

# The Broadcasting & Radio Re-Diffusion Act

## PART I Introduction

1. Short title.

1. This Act may be cited as the Broadcasting and Radio ReDiffusion Act.

2. Interpretation.

2. (1) In this Act -

"broadcasting" means either sound broadcasting or television broadcasting or both;

"commercial matter" means matter of any description which is broadcast with the intention of influencing listeners or viewers thereto to engage or abstain from engaging in commercial relations with any person;

"commercial broadcasting licence" includes an exclusive commercial broadcasting licence and a non-exclusive commercial broadcasting licence granted under section 11F;

"Commission" means the Broadcasting Commission established under section 12;

non-commercial broadcasting service means a broadcasting service which-

(a) broadcasts matter of any description that is not intended to influence listeners or viewers thereto to engage in or abstain from engaging in commercial relations with any other person;

(b) does not broadcast for profit; and

(c) is not engaged in commerce;

"rediffusion system" means a system for the dissemination by electrical or magnetic agency over a wired network connecting a transmitting instrument with a number of receiving instruments of sound.

"sound broadcasting" means the dissemination by wireless telephony of sounds of any description with a view to the entertainment or instruction of all persons who may with the aid of any equipment listen thereto, but does not include sounds which form part of a television broadcast;

special broadcasting licence means a non-exclusive special broadcasting licence granted under section 11F to provide non-commercial broadcasting services which are relayed worldwide and are consistent with the national interest;

"subscriber television service" means the one-way transmission of video programming or other programming service to subscribers for a fee, and subscriber interaction (if any) which is required for the selection of such programming or other programming service;

"television broadcasting" means the wireless transmission of visual images or pictures, together with any sounds broadcast for reception along with those images or pictures;

"video programming" means the transmission of visual images by means of radio magnetic signals or optical agency.

(2) For the purposes of this Act a person shall be deemed to engage in

commercial broadcasting if having the control of any broadcasting apparatus -  
(a) he accepts or agrees to accept valuable consideration of any description in respect of the use of such apparatus for the making of any broadcast; or  
(b) he uses or permits to be used such apparatus for broadcasting commercial matter.

(3) For the purposes of this Act a person shall be deemed to have the control of any broadcasting apparatus if he is entitled otherwise than in the capacity of servant or agent of some other person resident in Jamaica to determine whether or not such apparatus shall be used for any lawful purpose.

## **PART II Commercial Non-Commercial Broadcasting**

3. Restriction on commercial broadcasting. 3. (1) No person shall establish or maintain any broadcasting apparatus with a view to engaging or shall engage in commercial broadcasting except under and in accordance with the terms of a commercial broadcasting licence granted under this Act.

(2) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence against this section and on summary conviction before a Resident Magistrate shall be liable to a penalty not exceeding ten thousand dollars in respect of each day on which such offence is committed or in default thereof to be imprisoned for any term not exceeding six months.

4. [Repealed by Act 43 of 1995] 4. [Repealed by Act 43 of 1995]

5. [Repealed by Act 43 of 1995] 5. [Repealed by Act 43 of 1995]

6. Licence may be exclusive or non-exclusive. 6. (1) Any commercial broadcasting licence may, subject to the provisions of this section, be either a non-exclusive or an exclusive commercial -

- (a) sound broadcasting licence; or
- (b) television broadcasting licence; or
- (c) sound and television broadcasting licence.

(2) Every commercial broadcasting licence shall authorize the holder thereof during such period as such licence remains in force to erect, establish, maintain and operate such broadcasting apparatus of every description as may be necessary to enable the holder thereof fully and effectually to engage in commercial broadcasting in accordance with the terms of his licence.

(3) Every non-exclusive commercial broadcasting licence shall authorize the holder thereof during such period as the licence remains in force to engage in commercial broadcasting concurrently with the holder of any other commercial broadcasting licence under this Act.

(4) Every exclusive commercial sound broadcasting licence shall authorize the holder thereof during such period as such licence remains in force to engage in commercial broadcasting to the exclusion of all other persons except as otherwise provided in subsection (5) and subsection (6).

