

## PRESENTATION TO THE STEERING COMMITTEE ON MEDIA AND INFORMATION SOCIETY (CDMSI)

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Fiona Harrison

I have been the lead researcher for the Madrid-based NGO Access Info Europe on a project, supported by the Open Society Media Program, to look into transparency of media ownership in Europe and today I am going to present the results of our research. Ownership is a core topic in media policy, as it links to almost all aspects of media activity. It is central to any consideration of media freedom and democracy; pluralism, and diversity; of market performance and concentration; and of political influence wielded by and over the media.

Among the abundant research on media ownership, there has been very little consideration of whether the public and media regulators can access information about who owns the media. Transparency of ownership has in general been neglected by media freedom activists, academic researchers and regional standard-setting bodies. We would like to commend the Council of Europe, however, for being one of the few institutions to have previously addressed this issue in 1994 and again in 2007, and even as recently as this January.

In a moment, I will present the findings of our research in nineteen Council of Europe member states, looking specifically at whether the legal framework in each country allows identification of those who own and ultimately control the media.

### Why does transparency of media ownership matter?

Before I present our findings, I want to highlight the importance and relevance of *transparency* of media ownership.

The availability of accurate and up-to-date data on media ownership is an essential component of a democratic media system. It is impossible to take steps to address excessive media concentrations without the tools to identify the owners; public knowledge of owners' identities helps to ensure that abuses of media power can be assessed, publicised, openly debated and – even – prevented. Both media regulators and the general public must have access to information about who owns – and influences – media outlets.

In many countries, while people often have some idea of who formally owns the media, and even of who are the real powers behind media companies, this information is frequently based on hearsay rather than access to official ownership data. The complex chains of formal owners and the real “ultimate” or “beneficial” owners tend to be even more obscure, thus

preventing members of the public from knowing the influences to which media outlets are subject and which may affect their editorial line.

Transparency also matters for other reasons, including for purely economic reasons, so that media markets can operate efficiently.

## Previous initiatives on transparency of media ownership

As I have said, this has been a much neglected issue. There has been little research on the subject<sup>1</sup> and national and regional initiatives to promote diversity and media pluralism have focused on ownership with a view to preventing media concentrations. The need for *transparency* of media ownership as a precondition for diversity has been largely ignored.

Nor has the recognition of the need for transparency of media ownership been translated into clear international standards. The recommendations from inter-governmental organisations which do exist are non-binding and – as our research revealed – have not been complied with in most of the countries we surveyed.

The Council of Europe's 1994 *Recommendation on Measures to Promote Media Transparency*<sup>2</sup> states that "the regulation of media concentrations presupposes that the competent services or authorities have information which enables them to know the reality of media ownership structures"; and its 2007 *Declaration on protecting the role of the media in democracy in the context of media concentration*<sup>3</sup> reminds us of the "necessity of having regulatory measures in place with a view to guaranteeing full transparency of media ownership"

A 2008 Resolution from the European Parliament "[e]ncourages the disclosure of ownership of all media outlets to help achieve greater transparency regarding the aims and background of the broadcaster and publisher".<sup>4</sup>

As these are all non-binding, the enactment and implementation of legislation on media ownership transparency has been left solely at the discretion of member states. Our research revealed that these recommendations have not been complied with in most of the countries we surveyed.

## Recent and current initiatives

There is currently increasing discussion of transparency of ownership at as a precondition for media diversity and pluralism; in the past year, in addition to the research that Access Info Europe carried in this area out with the Open Society Media Program, it has been on the agenda for several regional bodies.

In January the Parliamentary Assembly of the Council of Europe (PACE) passed a new resolution on *The state of media freedom in Europe*<sup>5</sup> which states at paragraph 17 that the Assembly:

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<sup>1</sup> One welcome exception is the European Commission's study on *Indicators for Media Pluralism* (2009), available at [http://ec.europa.eu/information\\_society/media\\_taskforce/pluralism/study/index\\_en.htm](http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm)

<sup>2</sup> See Council of Europe's 1994 Committee of Ministers Recommendation 94(13) on Measures to Promote Media Transparency at [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1994\)013&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1994)013&expmem_EN.asp)

<sup>3</sup> See Council of Europe Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration at <https://wcd.coe.int/ViewDoc.jsp?id=1089615>.

