Note on the Minimal Necessary Amendments to the Broadcasting Law

by Toby Mendel

on behalf of
Centre for Law and Democracy (CLD), International Media Support (IMS) and FOJO Media Institute

For the Second Amendment and Drafting By Law meeting, 16 December 2016

The Ministry of Information of Myanmar has circulated a set of 11 proposed amendments to the Broadcasting Law, which aim to address some of the key weaknesses with the current proposals so as to be able to move forward to implement this Law. The Centre for Law and Democracy (CLD), International Media Support (IMS) and FOJO Media Institute (FOJO) support the idea of limited amendments at this time. The current Broadcasting Law is one of the most progressive in Southeast Asia and yet it has not been able to be implemented due to a few weaknesses in its structure. The overriding priority at this point is to move forward as soon as possible to implement the law.

Although we have identified a number of ways that the Law could be improved,[1] we believe that putting forward wider amendments at this time would be counterproductive because it would lead to a new, wide-ranging debate in parliament which could substantially delay the adoption of the amendments. We therefore support the approach of the Ministry of information to go ahead with very limited amendments at this time. The time for a wider debate about amendments will come in a few years time, once implementation of the Law has begun and the wider problems can be assessed properly from a practical perspective.

Furthermore, we support all of the amendments proposed by the Ministry of Information. Many of these are technical in nature, and simply address formal problems, such as the changed names of various ministries or the delayed time limit for appointing the Council. Others are more substantive, such as tweaking the rules on concentration of ownership and cross ownership, and we support them.

We have, however, two recommendations for what we consider to be essential additional amendments.

[1] See our analysis of March 2016, available at: http://www.law-democracy.org/live/myanmar-analysis-of-broadcasting-law-released/.

Section 50

Section 50, with the proposed amendments, prohibits anyone from owning, directly or indirectly, two or more companies offering the same broadcasting service in a single broadcasting zone, with the National Broadcasting Council to determine what constitutes direct or indirect ownership. This is positive.

However, at present, there are a few instances of one company with a single licence operating numerous channels or broadcasting services. If the rules do not ultimately limit the number of channels that a person can control, they will be of very little significance because one could own a large number of channels through one company. It is therefore suggested that this rules should make it clear that no one company can offer more than a set number of channels, which might be three or five.

In theory, the Council might, through its own rules and the power to determine the meaning direct or indirect control, set upper limits on the number of channels that a company might provide. However, the sensitivity of this decision, given that there are already companies in existence which exceed whatever (reasonable) maximum might be set, means that it would be far preferable for this limit to be set by parliament. Furthermore, a decision of this sort formally goes beyond determining the meaning of direct and indirect control, so the power of the Council to take it might be challenged in court.

Section 91

Section 91 is listed in the amendments table for the Broadcasting Law prepared by the Ministry of Information but, at least in the English version, no changes are actually recorded there. We assume this is a mistake of translation. But the result is that we are not aware of what is being proposed here.

Section 91 currently provides that those who are not satisfied with decisions of the National Broadcasting Council in relation to issuing licences (section 36), renewing licences (section 40), revoking licences (section 42), or imposing various other types of sanctions on licensees (sections 88 and 89) may lodge an appeal against those decisions with the President. This is completely inappropriate from the perspective of international standards, which require the regulation of broadcasting to be undertaken by independent bodies, a status for which the President clearly does not qualify. Better practice is for appeals against decisions of the Council to go to the courts. The idea of an appeal to the courts is also consistent with section 14(e), which suggests that the power of the Council to suspend or revoke a licence shall be subject to a court appeal.