(5) No non-exclusive commercial sound broadcasting licence shall be granted at any time when there is in force any exclusive commercial sound broadcasting licence unless either-

- (a) the holder of such exclusive sound broadcasting licence notifies the

Minister in writing of his consent to the grant of such non-exclusive sound broadcasting licence; or

(b) such non-exclusive sound broadcasting licence contains a term that the holder thereof shall not engage in commercial sound broadcasting until such time as such exclusive commercial sound broadcasting licence has ceased to be in force or the holder thereof has notified the Minister in writing of his consent to the holder of such non-exclusive commercial sound broadcasting licence engaging in commercial sound broadcasting.

(6) No exclusive commercial sound broadcasting licence shall be granted at any time when there is in force any non-exclusive commercial sound broadcasting licence unless such exclusive licence contains a term that it shall take effect as a non-exclusive commercial sound broadcasting licence until such time as all non-exclusive commercial sound broadcasting licences in force at the date of the grant of such exclusive sound broadcasting licence shall have ceased to be in force or shall have become vested in the holder of such exclusive sound broadcasting licence.

(7) The provisions of subsections (4), (5) and (6) shall have effect as respects exclusive commercial television broadcasting licences and non-exclusive commercial television broadcasting licences in like manner as they have effect as respects exclusive commercial sound broadcasting licences and non-exclusive commercial sound broadcasting licences.

(8) Subject to the provisions of this section, an exclusive commercial sound broadcasting licence may be granted notwithstanding that there is in force an exclusive commercial television broadcasting licence; and an exclusive commercial television broadcasting licence may be granted notwithstanding that there is in force an exclusive a commercial sound broadcasting licence.

6A. Non-commercial broadcasting services. 6A. (1) Subject to subsection (2), no person shall establish or maintain any broadcasting apparatus to engage in non-commercial broadcasting services except under and in accordance with the terms of a special broadcasting licence granted under this Act and such licence shall be non-exclusive.

(2) A person referred to in subsection (3) shall be eligible to be granted a special broadcasting licence.

(3) A person mentioned in subsection (2) is a person who promotes the values and interests of a foreign country in the provision of non-commercial broadcasting services which originate outside of Jamaica, are relayed worldwide and are consistent with the national interest of Jamaica.

7. Unlawful interference with cable wire. 7. Every person who unlawfully and maliciously or fraudulently cuts, injures, taps or interferes with any cable or wire connected with or used in connection with any broadcasting apparatus or other apparatus or equipment utilized for commercial broadcasting by the holder of a commercial broadcasting licence or for non-commercial broadcasting by the holder of a special broadcasting licence in accordance with the terms of such licence shall be guilty of an offence against this Act, and shall be liable on summary conviction thereof before a Resident Magistrate to a fine

not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding two years.

### **PART III Radio Re&shy; Diffusion.**

8. Control of radio re-diffusion. 8. (1) No person shall establish, maintain or operate in Jamaica any radio rediffusion system except under and in accordance with the terms of a licence granted under this Act.

(2) Every person who contravenes the provisions of subsection (1) shall be guilty of an offence against this section and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding one thousand dollars or to imprisonment for any term not exceeding six months in respect of each day on which such offence is committed.

9. [Repealed by Act 43 of 1995] 9. [Repealed by Act 43 of 1995]

10. [Repealed by Act 43 of 1995] 10. [Repealed by Act 43 of 1995]

11. Unlawful interference with re-diffusion system. 11. Every person who unlawfully and maliciously or fraudulently cuts, injures, taps or connects any wired extension or apparatus or hearing device to or otherwise interferes with any feeder wiring or high level link wiring or any wiring to or on or in any premises or any other wiring or cable or any insulator or support for wiring or any pole or apparatus or loudspeaker or transformer or other part of any radio rediffusion system operated by the holder of a licence under this Part in accordance with the terms of such licence shall be guilty of an offence against this Act, and shall be liable on summary conviction thereof before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment with or without hard labour for a term not exceeding two years.

### **PART IIIA Subscriber Television Service**

11A. No person to operate subscriber television service without licence. 11A.

(1) No person shall establish, maintain or operate any subscriber television service except under and in accordance with the terms of a licence granted under this Act.

(2) Every person who contravene the provisions of subsection (1) shall be guilty of an offence against this section and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Where a person has been convicted of an offence under subsection (2), the Court may, in addition to any other penalty, order that any equipment used in committing the offence be forfeited to the Crown.

11B. Person eligible for licence to operate subscriber television service.