<sup>4</sup> See European Parliament resolution of 25 September 2008 on concentration and pluralism in the media in the European Union, document P6\_TA(2008)0459, at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0459&language=EN>

“regrets that media ownership is not made transparent in all member States and asks them to adopt the necessary provisions to this end. ... ” and “calls on member States to take proper action for ensuring media transparency and pluralism and promoting journalistic standards.”

As a result of this interest by PACE, in September 2013, the Open Society Media Program and Access Info Europe are holding a seminar on transparency of media ownership in Brussels, with the Council of Europe, the European Commission, the European Parliament and the OSCE. We would value very much the representation and participation of a member of this Steering Group at that meeting.

The European Union is also getting more involved in this area. A recent report by the EC High Level Group on Media Freedom and Pluralism, *A free and pluralistic media to sustain European democracy*<sup>6</sup>, states that independent media regulatory bodies should ensure that media “have revealed ownership details” and that the media themselves should pro-actively ensure “transparency in divulging final ownership along with a listing of other media interests held by the same owners”.

In February 2013, members of the European Parliament’s Civil Liberties Committee voted to adopt a non-legislative resolution calling for the EU to introduce annual monitoring across the Union of media freedom and media concentration. [...for which, ownership transparency is a precondition].<sup>7</sup>

With so many regional initiatives on this topic, we would urge the Council of Europe to seize this opportunity to revisit the issue of transparency of media ownership in order to fulfil its mandate to promote media pluralism.

## Our research findings

To the best of our knowledge, our study is the first systematic survey of the conditions that enable – or, in many cases, prevent – the transparency of ownership.

In late 2011 we contracted lawyers in 19 Council of Europe countries (plus Morocco)<sup>8</sup> to complete a questionnaire which covered three main mechanisms for gathering information on ownership of media outlets and assessed the extent to which this data is available to the public:

1. *Media Regulation*: Media-specific regulations that require media organisations to disclose ownership information to a public body, such as a media authority.
2. *Direct Disclosure*: Media-specific regulations that require media organisations to disclose ownership information directly to the public.

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<sup>5</sup> <http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19474&Language=EN>

<sup>6</sup> <http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>

<sup>7</sup> <http://www.europarl.europa.eu/news/en/pressroom/content/20130218IPR05922/html/Media-freedom-MEPs-call-for-annual-EU-monitoring-of-member-states%E2%80%99-media-laws>

<sup>8</sup> Austria, Azerbaijan, Bulgaria, Croatia, Cyprus, Georgia, Germany, Iceland, Italy, Latvia, Luxembourg, Macedonia, Morocco, the Netherlands, Norway, Romania, Spain, Switzerland, Turkey and the UK

3. *Company Law*: The general legal requirements that may directly or indirectly require media ownership transparency, such as company rules that oblige company shareholdings to be disclosed and the information reported to company registers.

We found that across Europe as a whole, it is generally not easy to obtain sufficient information to identify those that own and control the media. This is particularly the case for the print and online media for which it is mostly not possible to find ownership information. We also found that even where information *is* gathered by public bodies or company registers, the law often does not allow the public to access it. In some cases, where it does permit public access, practical obstacles such as high fees or non-functioning websites or ill-informed public officials prevent the public from accessing the ownership information in practice.

Specifically, we found that:

- In 9 of the 20 countries it is not possible for the public to find out who the actual owners of the media are — either through media-specific reporting or through company registers.
- In only 6 out of 20 countries can the public access sufficient information from the media authority to establish who owns the broadcast media; for print and online media this is possible in 2 countries.
- In only 4 countries does the ownership information submitted to a company register allow identification of the owner for all types of company (publicly listed, limited company, etc.);
- One of the important pieces of information needed to identify those who own and control media is the identity of any beneficial owners (a beneficial owner is an “owner by proxy” – they are not the registered owner). For the broadcast media, beneficial ownership is only required to be disclosed to the media authority in 6 countries and to the companies register in 4 countries.
- The print and online media have a much lower obligation to report ownership information and are just covered by company law in many countries which, as stated above, only reveals ownership of all types of company in 4 countries.
- There is a range of information that is required to identify those that own and control a media outlet. I’ll talk more about this information under our recommendations but in just one country surveyed (Norway) is all the key information required to identify media ownership generally collected.

