

ARTICLE 19

# Venezuela: Law on Social Responsibility of Radio, Television and Electronic Media

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December 2011

Legal analysis

## Executive summary

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In November 2011, ARTICLE 19 analyzed the Law on Social Responsibilities on Radio, Television and Electronic Media of the Bolivarian Republic of Venezuela for its compliance with international standards on freedom of expression. The Law, published on 22 December 2010 is an amendment to the 2004 Law on Social Responsibility on Radio and Television. While proponents had applauded the 2004 Law as modernising the country's communication structure, critics had seen it as a naked attempt to gain control over private broadcast media.

The 2010 amended Law extends the power of the state to control electronic media in the same way as traditional broadcasting. The Law aims at “establishing social responsibility” for all participants and “to set a balance between their duties, liberties and rights”. While these purposes are recognised as legitimate by international law, ARTICLE 19 is concerned by four aspects of the law.

*Firstly*, the Law includes no safeguards against disproportionate and arbitrary restrictions on freedom of expression. In particular, there is no requirement for restrictions to meet the three-party test established by international law. In light of the severity of the provided sanctions, and the unnecessarily intrusive nature of certain restrictions, such an omission has troubling implications for freedom of expression.

*Secondly*, the Law fails to secure the independence of the broadcast regulators. While several regulatory bodies are established to implement the law, all are either part of the government or controlled by the government. This contradicts international standards and further exposes media regulators to arbitrary and politically-motivated decisions.

*Thirdly*, the Law contains some unclear prohibitions – with sanctions in place for “[encouraging] anxiety amount citizenry”, or “[disregarding] legitimate authorities” - which risk being used arbitrarily to place broadcast media under political control and to limit media pluralism.

Finally, the Law contains broad provisions for state control over the internet, with electronic media being regulated in the same way as traditional broadcasting. Such an approach to Internet regulation impedes both the right to freedom of expression and the right to privacy.

Among its recommendations, ARTICLE 19 therefore calls on the Venezuelan Government to change the Law on Social Responsibilities on Radio, Television and Electronic Media so as to:

- Remove unnecessarily restrictive interferences with freedom of expression from the law, and introduce legal safeguards against any future abuses.
- Ensure broadcast regulatory bodies are fully independent from the government and accountable to the public.
- Clearly define its prohibitions and restrictions on freedom of expression.
- Pursue a different and less restrictive approach to the regulation of the Internet.



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## About the ARTICLE 19 Law Programme

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The ARTICLE 19 Law Programme advocates for the development of progressive standards on freedom of expression and access to information at the international level, and their implementation in domestic legal systems. The Law Programme has produced a number of standard-setting publications which outline international and comparative law and best practice in areas such as defamation law, access to information and broadcast regulation.

On the basis of these publications and ARTICLE 19's overall legal expertise, the Law Programme publishes a number of legal analyses each year, Comments on legislative proposals as well as existing laws that affect the right to freedom of expression. This analytical work, carried out since 1998 as a means of supporting positive law reform efforts worldwide, frequently leads to substantial improvements in proposed or existing domestic legislation. All of our analyses are available at <http://www.article19.org/resources.php/legal/>.

If you would like to discuss this analysis further, or if you have a matter you would like to bring to the attention of the ARTICLE 19 Law Programme, you can contact us by e-mail at [legal@article19.org](mailto:legal@article19.org).

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## Summary of Recommendations

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ARTICLE 19 calls for the review of the Law on Social Responsibilities on Radio, Television and Electronic Media as follows, in order to bring it in line with international freedom of expression standards.

The Law should include a special provision requiring that restrictions on the right to freedom of expression meet the three-part legality test established by Article 13 of the American Convention of Human Rights and Article 19 of the International Covenant on Civil and Political Rights;

The enforcement bodies should be obliged to ensure that all restrictions provided by the Law meet the three-part legality test;

The enforcement bodies should impose proportionate sanctions which restrict the right freedom of expression as little as possible;

The following obligations on radio and TV broadcasters, which unnecessarily interfere with their right to freedom of expression, should be removed from the Law:

The obligation under Article 4 for all radio and TV broadcasters to play the national anthem;

The obligation under Article 11 for pay-per-view radio and TV suppliers to broadcast government television services on a free-of-charge basis;