11B. (1) A company referred to in sub-section (2) shall be eligible to be licensed to offer subscriber television service to the public.

(2) A company mentioned in sub-section (1) is a company which -

(a) is incorporated in Jamaica; and

(b) is controlled by persons who are citizens of Jamaica or a member of the Caribbean Community.

(3) Any company which -

(a) provides telecommunication service and has a monopoly in any area of that service; or (b) is an approved organization as defined in section 2 of the Office of Utility Regulation Act,

shall not be eligible to apply for or be granted any licence to operate subscriber television service.

(4) For the purposes of subsection (2) (b) "control" in relation to a company means the power of a person to secure by means of the holding of shares or the possession of voting power in or in relation to that company, or by any agreement or by virtue of any other powers conferred by the articles of association or other document regulating the company, that the affairs of the company are conducted in accordance with the wishes of that person.

11C. Offences 11C. (1) A person who knowingly subscribes to subscriber television service supplied by a person who is not licensed to operate such service commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) Every person who unlawful and maliciously or fraudulently -

(a) cuts, injures, taps or interferes with any cable or wire connected with any equipment or apparatus; or

(b) interferes with any wireless sign,

utilized for providing subscriber television service commits an offence and is liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred thousand dollars or to imprisonment for term not exceeding two years or to both such fine and imprisonment.

## **PART IIIB Licences**

11D. Application for licences. 11D. (1) Every person who is desirous of -

(a) engaging in commercial broadcasting; or

(b) establishing, maintaining or operating a radio re-diffusion system shall make an application to the Minister in the prescribed form for a licence.

(2) A company referred to in section 11B (1) which is desirous of offering sub-scriber television service shall make an application to the Minister in the prescribed form for a licence.

(2A) A person who is desirous of providing non-commercial services shall make an application to the Minister in the prescribed form for a special broadcasting licence.

(3) An application under this section shall be accompanied by the prescribed application fee.

11E. Procedure relating to application for licence. 11E. (1) The Commission shall process applications for licences under this Act and shall make such recommendation to the Minister in relation thereto as it thinks fit.

(2) For the purposes of making a recommendation under subsection (1) the Commission -

(a) shall determine whether or not the applicant satisfies the prescribed requirements for commercial or non-commercial broadcasting, radio re-diffusion or the operation of a subscriber television service, as the case may be; and  
(b) may, if it thinks necessary, hear oral submissions from the applicant.

11F. Grant or refusal etc. of licence. 11F. (1) The Minister, on receipt of a recommendation under subsection (1), may -

(a) grant a licence on such terms and subject to such conditions as he thinks fit;  
(b) refer the recommendation back to the Commission for further consideration; or  
(c) refuse to grant the licence.

(2) Where the Minister grants a licence under subsection (1), the applicant shall be notified in writing forthwith and the licence shall be issued to the applicant upon payment by him to the Commission of the prescribed licence fee.

(3) Where the Minister decides to refuse to grant a licence under subsection (1) he shall, within thirty days of that decision, notify the applicant in writing of the reasons for such refusal.

(4) An applicant may, in writing within fourteen days after receipt of such notification request the Minister to hear him in respect of the application and the Minister shall hear any applicant who so requests.

(5) After hearing an applicant the Minister may make such decision as he thinks fit.

(6) A licensee may, within a period of six months before the expiry of his licence, make an application in the prescribed form to the Minister for a renewal of the licence and the application shall be accompanied by the prescribed fee.

(7) The provisions of section 11E and subsections (1) to (5) of this section shall apply to an application for the renewal of a licence.

11G. Terms of licences. 11G. (1) The provisions of section 6 shall apply to every commercial broadcasting licence granted under this Act and every such licence shall -

(a) authorize the holder thereof to establish, maintain and operate a transmitting station and to engage in commercial broadcasting;  
(b) specify the type of broadcasting to which it relates; and subject to section 22, be valid for such period as may be specified in the licence.

(2) Every licence to establish, maintain or operate a radio re-diffusion system shall, subject to section 22, be valid for such period as may be specified therein and -

(a) shall specify the area in which such system may be established;  
(b) may be either a non-exclusive radio re-diffusion licence or an exclusive radio re-diffusion licence, as the case may be.

(3) Every licence granted in respect of subscriber television service shall, subject to section 22, be valid for a period of six years.

