

# **Analysis of the Press and Publications Law, No. 8 for the Year 1998, as Amended**

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**Author: Toby Mendel**

## ***Executive Summary***

Since the 1993 Press and Publications Law, which granted significantly greater freedom to Jordanians to establish newspapers, the rules governing the print media have gone through a number of changes. Under the current 1998 Press and Publications Law (PPL), as amended, a number of dailies – both public and private – have flourished alongside numerous other publications, although this sector now faces major financial headwinds. In addition to creating a basic framework in which the print media can operate, the Law provides strong protection for confidential sources and an early set of access to information rules for the print media. At the same time, there are a number of ways in which the Law could be brought more fully into line with international standards.

The scope of the Law is very broad indeed. It covers not only periodicals (newspapers and magazines) but also electronic publications, specialised publications (which may not be periodic), news agencies, printing presses, publishing houses, distribution houses, bookstores, public polling centres, advertising agencies, translation businesses and research centres. All of these bodies need to obtain licences from the government to operate and are subjected to various other rules. While there is some debate about the idea of registering periodicals, there is no need to licence all of these types of entities.

International standards call for regulation of the media to be undertaken by independent bodies. The Media Commission undertakes a number of regulatory functions and the idea of transforming this body into a more independent body is canvassed in some detail in the analysis of the Audiovisual Media Law. However, a number of regulatory roles – including licensing of news agencies and press publications – are undertaken by the Council of Ministers, while others – including licensing and approving the experience of the managing director of specialised publications, approving foreign correspondents, and approving financing of research and polling centres – are undertaken by the Minister.

In terms of the print media, under international law licensing systems, which allow for discretion to refuse to issue a licence, are not legitimate although technical registration systems may be. The PPL appears to create a licensing regime, while doing away with discretion to refuse permission would essentially transform it into a registration system. It would also be preferable if the deposit obligations for specialised publications, non-periodicals and books were transferred from the Director of the Media Commission to the National Library, as a form of archiving. A number of other licensing restrictions – such as the requirement for research and polling centres to obtain approval from the Minister before receiving funds, restrictions on specialised publications changing their topic of specialisation, and the complete ban on foreign funding, including investment funding for the print media – are also problematical from the perspective of international standards.

It is well established under international law that, unlike other professions, it is not legitimate to place conditions on who may be considered to be a journalist or to require journalists to belong to a mandatory association. Unfortunately, the PPL, in combination with the Jordan Press Association Law, imposes both of these types of requirements on journalists and excludes a number of people working in positions that would normally be considered to be journalists from the Jordan Press Association (JPA), such as individuals who do not work fulltime or who work for more than one outlet (freelancers).

The PPL also places specific conditions on a number of more senior figures, including the responsible directors of various entities, the owners of publications, the editor-in-chief of a press publication and the responsible managers of specialised publications. These requirements are different for different positions but, for example, the editor-in-chief of a press publication must have been a JPA member for four years, work fulltime for just one publication and be fluent in the language of the publication. As with journalists in general, it is not legitimate to impose legal conditions on who may occupy these positions.

Various provisions in the PPL impose a number of vague and broad both positive and negative content obligations on publications and journalists. For example, Article 7 requires journalists to maintain balance and to treat freedom of expression as an equal right for all citizens, while Article 39(d) prohibits the publication of libel or content which violates others' freedoms. While all of these provisions carry less onerous sanctions than the Penal Code, at the same time they do not conform to international law standards for restrictions on freedom of expression, in particular that restrictions should be carefully and narrowly drawn and be necessary to protect a legitimate interest. Article 39(a) grants the public prosecutor the power to decide what the print media may publish in relation to a criminal investigation, while international standards make it clear that it is never legitimate for an official to have that sort of power. Finally, the rules on the rights of reply and correction should be tweaked, for example to remove the power of the Director of the Media Commission to demand a reply whenever incorrect content affects the public interest.

One of the most controversial aspects of the PPL relates to amendments adopted in 2011 and 2012 governing websites. The definition of a press publication now includes electronic or online publications, i.e. websites. News websites, which disseminate news or comments related to the internal or external affairs of the Kingdom of Jordan, are required to obtain a licence to operate and otherwise to bring themselves into line with the rules for press publications, such as having an editor-in-chief who has been a member of the JPA for four years and who works fulltime for just one publication. Other websites are not required to register but, if they do, they receive both the benefits and obligations of press publications.

It is clear under international law that requiring websites to be licensed, or even to register, is not legitimate. This is not necessary to protect any of the interests recognised under

international law as justifying restrictions on freedom of expression. Instead, the free and open nature of the Internet should be respected, subject to laws of general application, such as defamation or hate speech laws. This situation is seriously exacerbated in Jordan due to the fact that the PPL requires the Director of the Media Commission to block unlicensed websites which violate the provisions of the law, including because they are required to register. 100s of websites were in fact blocked in June 2013, giving rise to widespread both internal and international criticism.

The new rules also set strict conditions for online content. These include that the owners and editor-in-chief are responsible for the content of third party comments, which are considered to be “journalistic material”, that only comments which related to the topic of the news article are allowed, and that websites must keep records of comments for six months, including information about the individual who posted them.

Once again, these provisions signally fail to respect international standards, which hold that websites should not be responsible for third party comments at least until they have received a reliable notification to the effect that the comment is illegal, and then fail to take it down. There is also no reason why comments should formally be required to relate to the news article; the online space is so important to freedom of expression precisely because it allows for freewheeling debates which do not necessary follow formal standards of logic and coherence. Finally, the ability and indeed right to post content anonymously is widely recognised as an aspect of the right to freedom of expression.

In terms of enforcement, the PPL creates a complex relationship between the Director of the Media Commission and the courts. The former has the power to ban the importation of foreign publications which breach the rules in the Law, whereas according to international law only courts should wield these sorts of powers. The Director also has the power to refer cases concerning books to the court, which led to the very high number of over 30 books per year being banned in 2013 and 2014. It would be preferable if any such actions were initiated only in the regular way by the prosecutorial authorities without the intervention of the Director.

## ***Introduction<sup>1</sup>***

The regulation of the print media sector in Jordan has evolved through a large number of changes over the last 25 years. While the direction has generally been positive in the sense of progressively democratising the sector, at the same time there have been some setbacks and there are also areas where further democratisation is still needed.

An early and very important development was the enactment of the 1993 Press and Publications Law (PPL),<sup>2</sup> which granted significantly greater freedom to Jordanians to establish newspapers. This led to the establishment of dozens of private weekly newspapers, albeit not dailies. These were very successful in terms of attracting audiences and advertisers and some even posed a threat to the erstwhile dominant public dailies. At the same time, many of the new weeklies were pushing the boundaries of what the government was prepared to tolerate and testing previously established red lines.

