

21 August 2023

To,

Minister of Communication, MK Shlomo Karhi**Subject: Broadcast Media Draft Bill-2023****Zulat's Position Paper**

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Executive Summary

The Broadcast Media Draft Bill published on 24 July 2023 (hereinafter: the bill) proposes substantial changes to Israel's media landscape. Its provisions are in contradiction to the public interest, infringe upon the independence of the media and its status as the fourth estate in a democratic system, and thus impair the citizenry's basic right to freedom of expression and to a free media. Below are the main points of these provisions and the problems they present.

1. **Existing regulators shut down, Politically controlled broadcasting authority established:** The bill proposes to abolish the Cable and Satellite Broadcasting Council and the Second Authority for Television and Radio, and instead establish a single entity to be called the Broadcast Media Authority (BMA) subordinate to the minister of communication and the government. Thus, instead of creating an independent media authority in accordance with numerous decisions to this effect by Israeli governments since 1996, it abolishes two independent entities and replaces them with a politically-controlled government affiliated body. This runs counter to the trend in democratic countries in the past 30 years, which are cutting regulators off government subordination and accord them independent status free of extraneous considerations.
2. **Licensing system replaced by registry:** Regulation through registration is not problematic per se, as long as the considerations are professional. The problem with this provision is that it abolishes regulatory stipulations on the one hand, and on the other hand empowers the BMA Council (BMAC) to enforce sanctions on the registrants, a power not awarded to political bodies, and to nationalize the measurement system of TV audiences. The proposed format would place audiovisual

service providers under a balance of terror and threaten freedom of the press and democracy.

3. **No structural separation protecting the independence of news broadcasters and maintaining their ethical conduct:** The bill proposes to abolish the restrictions and minimum requirements ensuring the independence of current broadcast news corporations and the separation between commercial/political and factual/ethical considerations. The provision ignores trends and processes in the media landscape, and the harm to news broadcasting and throws open the floodgates to cross-ownerships and centralization. It is fertile ground for the surge of a wealth-government-media nexus, endangers news independence, and hurts the public interest and the people's right to reliable, accurate, and unbiased information.
4. **Requirement to invest in local productions drastically reduced:** The proposed format drastically reduces the obligation to fund local productions, thus dealing a lethal blow to Israeli culture. Freedom of expression and artistic creation are basic premises of a free and democratic country, and the statutory requirement to invest in local production is based on the understanding that there is no culture without public funding. The claim that this reduction would be offset by extending the obligation to more platforms (such as international providers) is totally bogus given that it is unsupported by any economic evidence and that it would not be applied gradually, by first extending the obligation and then examining whether to reduce it.
5. **Weakening public broadcasting:** Requiring the Israel Broadcasting Corporation (IBC) to provide its content free of charge to one and all, in addition to the ban on advertising on its radio stations, would adversely affect revenues and royalties of content producers. Our position is that this is yet another attempt to weaken the IBC enroute to the elimination of public broadcasting altogether. This step contrasts the public interest in a strong and independent corporation that provides high-standard news programming, is free of commercial and political considerations, and preserves freedom of expression and opinion and the public's right to information.
6. **'Accountability and demand for information' camouflages politically-controlled audience research:** The bill proposes to empower the BMAC to demand/collect/process viewership data. Our position is that putting a political body in charge of audience research would enable it to manipulate the data, which could

determine a channel's revenues. The BMA would be able to bolster, weaken, or even close down channels per the minister/government's wishes.

7. In sum, There is no question that regulation is needed, provided it is current and focused on ensuring that the media can effectively serve a broad social and civic interest, as well as the people's right to freedom of expression, information, and media, based on the realization that this is essential to the fabric of democratic life. Unfortunately, the proposed bill runs counter to all the above, and is designed to promote government control of audio-visual content and in the process create a raucous and unrestrained media environment, subordinate to political considerations. The proposed law should be shelved altogether, and provisions should be made instead to establish an independent media authority, bolster public broadcasting, ensure funding for high-quality local and children's productions (and increase their number), and address the challenges created by the latest technological changes.