(4) Subject to subsection (5), it shall be a term of every licence granted under this Act that the licensee shall comply with such terms and conditions as may be specified therein.

(4A) Every special broadcasting licence shall, subject to section 22-

(a) be valid for a period of six years;

(b) be non-transferrable; and

(c) be subject to cancellation at the direction of the Minister in the national interest.

(4B) It shall be a term of every special broadcasting licence that the licensee shall

(a) pay the prescribed licence fee to the Commission forthwith upon the grant of the licence thereafter, while the licence continues in force, annually on or before each anniversary of such grant;

(b) forthwith upon any change in its membership, notify the Commission in writing of that change;

(c) comply with the relevant provisions of the Radio and Telegraph Control Act and the Telecommunications Act.

(5) It shall be a term of every licence granted for subscriber television service that the licensee shall -

(a) pay the prescribed licence fee to the Commission forthwith upon the grant of the licence and thereafter, while the licence continues in force, annually on or before each anniversary of such grant;

(b) forthwith upon any change in the nationality of or control by its members, notify the Minister in writing of that change.

(6) If a person who is granted a licence to provide subscriber television service does not provide that service within a period of six months from the grant of the licence or such longer period as the Minister may allow, the licence shall lapse and thereupon shall be rendered void.

(7) Where a licence is rendered void under subsection (6) the Commission shall so notify the licensee in writing and shall require the licensee to return the licence to the Commission within fourteen days after receipt of the notification.

(8) A licensee who fails to comply with a requirement under subsection (7) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine of ten thousand dollars for each day on which the licence is not returned to the Commission.

## **PART IIIC Appeals**

11H. Appeals 11H (1) Subject to subsection (1A), a person aggrieved by the decision of the Minister to refuse to grant or renew a licence under this Act may appeal to the Appeal Tribunal appointed by the Minister pursuant to subsection (3). (1A) No appeal shall lie to the Appeal Tribunal against the decision of the Minister to refuse to grant or renew a special broadcasting licence on the ground that such refusal is necessary in the national interest.

(2) An appeal shall lie from the Appeal Tribunal to the Court of Appeal on a

point of law.

(3) The provisions of the Second Schedule shall have effect as to the constitution of the Appeal Tribunal and otherwise in relation thereto.

(4) The Minister may make rules prescribing procedures relating to appeals to the Appeal Tribunal.

#### PART IV The Broadcasting Commission

12. Establishment of the Broadcasting Commission. 12. (1) There shall be established for the purposes of this Act a body to be called the Broadcasting Commission.

(2) The Commission shall be a body corporate to which the provisions of section 28 of the Interpretation Act shall apply.

(3) The provisions of the First Schedule shall have effect with regard to the constitution of the Commission and otherwise in relation thereto.

13. Appointment of staff. 13. (1) The Commission may appoint and employ at such remuneration and on such terms and conditions as it thinks fit a secretary, and such officers, agents and servants as it may consider necessary for the proper carrying out of its functions under this Act.

(2) The GovernorGeneral may, subject to such conditions as he may impose, approve of the appointment of any officer in the service of the Government to any office with the Commission, and any officer so appointed shall, during such appointment, in relation to pension, gratuity or other allowance, and to other rights as a public officer, be treated as continuing in the service of the Government.

14. Expenses of the Commission. 14. The expenses of the Commission (including remuneration of members and staff thereof) shall be defrayed out of sums provided from time to time for the purpose by Parliament and from fees paid pursuant to this Act.

15. Accounts and audit. 15. The Commission shall keep proper accounts of its transactions and such accounts shall be audited annually by an auditor to be approved by the Minister.

16. Functions of the Commission. 16. It shall be the duty of the Commission, with a view to the carrying out of the provisions and objects in this Act -

(a) to advise the Minister on any matter within its knowledge or on which the Minister may seek its advice, and, without prejudice to the generality of the foregoing, to advise in relation to -

(i) the terms and conditions on which licences may be granted; and  
(ii) the allocation of time to broadcasting of programmes which are of Jamaican origin or performed by Jamaicans or which are particularly relevant or significant to Jamaica;

(b) to conduct, or cause to be conducted, surveys for the purpose of ascertaining the extent to which matter transmitted or relayed from any station operated by a licensee is being received, or is capable of being received, in any geographical area within Jamaica;