The obligation under Article 14 for all radio and TV broadcasters to broadcast a minimum of three hours programming for children;

The obligation under Article 10 for all broadcast services to broadcast government messages and speeches on a free of charge basis;

The obligation under Article 17 for pay-per-view broadcast services to make available a channel for the national executive branch governing communication and information;

The obligation under Article 18 for all radio and television broadcasters to publish in print media their programmes stating their type, broadcasting time and date, and classified-content elements;

The broadcast regulatory bodies established under the Law should be independent from the government and accountable to the public;

The Law should clearly define the prohibitions and restrictions to freedom of expression including the acts of “[encouraging] citizen anxiety”; disturbing the public order, use of anonymity and inciting murder and / or promoting the violation of legal order;

Internet regulation should not be subject to radio and TV broadcasting rules and principles;

Requests for the restriction of access to online data should be subject to proper legal process by an independent body/court;

Electronic media providers should not be responsible for failures to execute illegal requests for restriction of access to electronic messages.

## Introduction

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This analysis contains ARTICLE 19's review of the compliance of Venezuela's Law on Social Responsibilities on Radio, Television and Electronic Media<sup>1</sup> ("the Law") with international freedom of expression standards.

ARTICLE 19 welcomes the opportunity to analyse the Law from a freedom of expression perspective, part of an ongoing effort by the organisation to improve the legislative protection of media freedom in the country. ARTICLE 19 has been actively involved in media freedom advocacy in Venezuela: we monitor and report on legal developments with impact on freedom of expression and access to information. In 2011 we conducted a fact finding mission on freedom of expression violations. We campaign before international bodies such as the UN Human Rights Council and the Inter-American Court of Human Rights to ensure protection of freedom of expression in Venezuela and organised trainings for domestic free speech activists.

The Law is an amendment to the Law on Social Responsibility on Radio and Television, which come into force on 7 December 2004. The initial 2004 Law was adopted following the unsuccessful coup *d'état* against the president Hugo Chavez in 2002. As the powerful private media networks in Venezuela supported the military coup the law had been seen as an attempt by Hugo Chavez's administration to gain control over the private broadcast media.

Public opinion about the predecessor of the present Law is contradictory. Some argue that it "fills one of the most important gaps" in Venezuela's media law, and that it "modernises the country's communication structure;"<sup>2</sup> others, including members of the private media and opponents of President Chavez, believe that it is a repressive tool designed to control them.<sup>3</sup>

The amendment to the 2004 Law on Social Responsibility on Radio and Television was passed by Venezuela's Parliament in December 2010. This amendment adds the words "Electronic Media" to the title of the original law and gives powers to the state to control Internet-based media.

The Law consists of 38 provisions divided into seven chapters. These include general and temporary provisions, and special provisions dealing with categorisation of broadcasting programmes; time slots; content restrictions; the public access to pay-per-view; ultra high frequency and very high frequency broadcast services; community television; protection of national production and public participation; the mandate and operation of broadcast bodies supervising programme content; promotion and distribution of national production; enforcement proceedings; and sanctions for violations of the legal regimes.

The Law states that its aims at establishing "social responsibility" for all participants in the broadcasting sector be they radio or TV providers, sponsors, producers or viewers and listeners, and at setting "a balance between their duties, liberties and rights".<sup>4</sup>

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<sup>1</sup> This analysis is based on the unofficial translation of the Law from Spanish to English in October 2011. This English translation is reproduced in the Annex to this analysis. ARTICLE 19 takes no responsibility for the accuracy of these translations or for comments based on mistaken or misleading translation.

<sup>2</sup> Angel Luis Olivera Soto, *Prior Restraints in Venezuela's Social Responsibility on Radio and Television Act: Are they Justified?*, The Geo. Wash. Int'l L. Rev., Vol. 40p. 429.

<sup>3</sup> *Ibid.*

<sup>4</sup> Article 1 of the Law.

To achieve its purpose the Law set up rules for the protection of minors; the preservation of national culture, ethnic languages and music; the protection of public health; public access to broadcast services; nationwide distribution of announcements by the President; and messages by the Ministry of Communication and Information. In addition it creates public bodies to enforce the new broadcast regime.