In May 1997, when Parliament had been dissolved, the government promulgated amendments to the Press and Publications Law<sup>3</sup> which imposed more stringent conditions on the weeklies. In particular, much higher minimum capital deposit requirements led to the closure of 13 of the 35 weeklies, due to them being unable to meet this condition. However, the Higher Court of Justice (now the Administrative Court) held that the amendments were unconstitutional on procedural grounds, nullifying both the amendments and the closures.<sup>4</sup>

A new Press and Publications Law was promulgated in 1998<sup>5</sup> which repealed the earlier, 1993 Law, and which remains in force, albeit subject to amendments. Under this Law, a number of dailies – both public and private – have flourished alongside numerous other publications, although this sector now faces major financial headwinds. The Law does impose licensing requirements on newspapers, in a system which is overseen by the government, contrary to international standards, although in practice it is relatively easy to establish a newspaper. It includes a number of positive guarantees of media freedom, protection of confidential media sources of information and a right of the media to access official sources of information. Less positive are its restrictions on who may practise journalism and broad, vaguely worded restrictions on content. And the extension of the law

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<sup>1</sup> This Analysis is based on a translation of the Press and Publications Law provided by UNESCO.

<sup>2</sup> Press and Publications Law No. 10 for the year 1993, published in the Official Gazette No. 15391, p. 311, 17 April 1993. Available in Arabic at: <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>.

<sup>3</sup> Provisional Law No. 27 for the year 1997, published in the Official Gazette No. 4205, p. 2428, 15 May 1997. Available in Arabic at: <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>.

<sup>4</sup> The decision was published in Bar Association Bulletin, issues 1 and 2 in January and February 1998, p. 389.

<sup>5</sup> Law No. 8 for the year 1998 published in the Official Gazette No. 4300, p. 3162, 1 September 1998. Available in Arabic at: <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>.

to cover online publications and news websites through amendments in 2011 and 2012 has been particularly controversial and has led to the blocking of 100s of websites in the country.<sup>6</sup>

This Analysis provides an assessment of the 1998 Press and Publications Law (the Law), highlighting its strengths and weaknesses, and making specific recommendations for reform as needed to bring it more fully into line with international standards and better practice. The Analysis refers to a number of leading international sources, including UNESCO's *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*,<sup>7</sup> the 2011 General Comment No. 34 by the UN Human Rights Committee,<sup>8</sup> the series of Joint Declarations by the special international mandates (special rapporteurs) on freedom of expression,<sup>9</sup> the regional declarations on freedom of expression adopted by the African Commission on Human and Peoples' Rights<sup>10</sup> and the Inter-American Commission on Human Rights,<sup>11</sup> and various Council of Europe recommendations and declarations.<sup>12</sup>

## 1. Scope of the Law

The very existence of special regulatory rules for the print media is a contested issue, with many established democracies not having any special legislation for this sector. International law does not necessarily rule out any special legal requirements for the print media, but these need to be carefully tailored to legitimate public and private needs.

With this in mind, it may be noted that the scope of the Law is very broad indeed. It covers, in different places, not only periodicals (newspapers and magazines) but also electronic publications, specialised publications which are not necessarily periodic in nature, news agencies, printing presses, publishing houses, distribution houses, bookstores, public

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<sup>6</sup> See, for example, Human Rights Watch, 4 June 2013, "Jordan: Rescind Order to Block Websites", available at: <http://www.hrw.org/news/2013/06/04/jordan-rescind-order-block-websites> and Centre for Law and Democracy (CLD), 24 June 2013, *Comments on the Law Amending the Press and Publications Law of 2012*, available at: <http://www.law-democracy.org/live/wp-content/uploads/2013/06/Jordan.PPLamendments.pdf>.

<sup>7</sup> July 2015. Available at: <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/assessment-of-media-development-in-jordan/>.

<sup>8</sup> Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f34&Lang=en).

<sup>9</sup> Available at: <http://www.osce.org/fom/66176>.

<sup>10</sup> Available at: <http://www.achpr.org/sessions/32nd/resolutions/62/>.

<sup>11</sup> Available at: <https://www.cidh.oas.org/declaration.htm>.

<sup>12</sup> Available at: <http://www.coe.int/en/web/freedom-expression/adopted-texts>.



polling centres, advertising agencies and even translation businesses and research centres. All of these bodies need to obtain licences from the government to operate (see, for example, Articles 12 and 15) and are subjected to various other rules.

This is unnecessary and engages, in addition to the right to freedom of expression, the right to freedom of association. In addition to issues relating to the role of the government (on which see below under Independent Regulation), there is simply no need to subject all of these types of activities to special licensing or even registration regimes. While international law does accept some limited forms of registration in relation to the traditional print media, even that is subject to strict conditions and, where it is extended to so many different types of entities, cannot pass muster as a restriction on freedom of expression and freedom of association.

#### Recommendation:

- The scope of the Law in terms of the number of different types of entities it subjects to regulatory measures should be reviewed and this should be limited to entities in relation to which such regulation can be justified as a restriction on freedom of expression and freedom of association by virtue of the clear benefits it creates.

## 2. Independent Regulation

The need for bodies which exercise regulatory powers over the media to be independent of the government is well-rooted in both international standards and the practice of democratic States. The reason for this is clear: if the government controls regulatory actions, there will inevitably be a bias, or at the very least a risk of bias, towards regulatory decisions which favour the government rather than the wider public interest. This clearly undermines respect for freedom of expression.

Numerous authoritative international statements have been made along these lines. Many of these statements focus on broadcast or telecommunications regulators, because most democracies do not have official bodies that regulate the print media or journalists. The 2003 Joint Declaration of the special international mandates on freedom of expression includes the following, broad statement about independence:

All public authorities which exercise formal regulatory powers over the media should be protected against interference, particularly of a political or economic nature, including by an

appointments process for members which is transparent, allows for public input and is not controlled by any particular political party.<sup>13</sup>

They reiterated this idea in their 2015 Joint Declaration, stating: “Administrative measures which directly limit freedom of expression, including regulatory systems for the media, should always be applied by an independent body.”<sup>14</sup>

The UN Human Rights Committee made a similar statement in its September 2011 General Comment No. 34, albeit limited to broadcast regulators:

It is recommended that States parties that have not already done so should establish an independent and public broadcasting licensing authority, with the power to examine broadcasting applications and to grant licenses. [references omitted]<sup>15</sup>

All three regional bodies for the protection of human rights – in Africa, the Americas and Europe – have also referred to the need for media regulators to be independent.<sup>16</sup>

In contrast to this, the Press and Publications Law allocates a wide range of functions to political bodies and individuals, specifically the Cabinet, the Minister of Information, the Department of Press and Publications (PPD, now part of the Media Commission or MC) and the Director (formally of the PPD but now the Director of the MC). The relevant functions are as follows:

- Cabinet:
  - Issuing licences to news agencies, on the recommendation of the Minister (Article 11(c)).
  - Issuing licences to press publications, on the recommendation of the Minister (Article 17(a)).
  - Authorising transfers of press publication licences (Article 18).
- Minister:
  - Approving individuals as correspondents of foreign periodicals (Article 9(a)).
  - Issuing licences to specialised publications and Article 15(a) entities (Article 17(b)).
  - Approving changes in the specialisation of specialised publications (Articles 19(b) and 26(a)).

