

Licensing and Licence Conditions

Broadcast Regulatory Master Class
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Licensing

- Unified licensing: one-stop shop
- Individual licences and general authorisations
- Minimum criteria for licensing
- Criteria suitable for type of licence
- Transparent and easy-to-understand process, assist applicants (to a reasonable degree), electronic applications

Licensing

- Beauty contest: determine the most suitable licensee
- Transparent and objective criteria
- Call for applications in an open process (or possibility to apply without specific call)
- There may be different criteria for different licences but this must be objective and fair (e.g. when certain programming is lacking this may be required as a condition for licensing)

The Licence

- The first part/page of the Licence is often a short stand-alone statement - a document that may be put on the wall or similar.
- Normally requires a signature or other form of acceptance
- The nature of the Licence resembles both a contract (something accepted by both sides) and a normative document from an authority.
- Applicable law(s) may be mentioned

The Licence (cont'd)

- Definitions of relevant terms need to be given
- Definitions are found in international documents (ITU, EU). Good to use internationally accepted terms and definitions: adds to clarity and international understanding, something appreciated by international firms but it also facilitates the work of the regulator.
- Important that the definitions include all terms used in the licence and that the list uses a consistent style so it is easy to use.

The Licence (cont'd)

- Terms and concepts that are defined in law may not need extra definition/mention in the Licence **or** if they are repeated the same terms and formulations must be used as in the law.
- Often easier to make reference to the relevant law(s), takes into account if the law changes
- Licence text and content needs to be under constant review but should not be changed too often

The Licence (cont'd)

- GENERAL TERMS AND CONDITIONS
- Every legal/physical person wishing to provide broadcasting must have a Licence before the start of broadcasting.
- The Licence is issued in a way as stipulated by the regulator's Rules and Regulations – *specific rules may be mentioned* .
- Adherence to Codes of Content and other rules as an explicit requirement.

The Licence (cont'd)

- The Licence does not releases the Licensee from the obligation to fulfil other legal or contractual obligations necessary for provision of broadcasting.
- Planning permission, environmental licences business registration, tax registration – any such permissions and licences are seen as separate obligations. What is needed and how to get it will be in other legislation and not handled by the regulator.

The Licence (cont'd)

- The regulator reserves the right to change, adjust and interpret the terms, issue additional Rules. The regulator shall consult users on any change via a public consultation process
- Reasonable time before changes enter into force
- The regulator must reserve the possibility to make changes if necessary, for the best use of the spectrum and the best functioning of the broadcasting sector. At the same time, there should not be frequent or encompassing changes as this would endanger legal certainty.

The Licence (cont'd)

- SPECIFIC TERMS AND CONDITIONS
- Programming requirements: schedules of types of programmes, etc. – not interfering in editorial freedom
- Major changes need to be approved
- Technical requirements in separate part/annex
- Frequency information in separate part/annex
- Station identification requirement

Licence conditions: Complaints

- The broadcaster must have a system for handling complaints
- This system must be set out in the licence application and approved by the regulator
- Must be a “real” system that can deal with complaints
- This does not replace the possibility to complain to the regulator

Licence conditions: Elections

- Licences may give special requirements for election periods
- Public service announcement requirement
- Different requirements for election reporting for different broadcasters: must be stipulated in the licence and/or law/regulations (legal certainty) – *or* possibility for the broadcaster to choose if to have political broadcasts or not, but must be unbiased

Licence conditions: Elections

- All Broadcast Media shall provide equitable access, equitable presentation, and equitable coverage of Political Parties with respect to newsworthy events and election activities
- Special rules will apply to adverts (if allowed)
- Equitable does not have to be equal, but has to be decided on fair terms

Licence conditions: Financial

- Financial information about the owners, business plan how the broadcasting will be financed
- Other information to ensure that ownership rules are not violated
- Financial information should normally not be publicly accessible (like most other information held by the regulator should be)

Licence Conditions: Technical

- Health and safety measures: for employees, for general public
- Technical requirements for antennas, etc. (applicable standards)
- Maintenance requirements: must not be any disruptions to broadcasting
- Special requirements may be set out in annexes

Enforcement

- The Licence may set out rules on sanctions or refer to the law
- Procedures for cases may be mentioned in the licence or by reference to the law
- *What is important is that the licensees are aware of their obligations and of the conditions and procedures in case of violation*

Additional requirements

- The regulator can ask for various information, as set out in the licence and in law (specifically or generally)
- Examples: copy-right contracts, rebroadcasting contracts, additional financial information
- Requirement to keep recordings of broadcasts for a certain time

Licence fees

- Application fees and annual fees
- Should be clear what a fee applies to
- Fees should not deter from providing a service but it is reasonable that those using a public good (frequencies) pay for it
- Fees in relation to market share (or similar)
- Administrative fees only for reasonable costs
- Enforce payment of licence fees

Licence fees are often used to fund regulators = increases independence

Digitalisation and Licences

- Two parts or two licences: separate content and technical transmission
- Similar to telecommunications licensing: requirement to provide access to networks
- Legal certainty: changes be transparent, justified

Transfer of Licence

- All transfers of the licence must be approved by the regulator
- The licence is tied to the original licensee – if this body changes, inform the regulator that decides if to approve a transfer or if to consider the body as the same legal person
- Licences cannot be sold

Licensing:

Which of these would you give a licence?

Why-why not? Based on what criteria?

What else do you need to know?

Radio Tomorrow

Run by a small religious group: It has a highly professional business plan, modern broadcasting equipment and all the necessary technical skills. Broadcasts will be discussions, music, youth programmes and similar.

Home-grown Radio

The local government: It will lease a modern studio and employ professional journalists. Funding will be via the regular local budget. Broadcasts will be local news and coverage of local events.

Pop-and-Hop

A commercial station aimed at young teenagers, playing only music with a minimum of talk. Financed by adverts and call-ins to request music.

Licensing

- A new radio station especially for the Roma (Gypsy) population should be created; the following apply for the licence:

Foreign-owned, reputable broadcaster with high-quality Roma broadcasting in neighbouring countries. Staff are Roma from other countries. Income from World Roma Foundation.

NGO from the local Roma community, staff are local – one journalist, the other amateurs with connections in local community. Two have convictions for disturbing the peace (illegal demonstrations). Income from advertising.

Firm that ran a radio station five years ago, it closed for financial reasons. Experienced staff, not Roma but they plan to hire a Roma journalist. Old station had one warning for indecent broadcasting.



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