Although the language of the Law referring to “social responsibility” and “radio and television democratisation” is unique and unseen in other similar broadcasting laws round the world, its purposes are legitimate inasmuch as the same interests are protected by international law. Likewise the EU Audiovisual Directive<sup>5</sup> aims at the protection of minors and consumers and covers advertising and the preservation of cultural diversity. However, from a freedom of expression viewpoint, the Law is problematic for four reasons:

1. The Law fails to secure the independence of the broadcast regulators;
2. The Law does not include safeguards against disproportionate and arbitrary restrictions on expression;
3. The Law it contains provisions for state control over the internet;
4. The Law contains some unclear prohibitions – for example, the prohibition on broadcasting messages “[encouraging] anxiety among citizenry”, or “[disregarding] legitimate authorities” - which can be used arbitrarily to pursue and punish critical opinion toward the government. As a result of these shortfalls the law can be used by the authorities to place broadcast media under political control and limit media pluralism.

This analysis highlights the positive aspects of the Law, identifies and explains its shortfalls, and makes recommendations aiming at safeguarding freedom of speech in Venezuela. The analysis is made on the basis of international human rights law and comparative media law. It also draws from ARTICLE 19’s *Access to the Airwaves, Principles on Freedom of Expression and Broadcast Regulation*<sup>6</sup>, a compilation of key international principles for protection of broadcasting freedom.

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<sup>5</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive); available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>.

<sup>6</sup> ARTICLE 19, March 2002, London; available at <http://www.article19.org/data/files/pdfs/standards/accessairwaves.pdf>.

# International Standards on Freedom of Expression and Broadcasting

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The right to freedom of expression, including the right to freedom of information, is a fundamental human right. The full enjoyment of this right is central to achieving individual freedoms and to developing democracy, particularly in countries transitioning from autocracy to democracy. Freedom of expression is a necessary condition for the realisation of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of all human rights.

The Law engages a number of international human rights provisions that form the basis of the legal analysis in the following section. This section identifies those international human rights provisions most relevant to the protection of freedom of expression and in particular the broadcasting regulations.

The *Universal Declaration of Human Rights*<sup>7</sup> (“UDHR”) is generally considered to be the flagship statement of international human rights standards, binding on all States as a matter of customary international law. Article 19 of the UDHR guarantees the right to freedom of expression in the following terms:

Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The *International Covenant on Civil and Political Rights* (“ICCPR”) is an international treaty, ratified by Venezuela in 1978, which imposes legally binding obligations on State Parties to respect a number of the human rights set out in the UDHR.<sup>8</sup> Article 19 of the ICCPR guarantees the right to freedom of opinion and expression in terms very similar to those found in Article 19 of the UDHR.

Guarantees of freedom of expression are also found in all three major regional human rights systems. As a state party of *the American Convention on Human Rights*<sup>9</sup>, Venezuela is legally bound to respect Article 13 guaranteeing the right to freedom of expression as follows:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

Respect for the rights or reputations of others; or

The protection of national security, public order, or public health or morals.

The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

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<sup>7</sup> Adopted by the UN General Assembly on 10 December 1948, Resolution 217A(III).

<sup>8</sup> UN General Assembly Resolution 2200A(XXI) of 16 December 1966, in force 23 March 1976.

<sup>9</sup> Adopted 22 November 1969, in force 18 July 1978.



Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

Similar guarantees for the right to freedom of expression are provided by Article 9 of the *African Charter on Human and Peoples' Rights*<sup>10</sup> and Article 10 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms*<sup>11</sup>. Although the decisions and authoritative statements adopted by regional human rights bodies outside of the Americas are not binding on Venezuela, they provide persuasive precedents for the scope and implications of the right to freedom of expression.

Freedom of expression is among the most important of the rights guaranteed by the ICCPR and other international human rights treaties, in particular because of its fundamental role in underpinning democracy. The UN Human Rights Committee, the body established to monitor the implementation of the ICCPR, has stated: "The right to freedom of expression is of paramount importance in any democratic society."<sup>12</sup> The European Court of Human Rights has held:

Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man.<sup>13</sup>

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media and public service broadcasters. The Inter-American Court of Human Rights, for example, has stated: "It is the mass media that make the exercise of freedom of expression a reality."<sup>14</sup> The European Court of Human Rights has referred to "the pre-eminent role of the press in a State governed by the rule of law"<sup>15</sup> and has recognised that the press plays a vital role of 'public watchdog'.<sup>16</sup> The UN Human Rights Committee has stressed the importance of free media to the political process:

[T]he free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.<sup>17</sup>

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<sup>10</sup> Adopted 26 June 1981, in force 21 October 1986.