<sup>13</sup> 18 December 2003, note 9.

<sup>14</sup> 4 May 2015, clause 4(a), note 9.

<sup>15</sup> Note 8, para. 39.

<sup>16</sup> See Principle VII(1) of the *Declaration of Principles on Freedom of Expression in Africa*, adopted by the African Commission on Human and People’s Rights at its 32nd Session, 17-23 October 2002, note 10; Principle 13 of the *Inter-American Declaration of Principles on Freedom of Expression*, adopted by the Inter-American Commission on Human Rights at the 108<sup>th</sup> Regular Session, 19 October 2000, note 11; and Recommendation (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, adopted by the Committee of Ministers of the Council of Europe on 20 December 2000, note 12.



- Receiving a copy of the annual budget of press publications (Article 20(b)).
- Approving the experience of the responsible manager of a specialised publication, on the recommendation of the Director (Article 25(2)).
- Approving financing for studies and research centres and public opinion polling centres (Article 41).
- Department:
  - Receiving copies of specialised publications (Article 26(b)), non-periodicals (Article 34(d)) and books (Article 35(a)).
- Director:
  - Being informed about changes to certain information about press publications (Article 22).
  - Being notified about the appointment of an interim editor-in-chief of a press publication (Article 24(b)).
  - Providing replies and corrections where the public interest is affected (Article 27(b)).
  - Banning or limiting illegal imported material, with subsequent approval of the court (Article 31(b)) and approving importation of such materials for research purposes (Article 33).
  - Requesting records of printed materials from printing presses (Article 34(c)).
  - Banning books upon a decision of the court (Article 35(b)).
  - Closing down entities which operate without the required licences (Article 48(a)).
  - Licensing news websites and blocking unlicensed websites which violate the law (Article 49).

Many of these particular powers are discussed in more detail below in the relevant sections of this Analysis. For purposes of this section, it is enough to point out that international standards call for these powers, to the extent that they are legitimate, to be exercised only by a body which is independent of government.

### Recommendation:

- Subject to comments and recommendations below regarding the legitimacy or necessity of some of the regulatory powers listed above, consideration should be given to establishing an independent body to carry them out. In particular, consideration should be given to transforming the MC into a body which is independent of government.

### **3. The System of Licensing**

The Law includes fairly detailed rules relating to the licensing of press publications – defined as including periodicals, whether daily, weekly or less frequent, and electronic publications – with less stringent rules for specialised publications, news agencies and a host of other entities, described in Article 15(a).

According to Article 15(a), “a printing press, a publishing house, a distributing house, a studies and research centre, a public opinion polling centre, a translation house, or a publicity and advertising agency” (hereafter Article 15(a) entities) must submit an application for a licence to the Minister, using the approved form, while Article 15(b) indicates that further details as to the procedure will be stipulated in regulations. According to Articles 17(b) and (c), the Minister will “take a decision” on such an application, provided it meets all of the requirements, within thirty days and the applicant will be notified within another 15 days. Any refusal to issue a licence must be justified.

The director of a printing press must keep records of all periodicals printed along with the number of issues, as well as of the titles of all books printed, their authors and the number of copies. Two copies of each non-periodical document printed by the printing press must also be deposited with the PPD (now part of the MC) before being distributed publicly (Article 34). The latter rule is supplemented by Article 35(a), which requires the author or publisher of any book to deposit a copy with the PPD.

Finally for Article 15(a) entities, according to Article 41, study and research centres and public opinion polling centres, as well as anyone working for them, may not receive or accept, in relation to their work, any funding from a Jordanian or non-Jordanian source without the approval of the Minister.

Breach of the latter rules, in accordance with Article 46(a), shall be punished by a fine of not less than twice the amount received. Article 48 provides that, where an Article 15(a) entity operates without a licence, the Director may close it down and confiscate its products, while those responsible may be punished by a fine of between JD 1,000 and 5,000. According to Article 47(a), distributing material that has been banned may lead to a fine of between JD 500 and 2,000, while breach of any provision of the Law which does not have a specific penalty associated with it may lead to a fine of up to JD 500 (Article 47(b)).

In addition to the problems noted above of it being questionable whether it is necessary to provide for special regulatory requirements for these entities at all and the problems with having politically linked actors overseeing such regulation, there are serious questions about the basic licensing system. Although, in practice, it is reportedly relatively easy to

obtain a licence,<sup>17</sup> the system appears to allocate discretion to the Director to refuse to issue a licence. Furthermore, there is no apparent reason for allocating an additional 15 days beyond taking a decision for that decision to be communicated to the applicant.

The deposit requirements in Articles 34 and 35 are also problematical inasmuch as they are designed to facilitate control rather than to preserve copies of publications for the future (which could be achieved by requiring deposits in national libraries). The Media Commission has also adopted some proposals for amending the Law which include replacing the Department in these articles with the National Library. Finally, the rule in Article 41 about requiring approval from the Minister before receiving funds, while no doubt well intentioned, is simply impractical from a business point of view and also opens up the door to undue control over these bodies. A better approach would be to require these bodies to be open about their funding, including by having their finances audited.

As noted above, the rules on press publications are more complicated. Article 11 recognises the right of every Jordanian and every company owned by Jordanians, as well as registered political parties, to establish a press publication. It calls on the Cabinet, on the recommendation of the Minister, to grant licences to the Jordan News Agency (Petra) and to foreign news agencies on the basis of reciprocity, and calls for regulations to be adopted for private Jordanian and foreign news agencies.

The primary rule on licensing of press publications is Article 12, which requires anyone wishing to obtain a licence to publish a newspaper to apply to the Minister and lists a number of required types of information, including the specialisation, language and name of responsible editor-in-chief. According to Article 13, press publications must also be registered as companies and submit their budget to the Companies Controller. Articles 17(a) and (c) provide for the Cabinet, on the recommendation of the Minister, to decide on the licence application within 30 days, and for the decision to be notified to the applicant within 15 further days. Failure to meet these deadlines shall represent a deemed approval of the application. Refusals to provide a licence must be justified.