Full Position Paper

1. We hereby wish to convey the position of Zulat for Equality and Human Rights to the Broadcast Media Draft Bill (hereinafter: The bill).
2. The bill distributed on 24 July 2023 proposes to make substantial changes to the media landscape in Israel. Its stated purpose is to adapt regulation on the subject to the changes that have occurred in recent years in broadcast media, access platforms, technologies, production and delivery of content, watching habits, etc.
3. The stated purpose of the proposed bill is to preserve the independence of media bodies and the public interest, based on the understanding that this is an " activity that has substantial effects on public discourse, culture, freedom of expression, commerce, and the image of Israeli society and democracy" (as stated in the introduction and in Clause 1).
4. The importance of an independent media cannot be downplayed, just as the principle that freedom of expression is a basic civil and human right cannot be understated. Freedom of the press/media is the offshoot of this principle, given that it fulfills, among other things, the people's right to know and to be exposed to a variety of opinions. An independent and free media/press is the foundation of democracy, as stated in a Supreme Court ruling from 1987: "Freedom of expression is the lifeblood of

democracy, since without it the democratic mechanism itself may be damaged. Not for nothing did this court state many years ago that 'without democracy there is no freedom of expression and without freedom of expression there is no democracy.'¹

5. The Supreme Court safeguarded a free press for decades, and not for nothing dubbed it "the fourth estate," which along with the other three integrate the system of checks and balances. This is the branch that upholds "the public interest in freedom of expression, among other things, through scrutiny of the actions of the government and other powerful factors in society, and open discussion and free exchange of opinion about the issues on the country's agenda."²
6. Given the way the Israeli media landscape has changed in the last decade, there is no disputing the need for a fundamental change to ensure that the objectives of an independent, free, and diverse media are realized. In light of these changes, which have detracted from the erstwhile prominence of the media and the news (partly due to the reasons cited in the introduction to the bill), it is especially important that any update of regulation should anchor the media's ability to serve broad social and civic interests as well as human and civil rights. The main purpose of such regulation should be to bolster the status of the media because of its essentiality to the fabric of democratic life. The media must be independent and able to effectively serve as a platform for free, diverse, and pluralistic discourse.
7. **However, the introduction bears no relation to the core of the bill.**
8. Instead of an independent national media authority detached of government and political influence, as specified in several government resolutions as of 1996, it proposes to establish a body that is under absolute governmental and political control. Instead of buttressing an independent and strong public broadcasting corporation based on the understanding that this is necessary for a functioning democracy, public broadcasting is weakened. And instead of regulation dealing with technological and other changes in recent years, including the revolution in broadcasting platforms, the bill ignores the duty to protect the people's interest and instead promotes government control.

¹ [Supreme Court Ruling HCJ 14/86 Laor v. Film and Play Review Board](#), *Takdin*, 5 February 1987 (Hebrew).

² [Supreme Court Ruling HCJ 73/53 Kol Ha'am Co. v. Minister of Interior](#), *Hamishpat World Archive*, 16 October 1953 (Hebrew).

9. The proposed format contradicts the core values of media in a democratic country and its independence, as well as freedom of expression, and the public interest. It does not promote an independent media that is able to effectively scrutinize the government and the centers of power in society, but quite the contrary: the bill proposes to eliminate any such option and is yet another step on the way to finalizing the regime revolution. Its single purpose seemingly is to confer unlimited power on government authorities and to control the fourth estate of a democratic regime: a free media.
10. These are not ordinary times. If in the past the premise underlying draft bills was that a minister/government would make wise and objective use of the powers granted to them by virtue of the law, that is very unlikely to be the case with the bill at hand. When examining the proposed regulation, one should consider not only the positive aspects in terms of the institutional and public interests but also - and even more importantly - in terms of the standing of the regulated body vis-a-vis the regulator, the public interest vis-à-vis the government, and human rights vis-a-vis the powers that be.
11. Below we would like to present the main points of our position with respect to the bill. We will briefly list the proposed set-ups, the current legal situation, and Zulat's position in relation to each of the proposals:
12. **Chapter 2: Broadcast Media Authority and Council**