We also found that the approach to disclosing media ownership is by no means unified across Europe. The simplest regime is that of Norway which has a Media Ownership Law which brings together all the relevant legislation in one place and which generally fulfils all of our disclosure requirements. At the other extreme, countries such as Turkey and Italy have a much more complex legal framework with a number of media-specific and company laws containing relevant provisions, whilst most countries lie somewhere in between with a

handful of laws addressing ownership. We are not advocating one or other model, rather highlighting the different models that exist across Europe.

## Recommendations on Transparency of Media Ownership

On the basis of the findings of our survey, Access Info Europe and the Open Society Media Program recommend that states take the following action:

### **1. Require (by law) and enable (with resources) national media authorities to collect and make public sufficient information to identify the beneficial and ultimate owners of media outlets.**

1.1 **Reporting Ownership:** Broadcast, print and online media<sup>9</sup> should be required to submit to an independent national media authority sufficient ownership information to allow identification of the beneficial and ultimate owners of the media outlet. This should be a one-way reporting requirement which in no way implies a requirement to register the media outlet or obtain permission to operate (with the exception of the pre-existing legal framework for audiovisual media).

1.2 **Public access:** All information submitted to the media authority and the company register should be available in electronic format at no cost to the public. The database should be available in an open format under an open licence which permits access to the full dataset and re-use of it. Printed extracts or copies of the entire dataset should be made available, with copying and delivery costs only being charged<sup>10</sup>

1.3 **Sanctions:** The media authority (or other relevant public body) should be tasked with overseeing the reporting obligation. It should be able to demand that media that fail to comply with the law— either by failing to report or by reporting false information—should do so satisfactorily within specified timeframe (perhaps 15 working days). Failure to comply with this demand should lead to proportionate fines which are sufficient to ensure accurate and timely reporting.

1.4 **Information to be disclosed to the media authority:** The basic information that should be required from media outlets in order to establish ownership is:

- Name, address and contact details of media outlet
- Name and contact details of the owner
- Beneficial ownership. As I said before, this is one of the most important criteria for identifying real ownership. Measures to address the need for transparency of media ownership which fail to capture the beneficial and ultimate ownership of media outlets will fail in their main purpose.
- Those with an indirect control or significant interest of a media outlet

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<sup>9</sup> The definition of online media should be such that it captures media outlets which define themselves as such but does not require more informal “media” such as organisational websites or blogs to be subject to the reporting obligation.

<sup>10</sup> In line with the standards of the Council of Europe Convention on Access to Official Documents, CETS 205, 2009.

- Size of shareholding beyond a certain threshold<sup>11</sup>
- Interests of owner in other media organisations and non-media organisations
- Subsequent changes in ownership (resulting from a merger or acquisition by other entities, etc.)

## **2. National Company Registers should collect information on the beneficial and ultimate owners of all companies and make public the contents of the Register.**

**2.1 Enhanced data collection:** we found that disclosure of beneficial and ultimate owners of companies is not currently required in most of our surveyed countries. Such information should be disclosed to Company Registers as this is key to establishing the real owners of a company.

**2.2 Public Access to Company Registers:** There is currently limited public access to company registers in many European countries. Information is either available upon payment of a fee or only to those who purchase the whole data set (usually large law firms and the like). The public value of this information is such that every member of the public should have access to it in order to be able to track the full chains of ownership of media outlets, including both media and non-media companies.

## **Recommended Actions for the Steering Committee on Media and Information Society (CDMSI)**

As stated above, it is important that the Council of Europe does not get left behind in this dynamic and fast-moving debate. In order to defend and protect media pluralism, it needs to be centrally involved in setting and implementing the standards in this area.

- We would welcome a panel discussion on transparency of media ownership at the Council of Europe Conference of Ministers responsible for Media and Information Society meeting Belgrade later this year. (I understand that the draft agenda for this meeting was discussed earlier today; we'd be pleased to know what opportunity there might be to get this issue onto the agenda.)
- We would value the participation of one or more representatives of this Steering Committee at our seminar on transparency of media ownership in Brussels in September 2013.
- We would urge the Steering Committee to take steps to encourage the Council of Europe to reconsider its standard-setting role on this issue, either by updating the 1994 Recommendation in light of the findings that I have just summarised, or through initiating a new and perhaps more detailed document.

**Fiona Harrison**  
[fiona@access-info.org](mailto:fiona@access-info.org)

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<sup>11</sup> Discussion on the most appropriate level at which to set the threshold for the purposes of transparency is still underway with a range of other organisations and institutions which are working on transparency internationally.