Access to Information and Protection of Privacy Act

Fact Sheet Five:
Registration of mass media services and news agencies

Introduction:

Sections 66 to 77 empower the Media and Information Commission (MIC) to register (and de-register) all mass media services operating in the country, as well as local and foreign news agencies.

In Zimbabwe, prior to the promulgation of this Act, newspapers and other mass media services operated without the need to register as a precondition as this was done under the Registrar of Companies.

Requirements and procedure:

In terms of section 66 of the Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA), a mass media service must register before it can carry out its operations. The registration certificate given to successful applicants is only valid for a period of two years, after which the entity is obliged to apply for renewal (section 66(5)). However, there is no guarantee that application for renewal will be successful. It is a criminal offence to operate without being registered and the maximum penalty for which is a fine or two years' imprisonment, or both (section 72 (2)).

AIPPA stipulates that all bodies, which disseminate or transmit mass media products, should obtain a certification of registration (section 66). Dissemination is defined to include "sale, subscription, delivery, diffusion or distribution" of information, while mass media products are defined to include an advertisement, any part of a periodical publication, “any electronically transmitted material, or audio or video recorded programme”.

A mass media service is defined in the Act as “[including] any service or media consisting in the transmission [dissemination] of voice, visual, data, textual messages to an unlimited number of persons, and includes an advertising agency, publisher or, as specially excluded or provided for in this Act, a news agency or broadcasting agency as defined in the Broadcasting Services Act [Chapter 12:06].”

These definitions are clearly overboard, covering all publications, no matter how small or irregular, and all forms of electronic communication, and formally
includes Internet Service Providers (ISPs), any store that rents videos, or even sells newspapers or music tapes, newspaper vendors and so on. The definition provided is vague and capable of more than one meaning, i.e., the definition of mass media, is not restricted to media commonly accepted as mass media, but is wide enough to cover other mediums of communication such as theatre, cinema, music, and other forms of expressing thought and opinion, not hitherto controlled, and usually only controlled in fully-fledged dictatorships.

Further, the whole of Section 66 is superfluous because existing laws governing the registration of companies adequately deals with the registration of media entities as well and it is, therefore, unnecessary for the Media and Information Commission (MIC) to interfere with the work of, or assume the work of, the Registrar of Companies. This is just a way of giving the government, via the MIC, the leverage to deny the public’s right to information by threatening to refuse to register media houses. This requirement permits the government to bring all mass media within a binding and defined legal network and trap, which makes for easier and more ruthless policing.

**Denial and cancellation of registration certificates:**

Section 69(1) (b) gives the MIC the right to decline to register an applicant if the information provided in the application is false, misleading, or contains any misrepresentation. Ordinarily, such a restriction on the right to freedom of expression is considered appropriate, but the requirement that newspaper companies register prior to operating is unconstitutional. This renders this whole section equally objectionable.

It cannot be over-emphasised that it is the duty of the Registrar of Companies to ensure that the papers of an applicant wishing to set up a company do not contain information that is false, misleading or containing any misrepresentations. Requiring newspaper companies to undergo a further screening process is onerous and restricts the exercise of the right to freedom of expression.

Section 69 of AIPPA further outlines the grounds upon which the MIC may refuse to register a mass media service, and these are:

1. if a mass media service fails to comply with any of the provisions of this Act.
2. if the organisation gives false or misleading information in its application or the application contains a misrepresentation.
3. if the concerned mass media service seeks to be registered in the name of an existing registered mass media service.

Once incorporated within the licensing framework, the government is able to exercise ultimate control over the mass media through a strict disciplinary system which includes penalties ranging from suspension and de-registration, and other non-stipulated, monetary penalties that are imposed at the discretion of the Minister of Information.
Since these provisions are based on an Act, which is clearly, unconstitutional, the penalties provided for by the Act are also, by association, null and void.

The general power to discipline the mass media is contained in section 71(6) and (9) of AIPPA. This section empowers the MIC to issue any order, if it is satisfied that a mass media service provider “…has contravened or is likely to contravene any of the provisions of this Act”. Such an order may be accompanied by a monetary penalty imposed at the absolute discretion of the Minister of Information.

Also implicit in this section is the erroneous idea that AIPPA constitutes a code or set of rules governing the mass media, the breach of which (even a simple technical breach) obliges the MIC, to intervene and punish the ‘errant’ party.

AIPPA also states that on its own initiative or after investigating a complaint made by an interested party, the MIC can suspend or cancel the registration certificate of a mass media service if it has reasonable grounds for believing that:

(a) the registration certificate was issued in error or through fraud, or there has been a misrepresentation or non-disclosure of a material fact by the mass media owner concerned
(b) the mass media service concerned does not publish (or go on air) within twelve months from the date of registration.
(c) the mass media service concerned has contravened the following sections of the Act – the section barring ownership of media services by non-Zimbabweans, by banned organisations and by insolvent person (sections 65; the section requiring publications to bear the publisher’s imprint (section 75); the section requiring a mass media service to deposit free copies of its periodical with the MIC and the National Archives (section 76); the section requiring a mass media service to publish, when required to do so by the MIC, court decisions and MIC decisions pertaining to that mass media service (section 77);

Clearly, these sections seek to create a benign and dormant press, by ensuring that those mass media services that are seen as a threat to government’s hegemony are not registered or are de-registered at will by a partisan Commission which gets its orders from the Minister of Information and Publicity. Suspension and closure of media houses is the most extreme sanction possible and should be applied, if at all, only after repeated and gross abuse of the law, as determined by a court.