Closing down existing regulators and establishing a new regulatory body bearing all the characteristics of a political body whose operatives are subordinates of the minister of communication and the government: It is proposed to abolish the Cable and Satellite Broadcasting Council (CSBC) and the Second Authority for Television and Radio (SATR), and replace them with a single new entity to be called the Broadcast Media Authority (BMA), which would operate according to the guidelines set by its council (BMAC). The latter would consist of nine members: the chairman who would be exempt from competing for the job with other candidates, three government representatives (on behalf of the Ministries of Communication, Finance, and Economy), two public representatives to be selected by the minister of communication, and three public representatives recommended by a search committee under the minister of communication's . In other words, seven of the nine members of the new authority's council, including the chairperson, would be chosen by the minister of communication.

13. For the sake of comparison, under the existing legal situation, Clause B6b of the Communications Law (Telecommunications and Broadcasting)-1982 (hereinafter: the Communications Law) stipulates that the government shall appoint a 13-member CSBC, of which six will be representatives of the minister of communication and seven others will be representatives of local government, the artist community, and the ministries of culture and of justice. As for the SATR, Clause 7 of the SATR Law-1990 stipulates that the government shall appoint a 15-member council and select the chairman from among them, based on the minister's recommendation following his consultations with associations of writers, teachers, and artists, institutions of higher education, the Academy of the Hebrew Language, the Israel Academy of Sciences and Humanities, and other public bodies. The members of the SATR's council shall all be public figures with a suitable cultural background, experience, and knowledge in their areas of expertise, and cognizant of the social situation in Israel. The law also stipulates that, to the extent possible, the composition of the SATR council shall reflect the range of opinions prevalent in the public. Not a single one of these stipulations has been retained in the new proposal.
14. **Zulat's position:** Changing the existing regulatory structure by closing down existing regulators and replacing them with a unified regulator is quite reasonable in the reality of contemporary media, provided that the body replacing them is independent of the minister/government. In other words, that the real purpose is to bring regulations up to date and to consolidate regulatory guidelines, streamline bureaucratic procedures, etc.
15. However, it is unacceptable that in 2023, in the name of technological changes and so forth, it is proposed to abolish an independent regulator and replace it with a government body controlled by the minister of communication. Such a step runs against the regulatory changes commenced in Israel and those in effect in democratic countries, whereby regulatory and supervisory bodies are cut off from government subordination in favor of professional independence free of political and business considerations.
16. Our position is that there is room for the creation of a consolidated regulatory body (perhaps even an independent communication authority), provided that its establishment does not hinge on a minister or on the government but, say, on an independent committee appointed to that end. Moreover, the professional autonomy

of the regulatory body and its independence should be anchored in law. Its budget should not depend on the government, the composition of its members should be balanced and their number not as low as proposed, its deliberations should be transparent, office-holders should not be "positions of trust," political elements and/or representatives of commercial companies (which may potentially be subordinate to it). The latter should not be able to influence its decisions and/or selection procedures and/or appointments and/or the length of tenure, and members should have demonstrable and relevant professional skills. A possible model is the regulatory body established by virtue of the Israel Public Broadcasting Law-2014 (hereinafter: **Public Broadcasting Law**): an independent legal entity audited under the State Comptroller's Law-1958, headed by a 12-member council (at least six of them women, one representative of Arab/Circassian/Druze society, representatives of the artist community, and people with professional academic background in accounting, law, or education) appointed upon the recommendation of a search committee headed by a Supreme or District Court judge, after consultation with the president of the Supreme Court as per Clause 29(a) of the Public Broadcasting Law.

