

TMC License Provisions on Copyright:

Guidelines for Compliance

1 January 2004

Preamble

The observance of international law and practice regarding the protection of intellectual property, including but not limited to video and audio entertainment materials, is crucial to the development of orderly and fair competition and the rule of law in a media market.

The Universal Declaration on Human Rights, which is part of the Kosovo Constitutional Framework, states in Article 27 that “Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Piracy—the illegal production, distribution, sale or broadcast of materials subject to international agreements on the protection of intellectual property—is a form of unfair competition in a media market. Piracy harms the interests of authors and other owners of rights, risks provoking international trade countermeasures, places those who do comply with the law at an unfair economic advantage and obstructs the development of a normal market economy.

Licenses that Temporary Media Commissioner has issued to all broadcasters contain the following requirements with regard to protection of copyright:

“It is the obligation of the Licensee to obtain all the proper copyright clearances and permission for any and all programming (including music via CD and other means) prior to the airing of such programming by licensee. This includes reproduction, retransmission and simultaneous relaying of foreign and imported signals, be it from distant territorial broadcasters as well as satellite-derived signals and programming. In the event that the programming is legally deemed in the public domain, no such permission is required. Licensee agrees to provide TMC copies of such licensing agreements on 72 hour written notice.”

There is currently no specific Kosovo law regulating the protection of copyright. In the absence of such a law, the normal systems of copyright protection for music and software—including the collection of fees for the use of music—cannot yet be implemented in Kosovo.

However, broadcasters are required to comply with normal practices of copyright protection to the fullest extent possible. It is therefore both practical and necessary that broadcasters (1) obtain legal rights to broadcast video materials through valid contracts with authorized vendors of films and other program materials; and (2) obtain legal rights to rebroadcast programming obtained from satellite transmission or other sources by means of valid contracts with the owners of such programming or their authorized representatives.

Accordingly, the Temporary Media Commissioner, within its mandate to regulate broadcasting, requires all broadcasters to obtain such contractual rights and to provide copies of contracts upon demand.

The following Guidelines explain how the TMC intends to enforce the provision for copyright protection in its existing licenses. These Guidelines shall remain in force until modified by the TMC or its successor agency, the Independent Media Commission, or until the adoption by the Kosovo Assembly of a law on copyright protection.

The TMC recognizes that a number of local television stations currently broadcast films and other program materials obtained from illegal sources at very low cost. We further recognize that adapting to a legal regime – purchasing rights from authorized vendors – may greatly increase the cost of operation for stations that now rely on pirated materials.

Therefore, it is the TMC's intention to provide a reasonable transition period of 90 days for the implementation of these Guidelines, beginning on 1 January 2004.

TMC encourages stations to cooperate with each other and with the Association for Electronic Media in Kosovo (AMPEK) to organize group purchases of rights to packages of films and other program materials from authorized vendors in the region.

By such cooperation, individual stations that do not compete with each other may greatly reduce the costs of legally acquired video materials without suffering a competitive disadvantage.

The following Guidelines should not be read as a comprehensive interpretation of what international law and practice permit or prohibit in the use of copyright-protected materials. These Guidelines apply an existing license requirement to most urgent and specific issues in Kosovo of the broadcast of pirated films and satellite programming.

This Rule shall be interpreted and applied in accordance with United Nations Security Council Resolution 1244 of June 1999.

Guidelines

I. Fair Use of Copyrighted Material:

- A. For purposes of scheduled news reporting and informative or educational broadcasting only, broadcasters may use reasonably brief excerpts of copyright-protected materials, provided that the broadcaster gives clear attribution to the source. In general such excerpts are not to exceed 90 seconds.
- B. This standard of “fair use” shall not be interpreted to permit multiple, sequential use of news materials produced by other organizations in the absence of a valid agreement from the owners of authors’ rights of such material or their authorized agents. In no instance may such “fair use” jeopardize the economic or moral interests of the owners of copyright and related rights.

II. Broadcast of Whole or Substantial Parts of Copyrighted Material:

- A. The broadcast of whole or substantial parts of video, audio or text materials subject to copyright protection, in excess of the Fair Use standard cited in Section I, Part A, is permitted only under a valid contract with the owner of the author’s rights or with a legally authorized vendor of such materials.
- B. In addition to the requirement in paragraph A, with regard to the broadcast of video, audio, and other materials protected by copyright, the TMC requires that broadcasters obtain all such material in electronic form or on DVD, compact disks, tapes or other recorded media in a way which respects copyright obligations.

III. Obligation of the Broadcasters

- A. We remind broadcasters that TMC licenses require the preservation of a complete recorded archive of programming they broadcast for a period of 21 days. License terms also require broadcasters to provide to the TMC copies of contracts showing that they possess legal rights to broadcast copyright protected materials. Broadcasters are required to provide such contracts within 72 hours or three days of a request by TMC.



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IV. Sanctions for Failure to Comply with this Rule

- A. Sanctions for violation of copyright provisions of TMC licenses shall be determined by the TMC in a fair and proportional manner, with due consideration for a broadcaster's material effort to comply with these Guidelines. TMC will follow its procedure for handling cases in accordance with Sections 3 and 4 of UNMIK Regulation 2000/36 and according to the Temporary Media Commissioner Rules of Procedure.
- B. The TMC will allow an initial transition period of 90 days from the effective date of these Guidelines, during which broadcasters are expected to make their best effort to reach full compliance with regard to all films or other programming which they broadcast. TMC may issue warnings, but no financial penalties, for non-compliance during this 90 days period.
- C. Following the 90-day transition period, a first violation of these Guidelines shall generally result in a formal Warning. However, a financial penalty may be imposed on a station that has received prior warnings and that has shown no material progress toward compliance with these Guidelines.
- D. Financial penalties may be calculated as a multiple of the commercial cost of broadcasting the product(s) in question. This cost will be determined by the TMC in consultation with relevant vendors. A first financial penalty shall be twice the commercial value of broadcast rights for the product in question.

V. Effective Date

- A. The effective date of these Guidelines is 1 January 2004. The effective end of the transition period to full compliance is 31 March 2004.

Robert Gillette
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