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PROMOTING OF PLURALISM IN NEW MEDIA**

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***Internet regulation in the OSCE area:***

***Introduction***

***of the first OSCE Internet matrix***

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## **Does Censorship in Internet Exist In Ukraine?**

There is an opinion about very low level of censorship in Ukraine. But it is not true. International community knows facts of pressure on journalists, rather than information on censorship in Internet.

De facto the state body for censorship in Ukraine is the National Expert Commission for Public Moral. Officially Commission's activity is limited to expert evaluation of any (video-, audio-, printed, electronic, advertisement) materials, but practically Commission's judgements are often very controversial.

There is Decree of the President of Ukraine #1085/2010JU of 9 December, 2010, ordering Cabinet of Ministers of Ukraine to abolish of the Commission in the prescribed manner. But for more than half an year this decree has not been executed, and Commission continues its active work.

State budget provides over 300 000 EUR for Commission's activity.

The norms of the Law of Ukraine «On Protection of Public Moral» allow for wide interpretation, limit freedom of expression and open space for abuse by the law-enforcement.

Commission is now working on amendments to the Law of Ukraine «On Protection of Public Moral». Their adoption can further enhance censorship of Internet in Ukraine, since it proposes to prohibit not only resources containing pornographic materials, but the ones that «do not satisfy rules of public moral» as well.

From the legal point of view impossibility to give a full legal definition of term «public moral» is evident. These definitions will always be biased and are rather philosophical categories. There are no distinct definitions of this term in Ukrainian law. They all are indistinct and give possibilities for too wide interpretation and usage. Therefore, no one can predict how should one behave in order not to violate the Law of Ukraine «On Protection of Public Moral», which means this very situation contradicts the rule of law.

The existence of Commission on Protection of Public Moral is irrational. All its rhetoric is based on concrete religious rules, practically a kind of ideology, while in democratic society no ideology may be recognized as the only legitimate one.

After political relativity we should come to moral relativity.

Vasyl Kostytsky, Chairman of the Commission has proposed numerous times to introduce moral censorship in Ukraine, including the Internet. The Commission has initiated amendments to the Criminal Code of Ukraine, which provided criminal punishment for storing pornography on a personal computer in order to distribute. However, storing it for personal use is not prohibited, which makes it difficult to distinguish and possible reprisals.

On March 25, 2004 the Draft Law #4042-1 «On interception and monitoring of telecommunications» was registered, according to which Internet providers were to install special equipment, similar to Russian SORM-2. However, under pressure from the civil society this Law was not adopted.

On December 10, 2008 the largest Ukrainian file exchange resource infostore.org was closed, accused by the Commission in distribution of pornography.

On February 4, 2010 the photo hosting site io.ua was closed, accused by the Commission in distribution of pornography. According to the statements by users and administrators, there was no pornography on the site. io.ua author was arrested, and Ministry of Internal Affairs has reported that he is being accused in creating website for erotic addicts, though erotics is not prohibited in Ukraine. In March 2010, the service owners were able to solve the conflict.

The Commission has even prohibited to broadcast some episodes of satirical TV series critical towards society South Park and The Simpsons.

On February 9, 2010 the Law of Ukraine «On Introduction of Changes and Amendments to Several

Legislative Acts of Ukraine (regarding Counteraction to Distribution of Child Pornography)», lobbied by the Commission, took effect. According to its Article 2: «Operators and communication providers must store and provide information on all connections of their subscribers in the manner, prescribed by the Law».

The Commission is considering now a possibility to create local youth committees on morality. Commission has already held a number of meetings and round tables with delegates of some youth organisations, neo-Nazi organisations among them.

Nearly a year ago during a large civic event «Anti-NEC», with well-known Ukrainian writers participating and with over 2000 people seeing it, the Commission expert Bohdan Benyuk, Vice Chairman of ultra-rightist party «Svoboda», told an anti-semitic joke from the stage, used obscene language addressing the journalist that asked him questions, and reminded on necessity to «stick to one blood».

After the excentric action in November 2009 against the Commission, social activist Oleksandr Volodarsky, aged 23, was arrested and sentenced to one year of restraint of liberty. At the moment he is serving his sentence in a jail and human rights defenders prepare an application to the European Court of Human Rights.

### **Recommendations:**

1. To abolish the Law of Ukraine «On Protection of Public Moral» as violating the norms of the Constitution of Ukraine, international agreements, ratified by Ukraine, and obligations as state-participants of OSCE.
2. To close down the National Expert Commission for Public Moral.
3. To abolish the Law of Ukraine «On Introduction of Changes and Amendments to Several Legislative Acts of Ukraine (regarding Counteraction to Distribution of Child Pornography)», as legalizing surveillance over Internet users.
4. To abolish criminal persecution for storing pornography at one's computer in order to distribute, as excessive punishment.
5. To prevent adoption of similar laws and establishment of state bodies with similar functions.

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