17. **There is nothing like that in the proposed format. Instead of strengthening the independence of the regulatory body, a small council would be set up in the Ministry of Communication whose composition and appointment of its members speak for themselves: a political body enabling the minister to gain full control over the regulation of broadcasters. Thus, instead of improving the status of the regulating body and establishing mechanisms independent of economic and political interests, the BMAC, which is granted supervisory and punitive powers and overly broad discretion is politically run. This creates ambiguity about the operating guidelines on the one hand, and enables selective enforcement by the minister on the other.**
18. **It transpires from the proposed set-up that what we have here is yet another phase in Israel's regime revolution, akin to the one in Hungary:³ politicization of the national agency overseeing broadcasting, total control by the communications minister over the new authority and the entire media landscape, blatant and abusive use of governmental power, an attack on the existing regulatory system, its termination and "re-creation" with government-appointed officials, ditching formats designed to protect the public interest, and replacing them with vague**

³ Lydia Gall, [Hungary Forces Klubradio Off Air](#), *Human Rights Watch*, 10 February 2021.

oversight and enforcement procedures that provide for imposing heavy fines (say, if the minister finds the coverage "unfair" or "unbalanced") thereby placing broadcasters under a regime of terror.⁴

19. **Chapters 3-4: Registration and Delivery of Video-Audio Content to the Public**

Registration in lieu of licenses: Clauses 26-35 of the bill propose to make the delivery of video and audio content contingent on registration by the BMAC chairperson as content providers or news providers. This is yet another major structural move, which would cancel the current licensing system and replace it with registration.

20. **Zulat's position:** The intention behind the bill submitted by the minister is crystal-clear: to gain full control of the media and shape the message in all news programs in favor of the government and its leaders. The bill achieves this purpose through a takeover of the regulator and the proliferation of news companies absent any structural separation from their owners to ensure a lasting dominance of a wealth-government-media nexus: tycoons could start news channels that would not be required to observe the independence of news broadcasts, current affairs programs, etc., and in return they would willingly serve the government that did good by allowing them to open those outlets, either out of a wish for close relations with the leadership or for fear of being subjected to draconian enforcement by the new political regulator.

21. The set-up sought by the Ministry of Communication amounts to a balance of terror on the broadcasters and a threat to freedom of the press and to democracy: removal of barriers and restrictions alongside control and oversight mechanisms, including over audience measurement procedures based on which channels build their revenue stream, and empowering the BMAC to impose heavy financial sanctions (1% of revenues) at its discretion.

22. **Chapter 5, Article A: News Delivery - Registration of News Providers**

Abolishment of structural separation, increased political interference in news broadcasts, and authorization of cross-ownerships: Clause 37 of the bill proposes to assign the task of registering news providers to the BMAC, while Clause 39 proffers on the minister broad and flagrant authority to interfere in the registration of news providers by doing away with existing restrictions and even to register a news provider on the verge of merging with another company - all this in consultation with the Israel Competition Authority's (ICA) director general whose decision would require no further

⁴ Moshe Gorali, [Non-Liberal Democracy: Thus Israel Became Hungary](#), *Calcalist*, 6 February 2023 (Hebrew).

approval. Clause 40 even authorizes the BMAC (which, as recalled, is controlled by the minister) to permit a news provider to own a newspaper or a news website after giving "consideration" to the potential impact on competition in the provision of news.

23. For the sake of comparison, under the current legal situation, Clause 6(5)1 of the Communications Law prohibits a licensed cable or satellite broadcaster to air news programs, except rebroadcasting of national or foreign channels approved by the CSBC: in other words, the news company and the content provider are totally separate. According to Article D of the SATR Law, the news is provided by an independent company that is a legal entity separate from the franchisee, with separate offices and executives. Its board of directors is not politically-controlled (two of its five members are appointed by the SATR Council), and even those appointed by the Council must at the very least meet the job requirements of a government company's chairperson of the board, in accordance with the Government Companies Law-1975 and other restrictions designed to prevent conflicts of interest. Today, establishing a news company requires a license and a security deposit to the tune of NIS 3 million. Current legislation also contains a series of conditions and restrictions to ensure the independence of news broadcasts and to prevent conflicts of interest (for example, if franchisees seek approval of joint news broadcasts), and guidelines about the minimum annual expenditure needed to operate a news company.
24. **Zulat's position:** The role of regulation in the news field is to prevent centralization and cross-ownerships, neutralize the influence of commercial and political considerations on news content, and ensure the existence of a public broadcasting corporation as a major and quality news provider, out of a commitment to the fundamental right to freedom of information and based on the importance of the role news play in the formation of independent and robust opinions as a basis for civic involvement.
25. The proposed set-up disregards all of these. If approved, the law would pave the way for commercial corporations, including newspaper owners, to become news providers in the broadcast media (given that the BMAC would be empowered to eliminate whatever restrictions remain). It would also bring about the politicization of news broadcasts as a result of the elimination of restrictions on the makeup of the board of directors and the weakening of public broadcasting – yet another step in subordinating broadcasts to the government and augmenting the risks posed by the wealth-government-media nexus. This is an ill-advised proposal that disregards the public

