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**PROTECTION OF MEDIA FREEDOM  
AND EXPRESSION IN BROADCAST  
INDUSTRY REGULATION.**

**NIGERIA**

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# INTRODUCTION



The protection of freedom of expression and the media is central to the functioning of a broadcast media system which includes industry practice and regulation.

The basic Nigerian, law, the constitution, already guarantees freedom of expression and media rights to citizens. This right is expected to be protected in the specific sectoral legislation and in the regulatory process.

How does the existing broadcasting industry legislation and the new Bill address the freedom of broadcasters? This is the question that this edition seeks to answer.

## The Place of Freedom in Broadcast Industry Regulation

Freedom is an essential component of media industry development. The constitution of Nigeria provides for the right of citizens to own and operate media outlets as part of the exercise of their freedom of expression.

Smaller legislations such as the National Broadcasting Commission (NBC) have a duty to reflect the letter and spirit of the constitution in their provisions.

The regulator is to ensure that its regulation does not cross the line to become violation of broadcasters' rights. It is to ensure that it provides a level playing ground to all licensees in its regulatory decisions. It is to ensure that broadcasters do not violate the rights of one another. It is to create space for broadcasters to seek judicial (court) intervention on the regulator's decisions where they have dissatisfaction. These and more should be articulated in the broadcasting legislation.

Freedom enables the media to grow, to innovate and to effectively carry out an important function articulated for them in Section 22 of the country's constitution: “the press, radio, television and other agencies of the mass media shall at all times be free to uphold... the responsibility and accountability of the Government to the people”

## What The Legislation Currently Provides

1. Section 2(1) (t) of the NBC Act provides that the NBC (the regulator) shall have the responsibility of “guaranteeing and ensuring the liberty and protection of the broadcasting industry with due respect to the law”

## What the New Bill Also Provides

1. The Bill creates a new section 9A titled “Classification of Licences”, under which it specifies categories of Broadcasting Service Licenses. These categories include the following: “IPTV, IP Radio, EPG, Online News Related Licence, Internet Broadcasting (Webcast), Over the Top Television (OTT), Any other class of licences as may be determined by the Commission”,
2. The Bill also creates a new section 13A which deals with the renewal of Licence. Section 13A(2)(b) empowers the NBC to refuse a broadcasting licence renewal application if the NBC has drawn a licensee’s attention to infringement and exercised its power of sanction over the licensee on three or more occasions.
3. Another newly created 13A(4) provides further that where a licence renewal application is made to NBC, less than six months prior to the expiration of the licence, NBC shall not renew the license unless the licensee pays, “in addition to the prescribed licence fee, a penalty as may be determined by the Commission (NBC), for each day during which the default continued.”
4. Section 19T, also a new creation in the Bill provides, that “No civil action shall be commenced against this Commission (NBC) or its authorized officers before the expiration of a period of 30 days after which notice of intention to commence the suit shall be served on the Commission by the intending Plaintiffs or his Agents”.



## Gaps in the Provisions of The Act and The Bill

1. Inclusion of the new contentious categories of Broadcast Services Licencees in the new Section 9A of the bill will be injurious to freedom of the media and expression.
2. Exercising regulatory power of sanction over a licensee up to three(3) times during a 5-year license period should not be enough ground to refuse license renewal.
3. The penalty prescribed for failure to make licence renewal application six months to license expiration is too harsh.
4. The new Section 19T is simply preventing citizens or licencees from approaching the court of law to save them from possible regulatory arbitrariness and abuse of their rights. This is a weird legislative provision.

## Recommendations: What the New Bill Should Now Provide for Protection of Freedom of Media and Expression

- a) The inclusion of the following among categories of broadcasting services licences, in Section 9A of the Bill, will be injurious to the civic space, freedom of expression and media freedom in Nigeria: "IPTV, IP Radio, EPG, Online News Related Services, Internet Broadcasting (webcast), Over-the-Top Television (OTT), and any other class of licences as may be determined by the Commission". They should be removed.
- b) Exercising regulatory power of sanctions over a licensee up to three (3) times during a 5-year period should not be enough ground for the regulator to refuse licence renewal. Hence, the new Section 13A(2)(b) in the bill should be removed.
- c) The penalty for failure to make licence renewal application six months to licence expiration is too harsh, hence Section 13A (4) of the Bill should be reviewed.
- d) Section 19T of the Bill which provides that "No civil action shall be commenced against this Commission (NBC) or its authorized officers before the expiration of a period of 30 days after which Notice of Intention to commence the suit shall be served on the Commission by the intending Plaintiffs or his Agents", should be removed.

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