



CIMC- 2006/4
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IMC Guidelines on Applying Sanctions to Licensees

1.0 Purpose: The purpose of these Guidelines is to define IMC policies on the imposition of sanctions for violations of IMC Regulations, upon the affirmation of such violations in accordance with IMC rules of procedure.

2.0 Definitions:

2.1 Regulation: “Regulations” shall mean the general and specific terms and conditions a TMC/IMC license; codes applicable to broadcast content; IMC Qualifications for License; valid orders or instructions that the IMC Council may approve with regard to the operations or conduct of a licensee; and all other statements of rights and obligations of broadcasters in Kosovo by the IMC or the SRSG as well those promulgated by the Temporary Media Commissioner and remaining in force.

2.2 Licensee: Licensee shall mean a radio or television broadcaster to which the TMC or its successor agency, the IMC, grants a License and the use of associated broadcast frequency(ies). [Same as in License, Part 1]

2.1 Sanctions: Financial or other penalties permitted for violation of IMC regulations under the Law on the IMC and Broadcasting.

3.0 General Policies:

3.1 Progressive nature of sanctions: Except for grave violations of Regulations, sanctions shall generally follow a progressive scale, beginning with a Warning for a first violation of a given Regulation. One or more fines shall generally precede any suspension of license. Failure to comply with a previous IMC decision or repetitions of similar violations will result in more severe sanctions, including progressively greater fines for violation of the same or equivalent IMC regulations.

3.2 Proportional nature of sanctions: Sanctions will be proportionate to the nature and gravity of a violation and the economic scale of the licensee, and will not be more severe than necessary to deter further violations and encourage remedial action by the licensee, taking into considerations all relevant mitigating or aggravating factors.

3.3 Preference for remedial action: In penalizing violations of its regulations, the IMC shall aim whenever feasible to encourage remedial action, settlement agreements and greater professionalism by a licensee.

4.0 Settlement Agreements: A Settlement Agreement with a licensee is appropriate when a licensee of its own free will acknowledges a violation and demonstrates a credible willingness to undertake remedial action such as staff training, reorganization or the issuance of internal rules designed to prevent the commission of similar violations in future.

4.1 Admission of violation: Settlement Agreements require an unqualified admission of violation by the licensee.

4.2 Suspended fines: A Settlement Agreement may include a provision for the payment of a fine. The obligation to pay a fine may be suspended for a limited period of time before the obligation terminates, generally six months, in the absence of further violations of IMC regulations. The commission of a similar violation during the period in which a fine has been agreed but suspended under a Settlement Agreement causes an obligation to pay the agreed fine. A Council Decision may impose a further penalty for the subsequent violation.

4.3 Remedial action: A Settlement Agreement should specify the remedial action the licensee is to undertake.

4.4 Disciplinary record: A case resolved through a Settlement Agreement in which the broadcaster complies through the duration of the Agreement does not constitute a sanction and should not generally be considered part of a licensee's disciplinary record. However, the IMC may consider the underlying facts of the settled case in future regulatory decision.

5.0 Seizure of equipment: The IMC may order the seizure of equipment only for the purpose of terminating unlicensed broadcasting. Such seizure shall be a last resort if clear written orders to the operator of an unlicensed transmitter to cease and desist and to remove the unlicensed equipment prove ineffective.

5.1 Seizure shall be limited to the minimum items of equipment necessary to achieve termination of the illegal broadcasting. The IMC shall provide the owner or operator of such equipment with a valid Warrant for Seizure and a receipt for the equipment, if the identity of the owner/operator can be determined.

5.2 Seized equipment shall be held by IMC in safekeeping, to be returned to its lawful owner upon satisfactory assurance that the illegal broadcasting will not recur. The IMC may dispose of such equipment in accordance with relevant law.

6.0 Suspension of License: The IMC shall suspend a license only upon grave, repeated or sustained violations of Regulations. Any such action shall be consistent with a proportional and progressive approach to sanctions.

6.1 Circumstances for Suspension of License: Suspension of license may be warranted by any of the following circumstances:

6.1.1 Previous imposition of substantial fines (more than two) for violations of IMC regulations.

6.1.2 Non-payment of an enforceable IMC fine; duration of the suspension shall be proportionate to the scale of the unpaid fine.

6.1.3 Suspension of a limited and proportional duration in lieu of imposition of a fine, if there is substantial reason to believe the licensee will be unable to pay the fine.

6.1.4 Exceptionally serious violation of IMC Regulations that presents a clear and immediate threat to public order.

6.2 Procedures for suspension of a license:

6.2.1 In all cases, IMC shall provide explicit written warning that a suspension may be ordered. The warning shall provide a clear and detailed justification, cite applicable IMC rules and shall provide a reasonable time for the broadcaster to respond and to remedy the violation at issue.

6.2.2 The IMC Council shall provide the licensee an opportunity for a hearing before rendering a Decision of Suspension, unless the Council

determines that the gravity of the violation is such that continued broadcasting presents a clear and immediate threat to public order.