interest and ignores a basic rationale: a political body lacks the ability and professional skill to evaluate competition and centralization factors when regulating the media landscape and approving/refusing/restricting applications. To wit, a political body cannot even begin to discuss the question of whether it is even appropriate for monopolists or centralized bodies to be owners of media.

26. In addition, the proposed set-up denotes a lack of professional understanding, not only of the purposes of regulation but also of the current media reality in Israel. The existing regulation, as well as the one proposed in the bill, overlook the changes that have taken place in the media market in terms of platforms, content providers, the limits of enforcement, and the management of content and news providers.
27. the proposed ignores deep trends in the news consumption market and the decline in television viewership in recent years: Keshet (14.9%), Reshet (6.7%), Channel 14 (5.1%), and Kan 11 (5.1%).⁵ In absolute numbers, this is a major decrease from a monthly average of 1.2 million to a mere 700,000-800,000 spectators, partly due to the proliferation of information sources and streaming services.⁶
28. Whereas in the past regulation was justified by the predominance of a few players (contract/license holders) who cornered most of the public's news consumption, today the market is more decentralized. Any regulation would become an interim phase to be followed by more decentralization and less reliance on existing platforms, among other things due to the ingression of new providers such as Cellcom, Partner, and FreeTV that are already operating, and on a model based on apps. This being the case, the burden would mostly fall on the ICA to ensure decentralization and prevent concentrations of power and cross-ownerships, such as a newspaper with broad circulation becoming a news content provider in the broadcast media, a development that needs to be anticipated in view of the dim future of the printed press market.
29. The proposed set-up is unprofessional and even negligent, and if implemented, it would be tantamount to loosening the reins of regulation and allowing the control of a variety of economic and political interests. Instead of making changes aimed at maintaining the independence of news broadcasts, removing extraneous considerations from the editorial desk, raising the ethical bar, and creating a framework that guarantees reliable and independent news broadcasts, the government seeks to tighten the bear hug with media owners and mortally harm

⁵ Shira Yom Tov, [News Ratings Revealed: Israelis' Favorite Newsreel](#), *Ice*, 27 June 2023 (Hebrew).

⁶ Nevo Trabelsy, [Viewers Abandon Newscasts. Which Channel in Danger?](#), *Globes*, 28 February 2023 (Hebrew).

news broadcasts in the process. There is a need for regulation and there is a way to do it, but it is not the way outlined in the bill.

30. **Chapter 5, Article B: News Delivery – Ethics in News**

Clause 42 of the bill contains a general provision regarding the obligation of a news provider to deliver reliable and balanced programming. Clause 43 stipulates that a news provider would adopt and announce the implementation of its own code of ethics without any legal requirement for external regulation.

31. In contrast, under the current legal situation, the CSBC is obliged to set a code of ethics in television broadcasts and advertising "pursuant to its role under the law." Thus, Clause 24(a)(2) of the SATR Law and Clauses 5 and 9 of the third amendment to the law stipulate the news editor's responsibility to ensure the independence of the news desk and credible reportage and to uphold the code of ethics.

32. **Zulat's position:** The proposal regarding ethics in news broadcasts is deficient, and deliberately so. It does not elaborate on the means that would be used to preserve ethics, such as the type of restrictions, independent oversight, enforcement, or sanctions (for violations of a code of ethics that has yet to be set), thus enabling the abuse of governmental power and censorship of news content. At the very least, there is need for a joint self-regulatory mechanism of the ever-growing number of news providers. However, such a decision must not be left up to the broadcasters alone, since in recent years we have seen the emergence of self-declared news providers actually serving political goals.