<sup>11</sup> Adopted 4 November 1950, in force 3 September 1953.

<sup>12</sup> *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

<sup>13</sup> *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, 1 EHRR 737, Para. 49. Statements of this nature abound in the jurisprudence of courts and other judicial bodies around the world.

<sup>14</sup> *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 34.

<sup>15</sup> *Thorgeir Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, 14 EHRR 843, para. 63.

<sup>16</sup> *Ibid.*

<sup>17</sup> UN Human Rights Committee General Comment No. 25, issued 12 July 1996.

## Analysis of the Law

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### 1. Positive features of the Law

From a freedom of expression viewpoint, ARTICLE 19 welcomes the following aspects of the Law as positive features of the legislation:

- Explicitly requiring that the interpretation and application of the law's provisions be subject to the constitutional principles of freedom of expression and free and pluralistic communication, and the ban of prior censorship (Article 2);
- Pursuing objectives of the broadcasting regulation in line with the legitimate objectives established by Article 19, paragraph 3 of the ICCPR: these include “[securing] respect for freedom of expression and information without censorship”; “[furthering] the actual exercise of and respect for human rights”; “[facilitating] the broadcasting of information and materials intended for minors”; “[furthering] the broadcasting of national productions and [encouraging] the development of the audiovisual national industry”; “[facilitating] the dissemination of the values of the Venezuelan culture”; and “[furthering] public participation” (Article 3);
- Respecting indigenous and ethnic languages by providing that the broadcast content specially directed to native people and communities can be made in native languages (Article 4);
- Ensuring accessibility of programmes for people with disabilities by providing that broadcast messages shall have sub-titles and be translated into Venezuelan sign language (Article 4);
- Supporting public participation in the broadcast sector by recognising the right of viewers and listeners’ to defend their “communication interests and rights” through associations (Article 12);
- Supporting national production by setting a daily minimum requirement of national production programming for any radio and television broadcaster (Article 14) and creating a social responsibility fund to finance projects developing and encouraging national production (Article 24);
- Supporting Venezuelan music by setting out a requirement for broadcasting Venezuelan music (Article 14);
- Protecting public health by setting out a prohibition on the advertisement of cigarettes and tobacco products and alcoholic drinks (Article 9);
- Protecting minors by creating a programme rating systems and programme watershed (Articles 6 and 7);
- Taking measures for the realisation of the constitutional duty<sup>18</sup> of the media to educate by setting up requirements for the broadcasting programmes for children (Article 14);

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<sup>18</sup> Article 108 of the Constitution of Venezuela provides: “The communications media, public and private, shall contribute to civil education.”

- Protecting viewers and listeners' rights by regulating the use of commercial messages, including product placement and advertising, and prohibiting the broadcasting of content associated with certain kinds of products and services (Article 7).

## 2. Problematic aspects of the Law

However, ARTICLE 19 finds the following aspects of the Law are highly problematic and in violation of the international freedom of expression guarantees:

### a) Failure to Provide Safeguards Against Disproportionate and Arbitrary Restriction

The Law excessively restricts broadcasting content and gives opportunities for unnecessary and disproportionate limitations on media freedom.

ARTICLE 19 believes that one of the biggest weaknesses of the Law is its failure to comply with international law requirements concerning restrictions on free expression. In order to ensure protection against arbitrary or disproportionate interferences with the right to freedom of expression, international law requires that all limitations on this right meet a three-part test.

The test is established in by Article 19 (3) of the ICCPR, which states:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights and reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

*First*, the restriction must be provided by law. *Second*, the restriction should pursue one of the explicitly mentioned aims such as respect of the rights and reputation, protection of national security, public order, public health or morals. *Third*, the restriction should be necessary to secure the legitimate aim. The same test is incorporated in all regional human rights treaties<sup>19</sup> and applied by international and regional human rights bodies.<sup>20</sup>

The three-part test safeguards the right to freedom of expression from arbitrary and overbroad restrictions.<sup>21</sup> States are therefore obliged to ensure that laws and decisions interfering with the right to freedom of expression or media freedom meet the three-part test.

