

**REPORTERS
WITHOUT BORDERS**
FOR PRESS FREEDOM

International Secretariat

47 rue Vivienne
75002 Paris, France

Verkhovna Rada
5 Hrushevskoho Str.
01008 Kiev, Ukraine

Paris, 26 October 2011

Dear Members of Parliament,

Reporters Without Borders, an international organization that defends freedom of information, would like to share with you its concern about Bill No. 7132 proposing amendments to the Protection of Public Decency Law.

This bill, which you approved on first reading on 18 October, aims to ban pornography and the use of words or images of an “obscene, vulgar and brutal” nature in the print and broadcast media and on the Internet. It also aims to penalize extremist and offensive content and the defence of violence. While we understand your goals, we are extremely concerned about the methods being used to achieve them. We think that the very vague definition of banned content, the possibility of blocking websites without a court order and the failure to take account of the public’s right to information pose a great danger to freedom of information in Ukraine.

This bill’s defence of “public decency” covers a very wide range of subjects, including not only pornography but also defence of fascism, appeals for war, “Ukrainophobia,” humiliation of handicapped persons and promotion of cigarette smoking. The response is nonetheless the same for all these “crimes.” The lack of clear definition leaves a disturbing degree of room for varying interpretations. Who will decide what “promoting (...) terrorism and other forms of criminal activity” covers? There have unfortunately been many examples in neighbouring countries of this kind of provision being used to crack down on every form of criticism. Our concern is increased by the fact that the bill applies to a very wide range of media.

By default, the National Commission for Protecting Public Decency is granted excessive powers. There is no provision for supervising the committee and no mechanism for appealing against its decisions. It alone has the power to determine the degree to which any content comes under a banned category. It will be able to require Internet Service Providers to “restrict free access” to content deemed to be indecent within 24 hours and without need for a court order. Since not only content creators but also editors and hosting companies could be held responsible, overblocking will be likely, threatening the free flow of information.

Ukrainian NGOs that defend the media are worried that acts of provocation, such as the posting of hate comments, could be deliberately used to get critical websites closed down. We share their concern. As in very closed countries, Internet Service Providers will be reduced to playing the role of “Internet policemen” without any autonomy. Whenever required, they will moreover be forced

to immediately hand over a user's private data to the police in order to "prevent" banned content from circulating online.

We regret that this bill does not weigh the legitimate need to combat terrorism and pornography against the public's right to information about subjects of general interest. This principle nonetheless lies at the heart of all the rulings that have been handed down by the European Court of Human Rights. The United Nations and the Organization for Security and Cooperation in Europe recently recognized in a joint report that this principle also applies to the Internet.

The news is unfortunately often dominated by violence or by disgraceful statements. Will these news events be censored because they fall within the definitions of the Protection of Public Decency Law? As international practice has often shown, there is a great danger that the bearers of bad news will be confused with those who were responsible for them. Journalists and bloggers are not responsible for the events they have a duty to report.

We are of the view that, if implemented as it stands, this proposed law would violate article 10 of the European Convention on Human Rights and article 11 of the Universal Declaration of Human Rights, which have been ratified by your country. We therefore think there it would redound to your credit if you were to reject this bill on second reading.

I thank you for the attention you give to this letter.

Sincerely,

Jean-François Julliard
Reporters Without Borders secretary-general

A handwritten signature in black ink, appearing to be 'J. Julliard', written over a horizontal line.