33. The provision in Clause 42 to deliver balanced and reliable content is not new. The current law grants extensive powers for oversight of broadcast content, but to this day these have been used sparingly and there is no guarantee that implementation by the BMA will be any better in the future. To repeat, the bill is supposedly intended to ensure the public interest, in news broadcasts in particular, vis-a-vis channel owners and the government. Accordingly, even though the bill's explanatory notes term it a "symbolic provision," there is no guarantee that "in the name of balance" the BMA will not demand the replacement of one commentator or the exclusion of another from a panel of talking heads.

34. Today more than ever it is imperative to update the code of ethics through public debate with the participation of all the relevant factors. The government's decision to ignore this shows that it prefers power and anarchy over the public interest and democratic values. In the era of social media, where broadcast channels have also

come to be dominated by simplistic and shallow messages that win over audiences, ignoring the need for a uniform and binding code of ethics serves the government's purposes: to amass power in the understanding that a takeover of the media is necessary to complete the revolution. As much is also evident from the bill, where any mention of ethics in news broadcasts is conspicuously absent. The removal of ethical restrictions would result in the ascendancy of a shallow and thuggish discourse and deal a harsh blow to the status of the media and democracy.

35. There is no justification for unenforceable regulation, and the severe damage to the quality of broadcasts should be addressed amid realization of the limitations of enforcement and oversight. We believe that quality news content can be achieved by education about critical news consumption, boosting public broadcasting with adequate budgets and salaries and anchoring its independence in law, adapting ICA enforcement and oversight to the emerging media landscape, adjusting existing defamation and consumer laws to the changing reality, and setting ethical rules accepted by the entire industry. These rules should emphasize the importance of preserving public broadcasting as independent, strong, free of commercial and political considerations, budgeted by public funds, and detached from any government influence. This is how it is done in democratic countries such as the United States, Great Britain, etc., and this is how it should be done in Israel, too.

36. **Chapter 7: Requirement to Invest in Local Productions**

The proposed format directly harms the thriving production industry behind the great diversity in Israel's television culture, and consequently harms the freedom of cultural expression of Israeli artists. Creative freedom is a basic positive human right, which every government in a democratic country has the moral duty to encourage and support.

Clauses 52-54 of the bill stipulate the obligation of content providers to invest a percentage of their annual revenues in high-quality local productions: 2% a medium-size provider (annual revenue: NIS 300-600 million), 4% a large-size provider (NIS 600 million or more), 6% a medium-size Israeli channel (NIS 80-160 million) and 12% a large-size Israeli channel (over NIS 160 million).

37. In the current legal situation, Reshet and Keshet are required to invest 15% of their revenue in high-quality original productions and devote 40% of their broadcast schedule to local content. For YES and HOT the requirement is 8% of their revenues (infrastructure costs decrease dramatically as subscribers switch to Internet services

and, accordingly, the amount designated for original productions; therefore, it is already now necessary to anchor in law an alternative forward-looking model to boost original production). Moreover, the bill proposes to abolish existing legislation requiring the transfer of local productions to external companies, a move that would seriously damage these companies and the production market as a whole.

38. The bill proposes to reduce the required investment in high-quality production from 15% to 12% for commercial Channels 12 and 13 and from 8% to 4% for YES and HOT and sets no minimum for local productions, thus adversely affecting their quality. Clause 57 provides no details on the computation of investment in local productions, does not explicitly affirm that guidelines will not apply to content, and fails to mention the term "high-quality" designed to encourage investigative programs, drama, documentaries, and quality programming for children. The meaning is clear: considerable reduction in the volume of local productions and severe damage to the quality of the content relayed to the public.
39. **Zulat's position:** The impact of freedom of creative expression on culture, a right accorded special status in political, cultural, and democratic philosophy and in the Israeli legal system, cannot be overstated enough.⁷ Artistic and cultural freedom of expression is of unique value in that it enables self-fulfillment through diverse manifestations: emotions, experiences, and impressions, in addition to verbal and rational formulations,⁸ which play a key role toward enriching social discourse. Freedom of expression is necessary for the existence of high-quality content for adults and children, for documentary and drama; for content that is accessible and available to all and becomes an integral part of the social fabric; for the creation of a cultural and historical treasure that underlies a shared identity. Freedom of cultural expression is not attained only through non-enforcement of a prohibition ("negative right"), but primarily through support with public budgets ("positive right"), which is only fair should come from the broadcasters flooding the networks with content.
40. **The proposed format drastically reduces the requirement for local productions and deals a death blow to Israeli culture.** The importance of local productions does not only lie in their contribution to Israeli culture and to its people, but also in the fact that