In violation of these requirements, the Law does not require that restrictions on the right to freedom of expression meet the three-part test established by international law. The most important consequence of this omission is the risk it creates that broadcasters will receive disproportionately severe sanctions. ARTICLE 19 notes that International law requires that any sanctions are commensurate with the seriousness of the offence in question. We point out that the Inter-American Court of Human Rights

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<sup>19</sup> For example, see Article 13, paragraph 2 of the American Convention of Human Rights or Article 10, paragraph 2 of the European Convention of Human Rights and Fundamental Freedoms.

<sup>20</sup> For example, the test is applied by UN Human Rights Committee in the case of *Mukong v. Cameroon*, 21 July 1994, Communication No.458/1991, and by the European Court of Human Right in the case of *The Sunday Times v. United Kingdom*, 26 April 1979, para. 45.

<sup>21</sup> See the case of *Herrera Ulloa v Costa Rica*, 2004, Inter-Am. Ct. H.R.(ser. C) No. 107, para 130.

has established certain prerequisites for the imposition of sanctions, stating that “[t]he state should choose the least restrictive position available to limit a protected right.”<sup>22</sup> Likewise, from a comparative perspective, the European Court of Human Rights - among other regional courts - assess the proportionality of sanctions by looking at the fairness of the proceedings, the procedural guarantees offered, and the nature and severity of the penalties.<sup>23</sup>

The Law includes no such requirements with respect to the sanctioning powers of enforcement bodies. Noting the nature and severity of the provided sanctions, which include suspension of licences and licence revocation, we are concerned that this omission may lead to disproportionate and excessive restrictions in on freedom of expression.

Aside from the lack of safeguards against disproportionate and arbitrary restrictions, many provisions of the Law unnecessarily limit the right to freedom of expression. The following requirements amount to unnecessary interferences with the right to freedom of expression:

The obligation for all radio and TV broadcasters to play the national anthem: According to Article 4 of LSRTEM broadcasters should play the national anthem when introducing and ending their daily programme or twice a day (at 6 am and 12 pm) if they offer 24-hour programming. Broadcasters at boarder areas, island and sea locations are obliged to play the national anthem at least three times a day.

The obligation for pay-per-view radio and TV suppliers to broadcast government television services on a free-of-charge basis<sup>24</sup>: Apart from being unnecessary this obligation does not pursue any of the legitimate aims for detailed above. While a requirement for pay-per-view service providers to broadcast news can be regarded as necessary for public information it is unnecessary to oblige these providers to broadcast all government television services.

The obligation for all radio and TV broadcasters to broadcast a minimum of three hours of programmes for children<sup>25</sup>: Unseen in other broadcasting laws around the world, this requirement means that even specialised channels such as music, sport or news channels will have to hire staff and make programmatic changes to provide for children. Although this requirement may pursue a noble purpose such as the education of children, it is unnecessary to mandate that all channels broadcast children programmes. In other countries, for example, the same purpose is achieved by special children channels.

The obligation for all broadcast providers to broadcast government messages and speeches<sup>26</sup>: This obligation gives the government the power to use all private channels at their own discretion. The Law does not set a limit on the time and specify the nature of these mandatory broadcasts, meaning that the government may take as much time as it wishes broadcasting propaganda on private media programmes. From a comparative law viewpoint, the obligation to broadcast public announcements and messages free of charge normally only applies to public broadcasters and for messages with a specific content.<sup>27</sup> The broad obligation on all broadcast providers to broadcast government messages

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<sup>22</sup> See the case of *Herrera Ulloa v Costa Rica*, para. 121, *ibid.* 21.

<sup>23</sup> See, for example, *Kyprianou v Cyprus*, Judgement of the Grand Chamber of 15 December 2005, Application 73797/01.

<sup>24</sup> Article 11 of the Law.

<sup>25</sup> Article 14 of the Law.

<sup>26</sup> Article 10 of the Law.