The following articles include a number of additional rules for press publications as follows:

- Article 18: Transfers of licences are permitted with the permission of the Cabinet and provided that the transfer agreement is provided to the PPD.
- Article 19: Licences are cancelled by law if the publication is not issued for six months or if publication stops for a set period (three months for a daily, 12 issues for a weekly and four issues if the publication is issued less frequently than weekly), although this does not apply to political party newspapers. Licences may also be

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<sup>17</sup> See *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, note 7, p. 90.

cancelled by the court for breach of the licence conditions, but only after it has been issued with two warnings to that effect.

- Article 20: Publications must depend on legitimate sources of funding, may not receive foreign funding and must provide the Minister with a copy of their annual budget within the first four months of the year.
- Article 22: Publications must publish a range of information in a prominent place, including the names of the owner and editor-in-chief, the place and date of the issue, the subscription rate, and the name of the printing press or website. The Director must also be informed of any changes to that information. Article 32 also requires the name of the author to be provided.
- Article 23: The editor-in-chief is responsible, along with the author, for the content of the publication.
- Article 24: Where the editor-in-chief is absent for up to two months, a caretaker may be appointed, but in case of a longer absence, a replacement has to be appointed.

Licences for specialised publications are issued by the Minister (Article 17(b)). Specialised publications cannot publish on topics outside of their areas of specialisation or change their areas of specialisation without the approval of the Minister, on the recommendation of the Director. They must also deposit three copies of every issue with the PPD (Article 26). For publishing outside of the area of specialisation without Ministerial approval, the court may nullify the licence after two warnings have been issued (Article 19(b)).

The sanctions noted above in Articles 47 and 48 apply in the same way to press publications as to Article 15(a) entities. Breach of most of the rules described above are covered by the generic Article 47(b) rule (i.e. a fine of up to JD 500). The Article 46 fines (i.e. of twice the amount) apply for breach of Article 20(a), and a failure to provide the budget in breach of Article 20(b) may lead to a fine of up to JD 3,000 and, if it persists, suspension of the publication (Article 46(b)).

A first issue is whether or not it is necessary to subject press publications to a licensing or even registration regime, especially in light of the fact that they need to be established as companies. It is clearly established under international law that licensing systems for the print media, which provide for discretion to refuse to issue a licence, are not legitimate. As the (then) three special international mandates on freedom of expression stated in their 2003 Joint Declaration:

Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.<sup>18</sup>

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<sup>18</sup> 18 December 2003, note 9.

It is not entirely clear from the language of Article 17(a) whether the scheme does allow for discretion to refuse to issue a licence once the conditions are met.

While international law does not entirely rule out technical registration of the print media, it recognises the potential for abuse of such systems, and therefore calls for restraint in imposing them. As the special mandates noted in the same 2003 Joint Declaration:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided.

The various rules limiting the area of specialisation of specialised publications, unless consent has been obtained from the Minister, in Articles 19 and 26, are not legitimate. These publications should be allowed to change their focus, albeit perhaps with some protection for consumer rights (for example for people with longer-term subscriptions). This will create a more competitive and flexible market for publications in the country, and is also more in line with international guarantees of freedom of expression.

The rules on funding, in Article 20, are excessive. Most countries do not place limits on foreign investment in the print media sector although such rules are more common in relation to broadcasting. At a minimum, some level of foreign investment in the sector should be allowed. This will not only allow for much needed funds to flow into the sector, but it will also bring foreign expertise and skills, which will help the sector develop. There is also no need to stipulate that publications should rely on legitimate sources of funding, since illegitimate sources are already presumably banned by the rule that renders them illegal in the first place.

### Recommendations:

- Consideration should be given to doing away with any special registration system for press publications and Article 15(a) entities and, at a minimum, the Law should make it clear that there is no discretion to refuse to issue a licence once the legal conditions have been met.
- Applicants should be informed forthwith once a decision on their registration application has been reached.
- The deposit rules in Articles 34(d) and 35(a) should be amended to provide for deposits with a national library.
- Article 41, requiring study and research centres and public opinion polling centres to obtain approval from the Minister before they may receive funds, should be repealed.
- The rules in Articles 19 and 26 limiting the flexibility of specialised publications to address other topics should be repealed.

- The rules on legitimate sources of funding and the complete ban on foreign funding, including foreign investment, set out in Article 20 should be repealed. The latter should either be abandoned entirely or the Law should set reasonable maximum limits on foreign investment in the media.

#### 4. Restrictions on Journalists

The most general provision on journalists in the Press and Publications Law is Article 10, which provides that no one who is not a journalist may practise journalism in any form, including as a correspondent for a local or foreign media, or present him- or herself as a journalist, although this does not apply to those whose work is limited to writing articles. This needs to be read in conjunction with the relevant provisions in the Jordan Press Association Law (JPA Law),<sup>19</sup> which give it fuller meaning.

According to Article 16(a) of the JPA Law, no media outlet may hire any person as a journalist unless he or she is on the practising journalist list of the JPA, breach of which may lead to a fine of between JD 1,000 and 2,000 according to Article 18(c) of the same law. Pursuant to Article 5 of the same Law, journalists must meet a number of conditions to attain this status, including having an appropriate combination of education and training (as a sort of intern). For example, those with a PhD in journalism do not have to spend any time training, while those who have an MA must train for six months and this increases with less education, so that those with just a secondary school diploma must spend four years training. Candidates must also pass a test at the end of the training period. Individuals must also work fulltime as journalists to remain on the practising journalist list.<sup>20</sup>

The rules exclude a number of categories of individuals who would be considered to be journalists in other countries. These include those working for broadcasters other than in the news department, those working for non-news websites (or websites that are not registered with the **MC**), those who do not work fulltime as journalists or who work for more than one outlet (which excludes freelancers and many of those who work for news websites, some of whom work for more than one website). In addition, some websites do not have a social security number, even if they are registered with the **MC**, which also precludes their employees from becoming JPA members.<sup>21</sup>

<sup>19</sup> No. 15 for the year 1998, published in the Official Gazette No. 4304, p. 3745, 1 October 1998. Available in Arabic at: <http://www.lob.gov.jo/AR/Pages/AdvancedSearch.aspx>.

<sup>20</sup> See *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, note 7, pp. 66-67.

<sup>21</sup> *Ibid.*, pp. 68-69.



It is clear under international law that restrictions on who may practise journalism, unlike licensing schemes for other professions, are not legitimate. As the UN Human Rights Committee stated in its 2011 General Comment No. 34:

Journalism is a function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general State systems of registration or licensing of journalists are incompatible with paragraph 3 [of Article 19 of the ICCPR].<sup>22</sup>

Similarly, the special international mandates on freedom of expression stated in their 2003 Joint Declaration:

Individual journalists should not be required to be licensed or to register.

There should be no legal restrictions on who may practise journalism.<sup>23</sup>

The Media Commission's proposals for amending the Law would also do away with mandatory membership in the JPA for periodicals and foreign media.