The disciplinary power accorded to the Commission is neither legitimate, nor enabled by any of the provisions of section 20(2) of the Constitution. In general the disciplinary power is objectionable because it is exercised by an organisation that is inherently politically compromised and one which is appointed by a representative of a competitor in the mass media industry in the form of the Minister of Information, as he/she is also in charge of the public print media and the national broadcasting radio and television entity,
the Zimbabwe Broadcasting Holdings (ZBH). The MIC cannot, in the circumstances, be expected to be partial and objective.

Information to be provided by mass media organisations:
Information required on application is prescribed in Statutory Instrument 169C of 2002. The applicant must provide a detailed business plan to the government and to the MIC. This business plan must state the following:

(a) a projected annual balance sheet for the first three years of operation.
(b) a projected annual profit and loss account for the first three years of operation.
(c) a projected cash flow statement for the first three years of operation.
(d) a market analysis, including identification of the market to be served by the applicant.
(e) particulars of the financial resources to be applied to the mass media service.
(f) particulars of previous experience in the provision of mass media services.

It is clear that the above information would only be of primary interest to a competitor and not a regulatory authority. Even though Zimbabwe does not have competition legislation, the information required by the MIC is anti-competitive, and actually works to sustain government monopoly of the media; and at the same time permits the Minister of Information, via the MIC, to undermine other media organisations.

It is important to note that misrepresentation or failure to disclose some of the information required on the part of the applicant or mass media organisation is sufficient ground for the suspension or cancellation of a registration certificate.

In addition, the Act states that should a mass media entity change ownership or shareholding structures, the MIC must be notified immediately of the exact details (including domicile address) of the new owner(s) or shareholders. This close monitoring of media houses is intended to ensure that the state keeps ‘tabs’ on all media organisations and is able to ‘screen’ the persons that it gives licences to. AIPPA is, therefore, an instrument of control and not a democratic means of regulating the media industry in the country. There is no other commercial sector in the country that is required to adhere to such oppressive restrictions.

The mischief sought to be controlled by the government in enacting such a law is not connected to the rational regulation of the industry. The government simply seeks to control and muzzle the print media, mainly because the private print media has been instrumental in informing the people of Zimbabwe of some of the excesses that government officials commit while in office.

Registration fees:

It is reiterated that, the requirement that prior to operating, all mass media owners must obtain licenses is unconstitutional. In the same vein, therefore,
the requirement that an application fee, determined in the discretion of the Minister of Information, must be paid by those mass media organisations seeking to register, is also unconstitutional and an unlawful restriction of the freedom of expression.

Further, section 70 is unreasonable in that it states that the Minister of Information has the final decision on what amount to levy the different applicants seeking to register. This means that the Minister of Information is free to levy huge amounts to those mass media organisations that he/she deems to be a threat to his paymaster, the government, thus rendering this provision patently unconstitutional.

Any restriction on freedom of expression based on the discretion of a public official and not on the law violates section 20 of the Constitution, which clearly states that any restrictions on this fundamental right must be based on law. While it is true that the Minister of Information is obliged to prescribe the fees to be levied under a statutory instrument, and that this will constitute law, the fact that the Minister still has the overall discretion to decide which mass media organisations to levy means that the fees payable may not be standard, but will differ from one mass media service provider to the other.

**Registration of news agencies:**

Section 74(3) severely penalises those that operate a news agency without the special licence. A fine or two-year imprisonment (or both) is prescribed. In addition, all news agencies that operate in Zimbabwe – whether they are domiciled within or outside the country – are prohibited from employing non-accredited journalists (section 79(6)).

Section 90 of AIPPA states that a representative office of a foreign mass media service may operate in Zimbabwe only if it has obtained permission from the MIC. Such permission is valid for only 12 months, but it can be renewed on the same terms and conditions that applied to it previously. Any person operating a foreign or local news agency, or representing a foreign mass media service without being registered faces a fine or imprisonment of up to two years or both (section 74).

It is clear that the real purpose of these sections is to make sure that after the local private press is silenced through threats to de-register them and their journalists, the next port-of-call would be to clampdown on any form of private and independent news collection and dissemination by foreign news agencies and media organisations. These conditions mean that even though they may be allowed entry into the country by the Home Affairs Ministry, no foreign news service journalist can enter the country without the express permission of the Minister of Information, in direct consultation with the President.

This is a way of ensuring that foreign news media – which of late have been viewed as conspiring with the West to unconstitutionally topple the government – is rendered compliant and meek.

Ends.