⁷ Aharon Barak, [Human Dignity: The Constitutional Right and Its Derivatives](#), *Nevo*, 2014 (Hebrew).

⁸ Edward J. Eberle, [Art as Speech](#), *University of Pennsylvania Journal of Law and Social Change*, 2007; David Munkittrick, [Music as Speech: A First Amendment Category Unto Itself](#), *Federal Communication Law Journal*, 2010; Alan K. Chen, [Instrumental Music and the First Amendment](#), *UC Law Journal*, 2015.

artistic expression is among the basic human rights and fundamental values of a free country. The rationale underlying the statutory requirement for local production, in Israel and in other Western countries, is that culture cannot survive without the state's support. Public funding is designed to fill the dearth in noncommercial and costlier quality content and to enhance the public interest: to cultivate common values, present them in the local vernacular, impart and enrich the country's common heritage, and consolidate a social identity that matches its unique national character. This is the case in all advanced democracies, in the resource-rich United States as well as in Great Britain and Scandinavia.

41. The claim that this is not a reduction but rather an expansion of the requirement because all content providers (such as Partner, Cellcom, Disney, and Netflix) would now be required to produce locally is totally unfounded given that their revenues are below the threshold set for enforcement of the obligation. If the minister and his professional staff sincerely believe as much, then they should not only reveal the economic data in support of their assertion but also reduce the obligation on current broadcasters only after they have ascertained that its enforcement on new ones has indeed led to a surge in local productions and its extent. However, as this is not what is being proposed, it is clear that this set-up is meant to pull the plug on the world of television content and production and cut off the only cultural conduit accessible to one and all, in the living rooms of Israeli homes, in total contravention of the public interest. This is yet another step on the road to a world of political, social, and cultural darkness.

42. **Chapter 8: Delivery of IPBC and Knesset Channel Content**

Clause 61 of the bill proposes to impose an obligation on the Israel Broadcasting Corporation (IBC) and the Knesset Channel to provide their content free of charge to any registered content provider, while Clause 73(a)(4) proposes to relay IBC content free of charge on the BMA's app.

43. **Zulat's position:** If implemented, this clause would harm both IBC revenues and content producers' royalties. Contrary to the minister's claim, it bears noting that at stake here is not cancelling the taxpayer's "double payment" for IBC content. Quite the contrary, requiring the IBC to relay its broadcasts free of charge to commercial entities (FreeTV, Netflix, HOT, YES) would help the latter reap profits from content produced with taxpayers' money. In other words, instead of the IBC's content library continuing to gain popularity and strengthen public broadcasting and instead of initiating

negotiations between the IBC and the commercial entities, the former would be compelled to relay its content gratis to the latter, so that they can generate commercial profit at the IBC and the taxpayer's expense.