Article 9 of the Law places stringent conditions on who may work as a correspondent for foreign news media, namely to the effect that they should be approved by the Council of the JPA, with the agreement of the Minister, and that regulations should be adopted to govern this issue. This is simply not legitimate and neither the JPA nor the Minister should play any role in deciding who may work for foreign news media outlets.

A number of provisions in the Law place conditions on the holders of certain positions at either publications or Article 15(a) entities, as follows:

- Article 16: Article 15(a) entities must have a responsible director who is a Jordanian, who is permanently resident in Jordan, who has not been convicted of "violating honour or morality", and who has "academic qualifications, expertise, and experience that are appropriate for the work", in accordance with instructions issued for this purpose by the Minister.
- Article 21: Owners of publications must be Jordanians, Jordanian companies or Jordanian political parties, and not have been convicted of "violating honour or morality".
- Article 23: Press publications must have a sole responsible editor-in-chief who is a journalist who has been a member of the JPA for at least four years (this does not apply to political party newspapers), who is a Jordanian who is normally resident in

<sup>22</sup> Note 8, para. 44.

<sup>23</sup> Note 18. See also the seminal case on this issue decided by the Inter-American Court of Human Rights, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5. Available at: [http://www.corteidh.or.cr/docs/opinion/es/seriea\\_05\\_ing.pdf](http://www.corteidh.or.cr/docs/opinion/es/seriea_05_ing.pdf).

Jordan, who works fulltime as a journalist and does not work for any other publication, who is fluent in the language of the publication, and who has not been banned from practising journalism. Pursuant to Article 24, the editor-in-chief shall lose his or her position if he or she fails to respect the conditions of Article 23.

- Article 25: Specialised publications must have a responsible manager who is a Jordanian, who has not been convicted of “violating honour or morality”, and who has a degree in the area of specialisation or have at least five years of relevant experience, as approved by the Minister on the recommendation of the Director.

Many of these conditions are problematical and/or unnecessary. The conditions in Articles 16, 23 and 25 relating to qualifications, expertise, experience and/or language skills are unnecessary and also not legitimate as restrictions on freedom of expression. These sorts of issues should be a matter of job competition – and in most cases they are natural conditions for these positions – and the market rather than regulation. The rules in Articles 16 and 25 which provide for a discretionary role in relation to experience for the Minister and Director are particularly problematical given that they open up the possibility of subjective, unfair decisions or decisions which are influenced by politics.

Similarly, the rules on not having been convicted of “violating honour or morality” are not legitimate. Senior media workers may bear responsibility for such violations even when they are committed by others, and even a minor violation would exclude them from holding these roles.

Finally, the requirement on editors-in-chief to have been a member of the JPA for four years might exclude perfectly competent people from these positions and is otherwise not legitimate as a restriction on freedom of expression. It is also unclear why the prohibition on working for another publication should be established by law, although, again, this would in many cases be considered to be a natural condition for such a position.

### Recommendations:

- Article 10 of the Law should be repealed and relevant amendments should be made to the JPA Law so as to do away with restrictions on who may practise journalism.
- Article 9 of the Law should be repealed.
- The problematical restrictions on the holders of certain positions at Article 15(a) entities, publications and specialised publications in Articles 16, 21, 23, 24 and 25 should be repealed.

## 5. Content Regulation

The Press and Publications Law includes a number of restrictions on content for publications. The more general of these requirements are found in Articles 4, 5 and 7 of the Law. Article 4 is cast as a positive provision protecting press freedom, but it requires the press to operate “within the limits of the law and within the framework of preserving public liberties, rights and duties as well as respecting the private life of others”. For its part, Article 5 calls on publications to respect the truth, and not to publish content that “conflicts with the principles of freedom, national responsibility, human rights, and values of the Arab and Islamic nation”.

Article 7 provides that journalists must respect the ethics of journalism and provides a list of six categories as examples of this, including the Code of Honour issued by the JPA. The five other categories cover:

- Respecting public liberties and the rights of others, including privacy.
- Treating freedom of expression and access to information as equal rights of citizens and the press.
- Maintaining balance, objectivity and honour in press content.
- Not publishing material likely to stir up violence or discord among citizens.
- Refraining from bringing or obtaining advertisements.

Breach of Article 5 is covered by Article 45(a), which provides for a fine of between JD 500 and 2,000, while breach of the other provisions is covered by the general sanction provision in Article 47(b), which provides for a fine of up to JD 500.

According to media law expert Yahia Shukkeir, 80 of the 114 lawsuits filed against journalists between 2000 and 2006 were based on Articles 4, 5 and/or 7 of the PPL.<sup>24</sup>

The main problem with these provisions is that they are almost impossible to define properly and hence leave the print media open to prosecution for a very wide range of material. For example, the ideas of content that conflict with the principles of freedom, national responsibility or the values of the Arab and Islamic nation are extremely flexible in terms of possible interpretation. Another problem is that many provisions place positive obligations on the media which are simply not appropriate. It is not the job of the media, for example, to treat freedom of expression as an equal right of citizens or to respect public

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<sup>24</sup> IREX/Jordan Media Strengthening Program and Center for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania. 2012. Introduction to News Media Law and Policy in Jordan: A primer compiled as part of the Jordan Media Strengthening Program, p. 33. See also p. 82 of *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, note 7, and especially Table 7.

liberties (as opposed to not breaching them and especially the rights to reputation and privacy).

Many of the standards found in Articles 4, 5 and 7 of the Law are norms that are more commonly found in self-regulatory systems for the media. This is the case, for example, with the requirement to maintain balance and to respect truth, which should not be imposed by law generally on expressive activities. What makes self-regulatory systems compliant with international standards relating to freedom of expression is that they normally result in only light types of sanctions, such as publishing a notice recognising breach of the standards, whereas imposing heavier, legally enforced sanctions by law is far more problematical. In Jordan, Article 7((f) of the Law renders compliance with the JPA Code of Honour mandatory, while the JPA Law provides for extensive sanctions at the hands of the JPA disciplinary board for breach of the Code.<sup>25</sup> As such, this cannot be considered to be a self-regulatory system. It should be noted that the Media Commission's proposals for amending the Law include repealing Articles 5 and 7.

A number of other provisions in the Law address more specific content issues. For example, Article 30(a) prohibits the publication of content under a pseudonym unless the author has provided his or her real name. Article 30(b) provides that any content published in exchange for a fee must be labelled as an advertisement. According to Article 36(b), publishing material covered by intellectual property rights according to the legislation in force is prohibited unless written authorisation has been obtained from the owner of the rights.