6.2.3 In circumstances of a clear and immediate threat to public order, on the advice of the IMC CEO, the Chair of the IMC Council, upon obtaining the written consent of at least three other Council members, may issue an Emergency Suspension Order valid until such time as the Council Chair determines that the licensee will present no further threat to public order. This action shall be confirmed by the full Council as soon as practicable.

7.0 Revocation of License: Revocation of license may be warranted by any of the following circumstances:

7.1 Voluntary Termination of broadcasting with notice to the IMC: A licensee that of its own will terminates its operations and so notifies the IMC shall be considered to have voluntarily surrendered its license. Upon such notice the IMC shall consider the license to be null and void. IMC staff shall so advise the Council, which shall issue an Order of Revocation of the license without prejudice to any future application for license the licensee may file.

7.2 Termination of Broadcasting without Notice to the IMC: The IMC may revoke a license if it determines that a licensee has terminated, not merely suspended, its operations without notice of termination to the IMC. Termination is defined as any of the following in addition to cessation of broadcasting: (a) ceasing to employ all staff to operate the station where such staff was previously employed; (b) cancellation of business registration; (c) disposal of premises and/or equipment for broadcasting.

7.3 Failure to use a License: Failure by a Licensee or Applicant to make full and consistent use of a previously awarded IMC License may be taken as evidence of an inability to manage and sustain a professional broadcast operation, and may result in revocation of license. Such failure shall be defined as failure to begin broadcasting within the period specified in the license, consistent failure to broadcast the minimum number of hours required in the license or prolonged or major repeated outage of broadcasting, unless such interruptions result from circumstances of *force majeure*.

7.3.1 Prolonged outage: Sixty (60) continuous days of cessation of broadcasting for reasons other than *force majeure*, or 90 discontinuous days within a six-month period, combined with failure to present a

credible plan to the IMC for resumption of broadcasting is defined as a prolonged outage. Such an outage shall be taken to signify the likely inability of the licensee to operate a broadcast station with minimal standards of professionalism. IMC shall notify a licensee that its license may be revoked for Failure to Use, and shall allow at least 14 days for the licensee to respond with a credible plan for resumption of broadcasting and to show cause why the license should not be revoked.

- 7.3.2 Prolonged erratic broadcasting:** Major repeated interruptions in, or gross variations of, a licensee's daily broadcasting time unrelated to *force majeure*, during a period of 60 days or more. Such outages shall be taken to signify the likely inability of the licensee to operate a broadcast station with minimal standards of professionalism. IMC shall notify a licensee that its license may be revoked for Prolonged Erratic Broadcast, and shall allow at least 14 days for the licensee to respond with a credible plan for resumption of broadcasting and to show cause why the license should not be revoked.
- 7.3.3 Failure to make consistent minimal use of a license:** Failure to make the minimum use of a licensed broadcast frequency as specified in the IMC license for a continuous period of 60 days or more, or 90 days in a six-month period, for reasons unrelated to external causes shall be a basis for revoking a license. IMC shall notify a licensee that its license may be revoked for insufficient use of frequency, and shall allow at least 14 days for the licensee to respond with a credible plan for resumption of minimum required broadcasting and to show cause why the license should not be revoked.
- 7.3.4 Second license suspension:** Repeated or sustained violations of IMC regulations that would justify a second suspension of license in any two-year period may serve as a basis for revocation of license.
- 7.3.5 Exceptionally grave violation of IMC regulations:** (1) failure to comply with an order of suspension; (2) commission of a regulatory violation that unambiguously encourages or result in an act of public disorder shall be considered a basis for revocation of license.
- 7.3.6 Failure to meet IMC Qualifications for license:** A licensee that falsely and deceptively asserts compliance with the IMC Qualifications for License may have its license revoked upon proof of such falsehood or deception. A licensee whose status or circumstances change so as to render the licensee no longer compliant with IMC Qualifications for License may have its license revoked upon failure, during a reasonable time, to remedy the disqualifying circumstances. Prior to revocation of a

license in such circumstances, the IMC shall provide at least 60 days for the licensee to seek IMC approval for the sale or other transfer of the license to a qualified licensee or otherwise to remedy the disqualification.

7.3.7 Unauthorized sale of a broadcaster: A license may be revoked if a broadcaster is sold or otherwise transferred to a third party in violation of the terms of license.

7.3.8 Public Interest Need for Tender: In exceptional circumstances, the IMC may determine that the sale or transfer of a broadcaster to a proposed new licensee is not in the public interest. In such cases, the IMC may order a public tender for the relevant frequency(ies) in which the proposed purchaser or recipient of transfer may compete without prejudice. Upon award of the tender, the original license shall be revoked.

8.0 Procedures for revoking a license: In all cases, IMC shall provide clear, explanatory warning that a revocation may be ordered, and shall provide a reasonable time for the licensee to respond and to remedy the matters at issue.

8.1 In all cases of proposed revocation of license, the IMC shall provide explicit written warning that a revocation may be ordered. The warning shall provide a clear and detailed justification, cite applicable IMC rules and shall provide a reasonable time for the broadcaster to respond.

8.2 The IMC Council shall provide the licensee an opportunity for a hearing before rendering a Decision of Revocation