrument to impose media control by the governing party, which has the right to appoint members of the National Media and Infocommunications Authority.⁴

D. Freedom House

- Hefty fines for “immoral” or “unbalanced” reporting may prevent journalists from reporting on crimes and such issues as sex, drugs, and alcohol.
- Law “subjects private media organizations to the same rules and regulations that govern public and state-run media and imposes penalties for content-related violations.”⁵

III. Review of Selected Provisions of the Law

Articles 9 and 42-45 establish that programming information must be reported to the authorities for registration purposes. Changes in program content require an update of the registration documents. Additionally, each media company must rate its programs and other media content depending on how it affects the “moral, mental, and physical health of the audience” and structure its programs and content depending on rating recommendations issued by the National Authority.

Article 12 regulates the procedure for delivering opinions by journalists and “employees of media services providers” who are required to be impartial when broadcasting parliamentary activities (art. 13), and must not infringe the public’s philosophical, religious, or faith-based convictions (art. 14).

The Media Council of the National Authority decides on the exclusive rights of a broadcaster (art. 16) and may suggest and even obligate a media operator to broadcast an “event of considerable importance” (art. 18).

Article 20 of the law introduces quotas for European and Hungarian works and music used by media registered under this Law. Separate quotas are established for state, public, and commercial media operators.

Rules on product placement and regulations on possible sponsorship of media organizations and their advertisement activities are established by the Law (arts. 30, 38).

⁴ Commentary, *Hungary: Media Law Endangers Press Freedom*, HUMAN RIGHTS WATCH, (Jan. 7, 2011), <http://www.hrw.org/en/news/2011/01/07/hungary-media-law-endangers-press-freedom>.

⁵ Press Release, Freedom House, Proposed Hungarian Media Law Would Threaten Freedom, (Dec. 13, 2010), <http://www.freedomhouse.org/template.cfm?page=70&release=1292>.

Article 77 requires the full disclosure of data requested by the Media Council. This might be understood as a requirement that journalists reveal their sources of information for publications concerning national security or public safety. This provision was passed in conformity with the requirements of article 6 of the 2010 Act on the Fundamental Rules of the Freedom of the Press and Media Content.⁶

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⁶ English translation published by the Budapest Times information portal, at <http://www.budapesttimes.hu/files/Act%20CIV%20of%202010%20on%20the%20freedom%20of%20the%20press%20and%20the%20fundamental%20rules%20on%20media%20content.pdf> (last visited Jan. 25, 2011).