Articles 38(a), (b) and (c) are essentially blasphemy provisions, prohibiting the publication of content which is pejorative or disparaging of constitutionally protected religions, which abuses the Prophets, which insults others' religious beliefs or which incites sectarian strife or racism. Article 38(d), on the other hand, prohibits the publication of content which is libellous or slanderous, which humiliates individuals or which violates others' freedoms. Article 39(a) prohibits the press from publishing information about an investigation relating to a case prior to its referral to the courts unless the prosecutor allows this. Article 39(b) provides that the print media may publish material relating to court hearings unless the court provides otherwise for purposes of upholding the rights of the individual or family, public order or public morals. According to Article 39(c), these rules apply to foreign media as well.

The general sanction provision in Article 47(b), which provides for a fine of up to JD 500, applies to Articles 30 and 36. Breach of Articles 38(a), (b) and (c), according to Article 46(d), attract much heavier fines of between JD 10,000 and 20,000, although this sort of

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<sup>25</sup> See *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, note 7, p. 148.

content in the press used to attract prison terms. Article 46(e) provides for a fine of between JD 500 and 1,000 for breach of Article 38(d), instead of the potential for imprisonment for defamation under the Penal Code. Finally, breach of Article 39 may attract a fine of between JD 3,000 and 5,000 pursuant to Article 46(c), although this does not preclude prosecution of the person responsible under another law. The Media Commission's proposals for amending the Law would limit the penalties associated with breach of Article 38.

According to international standards, a publication should be able to publish pseudonymous or even anonymous material, as long as it is prepared to take responsibility for the content it has published (i.e. so that anyone who feels that their rights have been infringed may sue the publication, even if the actual author is not known). The rule in Article 36(b) is legitimate, as long as the legislation on intellectual property includes appropriate exceptions to intellectual property rights, including the right of the media to quote excerpts as part of an analysis, report or critique of a larger piece.

According to UNESCO's *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, Article 38 was added to the Press and Publications Law after an incident in February 2006, when two Jordanian weeklies, *Shihan* and *Al Mehwar*, reprinted some of the Danish *Jyllands-Posten* newspaper cartoons which were deemed to have depicted the Prophet Muhammad in an offensive manner. This led to the editors-in-chief of the two weeklies, respectively Jihad Momani and Hashem al-Khalidi, being convicted and sentenced to two months' imprisonment in May 2006. The result is that breach of these rules by the print media now only leads to a fine, instead of imprisonment, albeit significantly higher fines than for other breaches of the Press and Publications Law. As of July 2015, no one had been prosecuted for violating Articles 38(a), (b) and (c).<sup>26</sup>

Under international law, blasphemy laws along the lines found in Articles 38(a), (b) and (c) are not legitimate, although it is legitimate to protect religious adherents against hate speech which is, in part, the aim of Article 38(c). According to the UN Human Rights Committee:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. [references omitted]<sup>27</sup>

<sup>26</sup> *Ibid.*, p. 87.

<sup>27</sup> General Comment 34, note 8, para. 48.

Article 38(d) refers to libel, slander, humiliation of individuals and violation of the freedom of individuals. As legitimate as the latter sounds, in the end it is simply too general a reference to meet the standard for restrictions on freedom of expression, which must be clear and precise. Better practice is to provide for specific laws to protect individuals' freedom, such as libel or defamation laws, privacy laws, hate speech laws and so on. Humiliation is also not a value that, under international law, can sustain a restriction on freedom of expression, because it is a subjective notion which is not capable of being proven to be true or false. As the UN Human Rights Committee noted, defamation laws "should not be applied with regard to those forms of expression that are not, of their nature, subject to verification".<sup>28</sup>

As for the references in Article 38(d) to libel, slander, it is recognised that protection of reputation is a legitimate ground for restricting freedom of expression and every country has some sort of defamation law for this purpose. At the same time, it is recognised that defamation is a complex area of law, and that standards and laws in this area must be carefully tailored to strike an appropriate balance between protection of reputation and the right to freedom of expression.<sup>29</sup> It is not clear whether the references in Article 38(d) to libel and slander incorporate standards from the rest of Jordanian law on these issues, but on their own they are not sufficiently developed or detailed to cover this area of law.

Article 39(a) gives the public prosecutor the power to decide what the print media may publish in relation to a criminal investigation. While the prosecutor should have the power, at least subject to appeal, to decide whether or not to provide information to the media about an investigation, this office remains a public office which needs to be subject to public scrutiny and oversight, in particular through the media. As such, it is simply not legitimate to give the prosecutor the power to dictate to the media what they may publish. In democracies, prosecutors have no power to tell the media what to publish about an investigation although they do have the power not to reveal information which may undermine the progress of an investigation. There are also a number of laws, for example relating to protection of children, protection of privacy and so on, which may be relevant in this area.

Articles 27-29 of the Law set out the rules relating to the rights of reply and correction. According to Article 27, a person affected by incorrect content in a press publication has the right to reply to it or to have it corrected, and the editor-in-chief must publish the reply or correction, free of charge, in the next issue in the same place and using the same print as the

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<sup>28</sup> *Ibid.*, para. 47.

<sup>29</sup> See, for example, the Joint Declaration of the special international mandates (special rapporteurs) on freedom of expression of 30 November 2000, note 9, which focuses mainly on the issue of defamation.



original piece. Where incorrect content affects the public interest, the Director can demand a reply or correction under the same conditions.

Article 28 sets out the grounds for refusing a reply or correction, which are that the error had already been adequately corrected, the reply or correction was written under a pseudonym or in a different language than the original piece, the content of the reply or correction was contrary to the law or to public order or morals, or more than two months had passed since the original piece was published. According to Article 29, if a foreign publication refuses to print a reply or correction, the injured party may sue the publication or its legal representative in Jordan.

According to Article 45(b), the responsible person (i.e. the affected person or the Director) can file a case in court to enforce these rules while Article 45(c) provides that the Director may file a case if a foreign publication refuses to provide a reply or correction.

These rules are broadly in line with international standards in this area, which recognise that replies and corrections are more effective, less intrusive ways of addressing problematical content than, for example, going to court. However, these rules could be improved in three ways. First, in recognition of the fact that a correction is less intrusive than a reply from the perspective of freedom of expression, its use should be prioritised whenever it is sufficient to resolve the problem. In other words, where a correction will redress the harm done, it should be the preferred remedy. Second, the scope of the right, which arises whenever a person is “affected” by incorrect content, is too broad. Better practice is to limit this to cases where a person has been harmed or his or her legal rights have been breached. Third, the rule relating to incorrect content affecting the public interest is problematical. This notion is not well defined and it is not appropriate for a government official to be able to place mandatory content in a publication. More professional media outlets will issue corrections whenever they publish content that is erroneous, but they should not be required by law to do so.

In general, it is preferable not to have special content rules for the press and, instead, for them to be responsible under laws of general application, such as a civil code, defamation law or penal code, for illegal content. Many of the content restrictions in the Press and Publications Law are also found in the Penal Code. However, there is an important difference inasmuch as breach of the Penal Code rules attracts much heavier sanctions, often including imprisonment. Inasmuch as these rules protect freedom of the press, they are therefore useful.

