

J. Y. Interpretation No.364 (September 23, 1994) \*

**ISSUE:** Is the right of access to the media a kind of freedom of speech protected by Article 11 of the Constitution?

**RELEVANT LAWS:**

Article 11 of the Constitution (憲法第十一條) .

**KEYWORDS:**

the right of access to the media (接近使用傳播媒體之權利), freedom of speech (言論自由), mass media (大眾傳播) . \*\*

**HOLDING:** The protection of the freedom of speech described under Article 11 of the Constitution includes the expression of opinion via radio or television broadcast media. To protect this freedom, the state must fairly and reasonably distribute the use of radio wave frequencies and bandwidths. The laws must be enacted in such a way as to respect equal rights to media access provided that the freedom to edit is taken into account.

**解釋文：**以廣播及電視方式表達意見，屬於憲法第十一條所保障言論自由之範圍。為保障此項自由，國家應對電波頻率之使用為公平合理之分配，對於人民平等「接近使用傳播媒體」之權利，亦應在兼顧傳播媒體編輯自由原則下，予以尊重，並均應以法律定之。

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\* Translated by Professor Tsung-Fu Chen.

\*\* Contents within frame, not part of the original text, are added for reference purpose only.

**REASONING:** Freedom of speech is the very foundation of a constitutional democracy. Radio and television broadcasts are important media through which people may state their ideas and commentary, thereby allowing public opinion to be expressed. This results in the reinforcement of democracy, the advancement of knowledge, and the promotion of cultural, moral and economic development. As such, the freedom of speech through radio and television is protected under Article 11 of the Constitution. However, because the messages disseminated via radio waves are boundless, radio and television engender a great and deep impact on society. The enjoyment of this freedom of information dissemination carries with it, under the principle of self-regulation, certain social obligations so as to avoid the abuse of these rights. The state is entitled to enact laws to restrict the freedom of the media should they demonstrate immorality, disturb the public peace, endanger the state, or infringe upon the rights of others.

Radio wave frequencies are a limited

**解釋理由書：**言論自由為民主憲政之基礎。廣播電視係人民表達思想與言論之重要媒體，可藉以反映公意強化民主，啟迪新知，促進文化、道德、經濟等各方面之發展，其以廣播及電視方式表達言論之自由，為憲法第十一條所保障之範圍。惟廣播電視無遠弗屆，對於社會具有廣大而深遠之影響。故享有傳播之自由者，應基於自律觀念善盡其社會責任，不得有濫用自由情事。其有藉傳播媒體妨害善良風俗、破壞社會安寧、危害國家利益或侵害他人權利等情形者，國家自得依法予以限制。

廣播電視之電波頻率為有限性之

public resource. In order to avoid monopolies, the state must enact laws that govern their distribution. Under such laws, the responsible authority is empowered to work out a fair and reasonable system concerning the lifting of the ban on radio wave frequencies. This system will serve to ensure the balanced development of radio and television and increase the availability of media for the average person.

In theory, the “right of access to the media” indicates the right to demand the mass media station owner publicly to provide a printed broadcast time schedule. This will serve to promote the truthfulness and fairness of media reports and commentary by enabling the public their rightful opportunity to express their opinions. That is to say, when an individual’s right is infringed upon due to wrongful media reports or commentary, he or she is entitled to offer a response or request the media to revise their reports or commentary. An example of the means by which radio and television media are able to improve the quality of democratic politics is by

公共資源，為免被壟斷與獨佔，國家應制定法律，使主管機關對於開放電波頻率之規劃與分配，能依公平合理之原則審慎決定，藉此謀求廣播電視之均衡發展，民眾亦得有更多利用媒體之機會。

至學理上所謂「接近使用傳播媒體」之權利（the right of access to the media），乃指一般民眾得依一定條件，要求傳播媒體提供版面或時間，許其行使表達意見之權利而言，以促進媒體報導或評論之確實、公正。例如媒體之報導或評論有錯誤而侵害他人之權利者，受害人即可要求媒體允許其更正或答辯，以資補救。又如廣播電視舉辦公職候選人之政見辯論，於民主政治品質之提昇，有所裨益。

way of holding impartial political debates during election campaigns.

Nonetheless, granting public access to the media in effect places limitations on media station owners in terms of editing and selection of information. It may serve to deprive media station owners of their right to free editing should they be required to accept unconditionally any individual's demands to express his or her objections through broadcast media. As a result of losing their freedom to edit, media station owners will be subject to excessive compromise and hesitate to report the full truth. Accordingly, the function of the media to report in a true and fair manner will be undermined. Therefore, both the public right to media access and the media's freedom of editing must be simultaneously considered. The law must set conditions on the public's access to the media in order to implement the equal integrity of the public right of access and the media's freedom of editing.

In conclusion, the freedom of expression through radio or television media

惟允許民眾「接近使用傳播媒體」，就媒體本身言，係對其取材及編輯之限制。如無條件強制傳播媒體接受民眾表達其反對意見之要求，無異剝奪媒體之編輯自由，而造成傳播媒體在報導上瞻前顧後，畏縮妥協之結果，反足影響其確實、公正報導與評論之功能。是故民眾「接近使用傳播媒體」應在兼顧媒體編輯自由之原則下，予以尊重。如何設定上述「接近使用傳播媒體」之條件，自亦應於法律內為明確之規定，期臻平等。

綜上所述，以廣播及電視方式表達意見，屬於憲法第十一條所保障言論

is included under the freedom of speech of Article 11 of the Constitution. To protect this freedom, the state must distribute the use of radio wave frequencies in a fair and reasonable manner. The laws must be enacted with a balanced regard for the public's equal right to media access and the media's right to edit freely.

自由之範圍。為保障此項自由，國家應對電波頻率之使用為公平合理之分配，對於人民平等「接近使用傳播媒體」之權利，亦應在兼顧傳播媒體編輯自由原則下，予以尊重，並均應以法律定之。