



## Broadcast media enters the digital age: A lifeline for press freedom in Israel Executive summary

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In this paper we will examine whether the regulation of broadcast media in Israel over the past few years has advanced freedom of expression and the public's right to know, or has led to the weakening of the media and to direct or indirect censorship of content. In the first part we will provide an overview of the regulation of broadcast media in Israel and present it as one of the central factors leading to the media market's current state, in which freedom of expression is at the mercy of politicians. In the second part, we will present the possibilities proffered by the digital world, which are dramatically changing the face of the broadcast media, and offer recommendations for strengthening the media as it moves to the Internet, through both the existing new technology and legislation that will ensure proper use of the technology.

A unique feature of the broadcast media is that even when outlets are privately owned, they must make extensive use of infrastructure and broadcast frequencies that are public property controlled by the state. Unlike print journalists, broadcasters until now were unable to publicize content without receiving the right to use the broadcast frequency or channel they needed from the state. Therefore, in Israel, as in many other countries, the public is a partner in every broadcasting outlet, and thus has the right to intervene in broadcasts, oversee their content, and sometimes even dictate what will be broadcast — all through legislation and regulations promulgated by the state and implemented through various supervisory bodies. These supervisory and administrative bodies were granted certain powers to ensure that broadcast frequencies and channels are indeed entrusted to the right people and are not abused.

Today, however, these limitations apply only to the traditional media entities: television, radio, and cable and satellite companies. By contrast, Internet media entities are not using a public resource, do not need to be licensed by the state to operate, and thus are not subject to any significant regulation.

According to the research literature, the political establishment plays a dual role when it comes to the broadcast media: It is both a customer of the media outlets, as an object of their coverage, and also supervises them and their coverage. The political establishment is thus liable to be biased in its supervision of the media, and may take steps to prepare the groundwork for political interference in decisions about media coverage and the politicization of this coverage (Caspi, 2007).<sup>1</sup>

Regulation of the broadcast media in Israel has not attained substantial achievements in promoting the public interests mentioned, and has weakened the various channels both politically and economically, endangering their independence and press freedom in Israel.

But the broadcasting sector has undergone a revolution over the past few years. It has transitioned from broadcasts via television channels that receive a license or franchise from the state, to free broadcasting over the Internet. This shift to broadcasting over the Internet requires a rethinking of broadcasting sector regulation.

In Israel it has been suggested, including in a Communications Ministry report, that the same stringent regulations imposed on the broadcasting sector be applied to Internet broadcasts. We suggest refraining from such regulation.

In the first chapter we will see that regulation of broadcasting in Israel has not led to the flourishing of the networks or to journalistic independence, but rather the contrary. In the second chapter we will see that in the western world, the tendency is to place minimal regulation on Internet broadcasts, with the main focus being on enforcing neutrality on the Web, to ensure free competition and freedom of expression. In the countries examined, the trend is to take action against violations of the law in areas such as intellectual property and information security by means of general legislation, and not through regulation of Internet broadcasts. From this we derive our recommendations for everything related to the Internet broadcast market in Israel, a stellar example of a small, democratic country fighting for its cultural identity.

## **Recommendations:**

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1. In light of the bleak outlook for press freedom in Israel, due in part to regulatory restrictions, we recommend that existing broadcasting regulations not be applied to the Internet. The existing commercial networks and the various content producers and editors must be allowed to function freely on the Web, so they can continue to operate and make a profit. The transition from the existing system to the system we are proposing will take place without harming the rights granted to licensees and franchisees in the broadcast media.

2. It is necessary to differentiate between commercial broadcasting and public broadcasting. Public broadcasting should be the main platform for producing content with historical, cultural, and national importance to be broadcast over the air or on the Web. Public broadcasting must, accordingly, prepare for the

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<sup>1</sup>Dan Caspi, "Politics and the media – an ongoing negotiation," 2007, 8.

many options made possible by online broadcasting, including developing interactive broadcasts and opening niche channels for Internet broadcasting of specific content for small minority groups. Public broadcasting must be funded accordingly. Cinema and television funds, in accordance with the Cinema Law, will remain a source of funding for this kind of content, which will be distributed via the various platforms.

3. Laws ensuring neutrality on the Internet must be legislated to prevent Internet and telephony companies (the infrastructure and connection providers) from discriminating against consumers based on the content, the content producers, or the identity of the platform or application owner. Prioritizing platforms should only be considered where it is essential in order to allow continuous broadcasting where necessary.

4. Legislation regarding the Internet must focus on protecting the rights of individuals and consumers – first and foremost on ensuring that Internet companies are operated transparently and that consumers are able to request any information collected about them from Internet or service providers.

5. Laws that apply to any kind of content, including laws on defamation, intellectual property, privacy, national security, and protection of minors, can be applied with respect to the Internet without giving prior authorization to Internet providers to monitor information on the Web. The moment a person or organization feels that their rights have been violated by information about them on the Web, they can go to court. Only the courts shall have the authority to obligate Internet providers to remove material or reveal sources of information. Monitoring of Web content should only take place with the prior approval of the courts, and only for a limited period of time and a specific purpose. Even when it comes to national security, only the courts should be able to order Internet companies to monitor content and pass on information to the relevant authorities. In this way, privacy and freedom of expression on the Web will be protected.

6. The appointment of special judges who will specialize in Internet-related issues should be considered (similar to the economic courts). They will have to deal with complex topics including economics, technology, freedom of expression, the right to privacy, and cyber warfare. It is important that these judges be familiar with and understand the processes developing in the digital age, because the Internet is a dynamic global system that is always changing.

7. Transparency must be required of Internet providers regarding the management of the Web and prioritization principles, if needed.

8. As we have shown, Western democratic countries are still studying the issue of neutrality on the Web, and are not rushing to pass laws to restrict Web freedom, even in the context of potential threats. Israel must act in a similar fashion: to strengthen the trend started by the Communications Ministry when it required cellular providers to respect the rules of neutrality on the Web, and to avoid regulation of content in Internet broadcasting.