



**BRIEFING**  
on  
**The Communications Bill (House of Lords Report Stage)**  
**Amendment to Preserve Media Plurality**

**ARTICLE 19**  
**Global Campaign for Free Expression**

**London**  
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## **I. Introduction**

ARTICLE 19, an international human rights NGO, takes its name from the corresponding provision in the *Universal Declaration of Human Rights* that guarantees the right to freedom of expression. ARTICLE 19 works globally to protect and promote that right.

ARTICLE 19 is concerned that the Communications Bill, as originally proposed, would relax the rules relating to media cross ownership, paving the way for further concentration of media ownership to the detriment of media diversity and the public's right to receive information from a variety of sources. This would have a detrimental effect in the United Kingdom, where a strong regulatory approach has so far proved relatively effective in preserving diversity and quality in the media. It would also, however, coming on the heels of the recent relaxation of such rules in the United States, have global repercussions, sending a signal around the world that media concentrations are no longer viewed as a threat to diversity in the developed democracies.

We urge Peers to continue to protect media pluralism by amending the Communications Bill to limit cross media ownership. In particular, we urge Peers to ensure that the law does not allow corporations with large holdings in the print media to gain control over the fifth terrestrial TV network.

This Briefing elaborates on the scope of the right to freedom of expression and argues that, under international human rights law, the United Kingdom is required to preserve and protect media pluralism. Such obligations are now, with the entering into force in October 2000 of the Human Rights Act 1998, part of domestic law in the United Kingdom.<sup>1</sup>

## **II. The Obligation to Safeguard Pluralism in the Media**

The overriding importance of freedom of expression as a human right – guaranteed by Article 10 of the European Convention on Human Rights (ECHR) – has been widely recognised, both for its own sake and as an essential underpinning of democracy and as a means of safeguarding other human rights. The European Court of Human Rights has referred to it as “one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man”.<sup>2</sup>

Freedom of expression protects not only the right of individuals to disseminate information, including through the broadcast media, but also the right of all individuals to receive information. This right, in turn, depends on the ability to access information from a variety of sources. As the European Court of Human Rights has held, the right to receive information “cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor.”<sup>3</sup> In that case, the Court held that a prohibition on private terrestrial broadcasting represented a breach of the guarantee of freedom of expression, in part because it undermined diversity.

It is a truism that, in the modern world, most people receive the vast majority of their information, particularly about matters of public interest and current affairs, from the media. An unfortunate recent trend, reflected in the United Kingdom as elsewhere, is that it has become far more common, and accepted, for media owners to interfere in editorial policy. Undue concentration of media ownership, therefore, will inevitably reduce pluralism of media content, undermining the public’s right to receive information. Concern with this trend led the three special rapporteurs on freedom of expression, at the UN, OSCE and OAS, to note, in a Joint Declaration of 20 November 2001: “Media owners and media professionals should be encouraged to conclude agreements to guarantee editorial independence; commercial considerations should not unduly influence media content”.

In some cases, the right to freedom of expression requires States to take positive steps effectively to secure enjoyment of this right for everyone. As the European Court has stated: “[I]n addition to the primarily negative undertaking of a State to abstain from interference in Convention guarantees, there may be positive obligations inherent in such guarantees. The responsibility of a State may then be engaged as a result of not observing its obligation to enact domestic legislation.”<sup>4</sup>

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<sup>1</sup> C. 42.

<sup>2</sup> *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

<sup>3</sup> *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17202/90, para. 38.

<sup>4</sup> *Vgt Verein gegen Tierfabriken v. Switzerland*, 28 June 2001, Application No. 24699/94, para. 46.

The need to enact legislation to safeguard media pluralism is one example of such a positive obligation. Indeed, in our view, States are under a general obligation to create an environment in which a diverse, independent media will flourish, thereby satisfying the public's right to know.<sup>5</sup> This means that effective measures should be in place to prevent undue concentration of ownership both within the broadcast sector and between broadcasting and other media sectors.

Specific statements on the need for measures to protect against undue concentration of media ownership can be found in a number of international human rights instruments. In Recommendation 99(1) on Measures to Promote Media Pluralism, which is based on Article 10 of the ECHR, the Council of Europe states: "Member States should consider the introduction of legislation designed to prevent or counteract concentrations that might endanger media pluralism."<sup>6</sup> In particular, the Council of Europe recommends:

Member States should examine the possibility of defining thresholds ... to limit the influence which a single commercial company or group may have in one or more media sectors.<sup>7</sup>

The three special rapporteurs on freedom of expression, in their Joint Declaration of 20 November 2001, stated: "Effective measures should be adopted to prevent undue concentration of media ownership".

The *European Convention on Transfrontier Television* requires States to "endeavour to avoid that programme services transmitted or retransmitted by a broadcaster ... within their jurisdiction ... endanger media pluralism."<sup>8</sup> Finally, a number of legally binding European Union Directives also note the importance of pluralism.<sup>9</sup>

### III. Conclusion

In order to guarantee the right to freedom of expression, including the right to receive information from a variety of sources, international human rights standards require States to

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<sup>5</sup> See ARTICLE 19, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (ARTICLE 19: London, 2002), Principle 3. This has been accepted in principle by senior courts around the world. See, for example, the Supreme Court of Sri Lanka's judgment in *Athukorale v. Attorney-General of Sri Lanka* (1997) 2 BHRC 610, p. 624.

<sup>6</sup> Recommendation No. R(99)1 of the Committee of Ministers to Member States on measures to promote media pluralism, adopted 19 January 1999, Part I.

<sup>7</sup> *Ibid.*

<sup>8</sup> E.T.S. 132, in force 1 May 1993, as amended by the *Protocol Amending the European Convention on Transfrontier Television*, E.T.S. 171, in force 1 October 2000, Article 10*bis*. The Convention entered into force for the United Kingdom in May 1993, while the Protocol entered into force in March 2002.

<sup>9</sup> See Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Official Journal L 298, 17/10/1989, pp. 23-30, Preamble and Article 19, and Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, Official Journal L 202, 30 July 1997, pp. 60-71, Preamble.

take effective steps to promote diversity of ownership within the broadcast media and between broadcasting and other media sectors.

For this reason, countries around the world – including the United Kingdom, under the broadcasting laws currently in force – have restricted cross media ownership.<sup>10</sup> In the United States, the Senate is working to roll back a recent decision by the Federal Communications Commission which eased ownership restrictions.<sup>11</sup> We urge the House of Lords to preserve plurality in the United Kingdom media by supporting amendments that will limit cross media ownership.

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<sup>10</sup> See the Broadcasting Act 1996.

<sup>11</sup> As reported by Associated Press, 19 June 2003.