### Recommendations:

- Instead of including the rules found in Articles 4, 5 and 7 of the Law in a legal

instrument, consideration should be given to trying to establish a self- or co-regulatory system to address these issues, overseen by an independent, professional body and applying lighter sanctions.

- Article 30(a), prohibiting the publication of pseudonymous content, should be repealed.
- The rules on intellectual property should be reviewed to make sure that they are in line with international standards in this area, including as to exceptions.
- Articles 38(a), (b) and (c) should either be repealed or amended so as to prohibit only incitement to hatred on the basis of religion in line with international standards on hate speech.
- Consideration should be given to clarifying whether or not the references to libel and slander in Article 38(d) incorporate standards from the rest of Jordanian law in this area and, if not, more detail should be provided as to applicable defences and so on.
- The references to humiliation and violations of the freedom of others in Article 38(d) should be repealed.
- Article 39(a) should be repealed.
- The rights of reply and correction should include a system for prioritising a correction whenever it will suffice to redress any harm done and should be limited to cases where an individual has been harmed by published content. They should also not apply where content simply affects the public interest.

## 6. Regulation of Online Publications

Amendments to the Press and Publications Law in 2011 and 2012<sup>30</sup> expanded its scope to cover websites and imposed various other obligations on news websites, in particular. According to Article 2, a press publication includes an “electronic” or online publication. Such publications may choose to register in accordance with rules issued by the Minister for this purpose and, if they do, they will be treated as press publications for purposes of the Law, which brings both the benefits and the obligations described in this Analysis.

Article 49 of the Law places special obligations on so-called “news websites” or websites which disseminate “news, features, articles and comments related to the Kingdom’s internal or external affairs”. According to Article 49(a)(1), news websites are required to obtain a licence from the Director and otherwise reconcile their situation with the provisions of the Law within 90 days. Article 49(b) makes it clear that “all the enforced legislation related to press publications” apply to those news websites which are required to obtain a licence. According to Article 49(g), the Director must block unlicensed websites which violate the

<sup>30</sup> Amended Press and Publications Law no. 17 for the year 2011 and Law no. 30 for the year 2012.

provisions of this Law or any other law, including because they have not obtained a licence if they are required to do so. Pursuant to Article 48, if a news website operates without being registered, the Director may close it down and it may be fined between JD 1,000 and 5,000.

As noted above, licensing rules for the print media are not legitimate and even technical registration systems are often problematical. Imposing such rules on websites, or even websites which carry news – which, according to the definition in the Law is a very wide range of websites – is simply not legitimate and this is not practised in democracies. As the special international mandates on freedom of expression stated in their 2011 Joint Declaration on Freedom of Expression and the Internet:

Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it.<sup>31</sup>

The Media Commission's proposals for amending the Law include several provisions relating to electronic publications, including that mandatory membership in the JPA should not be required for electronic and news websites, replacing the notion of licensing with registration and limiting to some extent liability of the publication for comments (see below).

The special mandates also made it clear that blocking of websites is an extreme measure which should only be applied in very rare cases:

Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.<sup>32</sup>

Blocking a website simply for failing to register clearly does not meet these conditions. This is particularly problematical given that blocking is done at the behest of a government official (i.e. rather than a court order).

Hundreds of unregistered news websites were blocked in June 2013, and hundreds remain blocked today, alongside nearly 200 that have registered as news websites (and a similar number that have registered as specialised websites which do not need an editor-in-chief). The action to block websites in June attracted international criticism.<sup>33</sup> 7iber, a Jordanian

<sup>31</sup> Adopted 1 June 2011, clause 1(c), note 9.

<sup>32</sup> *Ibid.*, clause 3(a).

<sup>33</sup> See, for example, Human Rights Watch, note 6 and Centre for Law and Democracy, note 6. See also Centre for Law and Democracy, 7 June 2013, "Jordan: Internet Blocking Orders Violate Freedom of Expression", available at: <http://www.law-democracy.org/live/jordan-internet-blocking-orders-violate-freedom-of->

online magazine, challenged the amendments in court but lost its case recently and was ordered to pay JD 1,000.<sup>34</sup>

Furthermore, the rules go well beyond simply requiring websites to obtain a licence, since they must also bring themselves into compliance with all of the rules for press publications. This requires them, among other things, to appoint a responsible editor-in-chief who must be a journalist, have been a member of the JPA for at least four years, work fulltime as a journalist and not work in any other profession (Article 23; see commentary above). As noted above, these sorts of conditions on editors-in-chief are generally inconsistent with international law. However, they are particularly problematical for news websites, many of which operate in an entirely different manner than newspapers.

The new rules also set out a number of conditions on content. According to Article 49(c), comments published on websites are considered to be “journalistic material”, thereby engaging the responsibility of the publication as well as its owner and editor-in-chief. At the same time, the author of the comment remains personally liable for it (Article 49(f)). Article 49(d) prohibits the publication of comments if they do not relate to the topic of the news piece, they have not been validated or they represent a breach of the Press and Publications Law or any other law. In accordance with Article 49(e), websites are required to keep records on comments for at least six months, including information about the comment and the individual who posted it.

According to UNESCO’s *Assessment of Media Development in Jordan: Based on UNESCO’s Media Development Indicators*, as of July 2015 there were almost 30 ongoing cases relating to third party comments published on news websites. In addition, many news websites have simply disabled the commenting function to avoid the risk of being held accountable for third party comments.<sup>35</sup>

The rules on comments are very problematical. First, better practice is not to render websites liable for content posted by third parties. According to the 2011 Joint Declaration of the special mandates:

No one who simply provides technical Internet services such as providing access, or searching for, or transmission or caching of information, should be liable for content generated by others, which is disseminated using those services, as long as they do not specifically intervene in that content or refuse to obey a court order to remove that content, where they have the capacity to do so (‘mere conduit principle’).<sup>36</sup>

[expression/](#).

<sup>34</sup> See Committee to Protect Journalists, 22 March 2016, “Mission Journal: Rise in journalist arrests tarnishes Jordan's image as reformist”. Available at: <https://cpj.org/blog/2016/03/mission-journal-rise-in-journalist-arrests-tarnish.php>.

<sup>35</sup> Note 7, p. 91.

<sup>36</sup> Note 31, clause 2(a).

This means that websites that do not moderate third party content should generally not be held liable for that content. At a minimum, websites should not be held liable until they receive an actual and reliable notification of a breach of the law. Without such protection, many websites could simply not offer an opportunity to third parties to post comments, because of the cost and burden of moderating that content, to the detriment of freedom of expression online. As noted above, this is already starting to happen in Jordan. Globally, many of the most popular social media tools – including Facebook, Twitter and YouTube – would simply not be able to operate under these conditions and enormous parts of the web would just have to close down.