<sup>27</sup> For example, see Article 51 and 52 of the Bulgarian Radio and Television Law:

and speeches is an interference with the editorial independence of broadcasters, since it means that the government instead of editors decides what and when to broadcast certain material. Moreover, this obligation is unfair in view of the existence of government broadcast channels which already air all government messages and announcements on a free of a charge basis.

The obligation for pay-per-view broadcast services to make available a channel for the national executive branch agency governing communication and information for the purposes of transmitting a national production audiovisual service<sup>28</sup>: This requirement clearly amounts to an unnecessary interference with the broadcasting policy of private broadcasters, since it does not make sense why viewers should be made to pay a cable provider for a channel they can watch for free. Moreover this requirement is unfair because it obliges providers of pay-per-view broadcast services to make available this channel on a free of charge basis.

The obligation for radio and television broadcasters to publish in the print press their programme guides including classified-content elements<sup>29</sup>: Noting that broadcasters worldwide decide alone whether and how to advertise their programme, we consider that this obligation is not necessary. Moreover we are concerned that the obligation to provide programme information in advance may be used by the authorities to control the media and prepare for interference if a specific programme is likely to be critical of them.

ARTICLE 19 calls on the Venezuelan Government to introduce legal safeguards against disproportionate and arbitrary restrictions on the right to freedom of expression. The specific legal safeguards are listed below as recommendations.

#### **Recommendations:**

- The Law should include a special provision requiring that restrictions on the right to freedom of expression meet the legality test established by Article 13 of the ACHR and Article 19 of the ICCPR. The restrictions should i) be based in law, ii) pursue one of the following aims: respect for the rights or reputations of others; protection of national security, public order, or public health or morals, and iii) be strictly necessary for the achievement of the legitimate aims
- The enforcement bodies should be obliged to ensure that all restrictions provided by the Law meet the three-part legality test
- The enforcement bodies should impose proportionate sanctions which restrict the right freedom of expression as little as possible
- The following obligations on radio and TV broadcasters, which unnecessarily interfere with their right to freedom of expression, should be removed from the Law:

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Art. 51. The Bulgarian National Radio and the Bulgarian National Television shall be obligated to provide upon demand, forthwith and free of charge, program time for official announcements by representatives of state bodies in cases of disaster or imminent threat to the lives, security, and health of the population, or of individuals.

Art. 52. (1) The President of the Republic, the Chairman of the National Assembly, the Prime Minister, the Prosecutor General, and the heads of the Constitutional Court, the Supreme Administrative Court, and the Supreme Court of Cassation shall have the right of address on the Bulgarian National Radio and Bulgarian National Television.

<sup>28</sup> Article 17 of the Law.

<sup>29</sup> Article 18 of the Law.

- The obligation under Article 4 for all radio and TV broadcasters to play the national anthem
- The obligation under Article 11 for pay-per-view radio and TV suppliers to broadcast government television services on a free-of-charge basis
- The obligation under Article 14 for all radio and TV broadcasters to broadcast a minimum of three hours programming for children;
- The obligation under Article 10 for all broadcast services to broadcast government messages and speeches on a free of charge basis;
- The obligation under Article 17 for pay-per-view broadcast services to make available a channel for the national executive branch governing communication and information, for the purposes of transmitting a national production audiovisual service.
- The obligation under Article 18 for all radio and television broadcasters to publish in print media their programmes stating their type, broadcasting time and date, and classified-content elements.

*b) Lack of Independence of Governing Bodies Provided by Law*

ARTICLE 19 finds problematic that all governing bodies established by the Law are controlled by the government.

The Law establishes several bodies to implement and supervise the execution of the law. These include:

The National Telecommunication Commission<sup>30</sup>: the state broadcast regulator under the control of the Director General of the National Commission of Telecommunications. It is responsible for the promotion of policies and the implementation of radio and television social responsibility regulation, and can institute proceedings under administrative law arising from violations of this act and impose sanctions. It can also order, modify or revoke precautionary measures;

Television Programming and Radio Programming Commissions<sup>31</sup>: headed by a representative of the Ministry of Communication and Information and consist of representatives of broadcast service suppliers, independent national producers and viewers and listeners' organisations. The commission assigns radio and TV airtime to independent producers;

Board of Social Responsibility<sup>32</sup>: chaired by the General Director of the National Telecommunication Commission and composed of representatives from the ministries of communication, culture and education; the consumers' protection agency; the national women's institute; the national child protection agency; a representative of the Church; representatives of viewers and listeners' associations; and a teaching professional from the communication schools. The Social Responsibility Board has several responsibilities, including the adoption of technical standards pursuant to the Law, the imposition of sanctions pursuant to the act, and the authorisation of expenses from the Social Responsibility Fund. Its decisions are made by a majority vote

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<sup>30</sup> Article 19 of the Law giving new powers to National Telecommunication Commission.