44. The IBC would be further affected by the ban on advertising in radio channels, which would reduce its annual revenues by an additional NIS 100 million. Although this is not specified in the bill, it has been learned that the minister plans to "privatize" IBC's radio stations. We will address the lethal blow that such a move would deal to freedom of expression and the media only if such a proposal is brought up for discussion, and hope this will not happen.
45. The writing has long been on the wall, given that the minister considers the IBC "patently biased" and Channel 33's broadcasts "akin to those of the Palestinian Authority."⁹ The entire intention of the bill is to weaken public broadcasting with a view to its termination altogether, by slashing the IBC's revenues and distributing its content to commercial entities to increase the latter's profits.
46. **Chapter 10: General Guidelines - Distribution of Broadcasts by BMA**
Clauses 72-76 propose to transfer Idan Plus (Israel's digital terrestrial television or DTT) to a BMA app, as opposed to the current situation whereby commercial channels are required by law to pay millions of shekels in distribution fees to the SATR.
47. **Zulat's position:** Approving this set-up means that the state would not only regulate, monitor, and enforce, but would also be a full-fledged content provider free to do as it pleases with the content of Israel's major television channels, while violating the property rights of broadcasters and forfeiting their right to generate profits from internet broadcasts.
48. Another problem arising from the proposed format is that because Idan Plus is distributed to a wider audience, switching to a DTT app might affect a large public that today benefits from free broadcasts and is highly unlikely to continue to enjoy the service if it can only be accessed through an app. Therefore, if the intention is to promote such a format, it is necessary first to examine the damage to be inflicted to audiences if distribution in its current form is canceled.
49. **Chapter 11: 'Accountability and Demand for Information' (or Government Chokehold on Broadcasters)**

⁹ Jasmin Gueta, [Free Market? IPBC To Fund Increased Profit of Private Companies](#), *TheMarker*, 23 July 2023 (Hebrew). The quotes are from the communications minister's letter to the IPBC.

According to Clause 81 of the bill, the BMAC would be authorized to demand from broadcasters to provide audience measurement in real time on a dedicated interface, as well as to collect and process data from this interface or any other source and publish it.

50. In contrast, at present, audience measurement is published by the Israel Audience Research Board, which is composed by the broadcasters, advertisers, and advertising agencies and seemingly strikes a straightforward balance between the stakeholders and ensures that calculation and publication of the data is free of political considerations and government intervention.

51. **Zulat's position:** The proposed set-up enables the government to control the calculation and publication of viewership data, thereby dangerously opening the door to data biased in favor of pro-government channels and broadcasters. It bears noting that audience shares, even fractions of percentages, translate into cash going into a broadcaster's coffers and determine the longevity of a program, the strength of a channel, its influence on the public, and its survival. This is doubly dangerous because of the so-called "network effect," whereby people tend to watch content that many others are watching.¹⁰ The proposed format may become an ever-growing snowball controlled by the government for the benefit of the channels supporting it.

52. **Conclusion**

"Democracies don't die with a bang but with a whimper, by means of a prolonged weakening of their institutions, particularly the judicial system and the media, and the slackening of political norms"¹¹ – words that aptly fit the chaos created by the proposed set-up.

53. **Zulat's position** is that it is indeed necessary to update regulation in order to bolster an effective media that fulfills a vital role in democratic life, promotes freedom of expression and local artistic production, a free and independent press and freedom of information; regulation that focuses on consolidating legal arrangements for actors of similar characteristics, promoting effective competition in broadcasting amid realization of its limitations, and optimizing bureaucratic processes; regulation that preserves the separation between content and commercial considerations and is

¹⁰ Jasmin Gueta, [Seven Reasons To Worry About Media Freedom in Israel](#), *Haaretz*, 1 August 2023.

¹¹ Benjamin Carter Hett, American historian and professor at Hunter College, quoted by Yoram Peri in [All the Ways Democracy Is Crashing and Burning](#), *Haaretz*, 2 September 2018.

devoid of extraneous influences, such as political and economic factors that threaten the achievement of this purpose.

54. Zulat wishes to caution that the proposed bill flouts all of the above. There are three major things wrong with it: it harms independent broadcasting by increasing broadcasters' dependence on the government, it weakens public broadcasting whose role is to serve as the compass of social values in news and quality content, and it cuts back local productions thereby dealing a severe blow to Israeli art creation. The bill constitutes yet another step damaging Israeli democracy and the right to freedom of expression, information, and creativity, which are the prerequisites of any democracy, and to a press free from political pressures, whose role is to fearlessly criticize government institutions and their actions. Should the bill be approved, even if only partially, the core characteristics of Israeli society and human and minority rights will be harmed, the liberal character of Israeli society will continue to slide into the abyss, as will those who think they will remain in power forever.