These standards are set out clearly in the Council of Europe’s *Declaration on Freedom of Communication on the Internet*, which states:

Principle 6: Limited liability of service providers for Internet content

Member states should not impose on service providers a general obligation to monitor content on the Internet to which they give access, that they transmit or store, nor that of actively seeking facts or circumstances indicating illegal activity.

Member states should ensure that service providers are not held liable for content on the Internet when their function is limited, as defined by national law, to transmitting information or providing access to the Internet.

In cases where the functions of service providers are wider and they store content emanating from other parties, member states may hold them co-responsible if they do not act expeditiously to remove or disable access to information or services as soon as they become aware, as defined by national law, of their illegal nature or, in the event of a claim for damages, of facts or circumstances revealing the illegality of the activity or information.<sup>37</sup>

Second, the conditions on comments imposed via Article 49(d) are, for the most part, not justifiable. There is no reason, for example, why comments should be required to relate to the topic of the news piece. One of the values of the Internet is as a freewheeling forum for discussion and people should be free, subject to otherwise legitimate legal restrictions, to post whatever they want. Shifting to a new topic is perfectly legitimate. And, as noted above, websites should not be required to monitor or “validate” third party content.

Third, websites should not require individuals who post third party comments to disclose their identities. The importance of anonymity online is widely recognised as a key freedom of expression value. As the special international mandates on freedom of expression stated in their 2015 Joint Declaration:

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<sup>37</sup> Adopted 28 May 2003. Available at:  
[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805dfbd5](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805dfbd5).

Encryption and anonymity online enable the free exercise of the rights to freedom of opinion and expression and, as such, may not be prohibited or obstructed and may only be subject to restriction in strict compliance with the three-part test under human rights law.<sup>38</sup>

The importance of anonymity was also recognised in the Council of Europe's *Declaration on Freedom of Communication on the Internet*:

In order to ensure protection against online surveillance and to enhance the free expression of information and ideas (...) States should respect the will of users of the Internet not to disclose their identity.<sup>39</sup>

### Recommendations:

- Article 49 should be repealed. In particular, news websites should not:
  - be required to obtain a licence or register to operate;
  - be required to meet the conditions placed on press publications;
  - be subject to being blocked at the behest of the Director;
  - be responsible for third party content they host unless and until they receive an actual and reliable notification to the effect that that content is in breach of the law; or
  - be required to obtain or record information about third party posters, including their names.
- The restrictions on the content of comments set out in Article 49(d) should be repealed (although the one about breaching the law is not illegitimate, neither is it necessary since laws already provide for penalties for their breach).

## 7. Protection of Sources

The Press and Publications Law includes two provisions on protection of sources. Article 6(d) provides simply:

The press publication and the journalist have the right to keep secret the sources of their information and news.

This is supported by Article 8(e), which forbids anyone from coercing journalists to disclose the sources of their information. According to UNESCO's *Assessment of Media Development*

<sup>38</sup> Adopted 4 May 2015, clause 8(e), note 9.

<sup>39</sup> Note 37, Principle 7.



in Jordan: Based on UNESCO's Media Development Indicators, these provisions are widely respected in practice.<sup>40</sup>

## 8. Applying the Rules

A number of provisions in the Press and Publications Law create special enforcement rights or responsibilities. Thus, Article 31(b) gives the Director the power to stop the importation or distribution of foreign publications which breach the provisions of the Law, or to limit the number of imports, provided he or she submits an urgent case to the court to validate this action. Pursuant to Article 33, the Director may still allow government institutions, universities, and scientific research centres to import these banned materials for research purposes. According to Article 36(a), where the owner or manager of a printing press becomes aware that a court has banned any printed matter, he or she shall stop printing that material.

Article 31(b) is problematical inasmuch as it gives a government official the power to exercise what amounts to prior censorship over foreign printed material, although the impact of this is limited by the fact that the action needs to be ratified by a court on an urgent basis. It would be preferable, however, simply to undertake the action via an urgent court decision in the first place.

Amendments to the Law in 2007 replaced the system of prior censorship for books with a system whereby the Director may, "by a decision of the court", ban a book and confiscate any copies if he or she "discovers" that it violates a law (Article 35(b)). According to UNESCO's *Assessment of Media Development in Jordan: Based on UNESCO's Media Development Indicators*, 1278 books were banned between 1955 and 1987, while 52 were banned from the beginning of 2013 to August 2014.<sup>41</sup>

Formally, inasmuch as this system requires an order of the court to ban a book for breaching the law, it is broadly in line with international standards. However, it is unclear why the Director should have the power to initiate a court action against offending publications, rather than the normal prosecutorial authorities. Furthermore, banning a book is an extreme measure which should only be applied for serious breaches of the law. The very large number of books being banned, which over 2013 and 2014 represented an average of over 30 per year, raises questions about the way the system is applied and may suggest that the Director is less restrained in bringing cases than the prosecutorial authorities might be. Given the extremely serious consequences of banning a book, great restraint should be applied in using this provision.

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<sup>40</sup> Note 7, p. 60.

<sup>41</sup> *Ibid.*, p. 90.

Pursuant to Article 48(a), the Director may close down press publications or Article 15(a) entities which are operating without a licence and confiscate any outstanding issues. Such actions should be undertaken only after a court has made an order to this effect.

Article 42 of the Law establishes a special system for the prosecution of both crimes and civil wrongs committed by the print and broadcast media. The essence of the system is that courts shall establish specialised chambers, which have more expertise regarding the media, to deal with cases involving the media. The rules also provide for expedited processing of criminal and civil cases involving the media, at both the initial and appeal levels. The experience so far has been that these courts have generally shown greater deference to the media and a better understanding of the operational needs of the media, in particular their need to provide the public with up-to-date news.<sup>42</sup> Furthermore, Article 42(i) of the Law prohibits pre-trial detention of journalists for crimes, which is a significant advantage over ordinary criminal defendants.<sup>43</sup>

While special courts for the media are something which would normally attract some suspicion, the fact that this system has resulted in more friendly treatment of the media by the courts is clearly a benefit from the perspective of freedom of expression.

### Recommendations:

- Consideration should be given to amending Article 31(b) to provide that any action to ban foreign printed material should only be taken pursuant to a court order.
- Consideration should be given to repealing Article 35(b), giving the Director the power to initiate a court action against a book and, at a minimum, the Director should exercise great restraint in applying this article.
- The power to close down entities operating without a licence, as provided for in Article 48(a), should vest in the courts, not the Director.

**- Ends -**

<sup>42</sup> *Ibid.*, p. 75.

<sup>43</sup> *Ibid.*, pp. 72-3.