



## Broadcasting Services Act

### Fact Sheet Four:

#### Amendments, cancellation and suspension of licences

##### Introduction:

According to the Broadcasting Services Act (2001), broadcasting licences may be amended at the instance of the Minister of Information if he/she considers the amendment "...necessary to reflect the true nature of the service, system or business which the licensee is conducting" or "...necessary or desirable in the public interest" (section 15(1) (c) and (d)).

In effect, this section grants the Minister absolute power to amend a licence, interfering with the nature, quality and quantity of information broadcast, by a licensee. "Public interest" is a very vague term. Its definition is left to the absolute discretion of one man, a political appointee and ruling party functionary and is thus open to abuse and subjective interpretation.

In terms of sections 16 and 25 of the Act, the Minister is granted authority and power to suspend or cancel licences, if, among other things, the licensee has:

- (1) contravened *any* provision of the BSA applicable to them
- (2) failed to comply with *any* term or condition of the licence
- (3) acted in a manner prejudicial to the defence, public safety, public order, public morality or public health of Zimbabwe; or,
- (4) the licensee has repeatedly breached one or more provisions of the applicable Code of Conduct or *any standard determined appropriate by the Minister*.

Clearly, the unfettered powers of the Minister's to grant, amend, revoke or suspend a broadcasting licence are unconstitutional. It is commonly accepted that a restriction on freedom of expression cannot be regarded as law if it is not formulated with sufficient precision to enable a citizen to regulate his/her conduct. The restriction must be specifically defined, ascertainable and understandable by all.

Therefore, limits that are not articulated with precision cannot be considered to be law. It is therefore arguable that the system of compulsory licensing contained in the BSA Act violates freedom of expression as it unduly restricts the people's right to receive and impart views and ideas without hindrance, particularly because it exceeds the limitations permitted by Section 20 (2) (iv) of the Constitution of Zimbabwe, and is not reasonably justifiable in a democratic society. All regulatory power is centralised in one person, and not an Authority, exposing the electronic media to political and competitor bias, thus compromising their operations.

Section 15(2) of the Act obliges the Minister to consult the BAZ board prior to amending any licence and to cause the Authority to advise the licensee of the reasons for the proposed amendments. The licensee is entitled adequate time to make public representations to the Minister via the BAZ board, after which, the Minister has the power to disregard any recommendations from the hearing and still suspend or cancel the license. These conditions are of no comfort nor do they make the Minister's power constitutional simply because the Minister merely has to *consult* the BAZ board, but is not obliged to follow its advice or recommendations

Further, an appeal against the decision of the Minister to amend (or cancel or deny) a licence does not suspend the Minister's decision. The licensee remains off-air while the appeal is

being heard. Clearly, the dispute resolution mechanism proposed by the BSA (sections 16 and 43) does not provide security to a potential broadcaster.

The system is deliberately cumbersome and is too strict, while at the same time affording the Minister of Information unfettered powers over broadcasters. Besides, a hearing conducted by the same person who has deemed it rightful to cancel or amend your licence means that the Minister becomes the complainant, judge and prosecutor in the same matter. This is in clear violation of Section 18(2) and (9) of the Constitution of Zimbabwe which guarantees everyone a fair hearing before a free and impartial tribunal.

Ends.