<sup>31</sup> Article 15 of the Law.

<sup>32</sup> Article 20 of the Law.

All regulatory bodies established by the Law are either part of the government or controlled by the government. For this reasons these bodies are not independent. This is in contradiction of international standards which provide for independence of all broadcast regulatory bodies. In this respect we refer to Principle 10 of ARTICLE 19's *Access to the Airwaves, Principles on Freedom of Expression and Broadcast Regulation*<sup>33</sup> which states:

*Principle 10: Independence*

All public bodies which exercise powers in the areas of broadcast and/or telecommunications regulation, including bodies which receive complaints from the public, should be protected against interference, particularly of a political or commercial nature. The legal status of these bodies should be clearly defined in law. Their institutional autonomy and independence should be guaranteed and protected by law, including in the following ways:

- specifically and explicitly in the legislation which establishes the body and, if possible, also in the constitution;
- by a clear legislative statement of overall broadcast policy, as well as of the powers and responsibilities of the regulatory body;
- through the rules relating to membership;
- by formal accountability to the public through a multi-party body; and
- in funding arrangements.

Further safeguards for the independence of regulatory bodies include:

- an explicit provision in the legislation that regulatory bodies are independent and the interference with their activities and members is prohibited;
- a clear stipulation in the law of the policy objectives underpinning broadcast regulation;
- setting out status and mandate of the members of the regulatory bodies including
- the manner of nomination and appointment of the members,
- rules of incompatibility,
- terms of office;
- the manner of termination of office;
- payment and reimbursement of the members;
- a clear formulation of the remit and responsibility of regulatory bodies;
- detailed rules of accountability of regulatory bodies;
- a guarantee that all decisions of regulatory bodies affecting individuals are subject to judicial review;

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<sup>33</sup> *Supra note 5.*

- regulation of a funding scheme which ensures adequate funding in view of the mandate of the regulatory bodies.<sup>34</sup>

ARTICLE 19 reminds the Venezuelan Government that the independence of regulatory bodies from the government and private businesses is a safeguard against politically-motivated and arbitrary decisions stifling free expression.

#### **Recommendations:**

- The broadcast regulatory bodies established under the Law should be independent from the government and accountable to the public

#### c) Unclear Prohibitions Set by the Law

ARTICLE 19 finds some provisions of the Law to be vague and unclear and susceptible to abuse by the authorities.

We observe that the Law provides for sanctions for acts which are unclearly defined and allow for broad interpretations. For example, broadcasters and other subjects of the law can be sanctioned for “[encouraging] anxiety among citizenry or disturbing the public order” or for “[disregarding] legitimate authorities” or for “use of anonymity.”<sup>35</sup> In addition the Law prohibits the broadcasting in “electronic media services” of messages which “promote anxiety or disturbing public order”; or “inciting murder and / or promoting the violation of legal order.”<sup>36</sup>

Vague provisions can be abused by law enforcement officers. Moreover, they exert an unacceptable chilling effect on freedom of expression as the media steer clear of potential zone of conflict. Mindful of this, the European Court of Human Rights has held:

[A] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.<sup>37</sup>

Moreover some of the vague restrictions in the Law are in violation of international law inasmuch as they are not legitimate aims for restrictions on the right to freedom of expression. For example, freedom of expression cannot be restricted for the “promotion of anxiety.” The European Court of Human Rights has held:

Freedom of expression [...] is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.<sup>38</sup>

#### **Recommendations:**

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<sup>34</sup> For more information on the safeguards for independence of regulatory bodies see ARTICLE 19’s *Access to the Airwaves, Principles on Freedom of Expression and Broadcast Regulation; Supra note 6.*

<sup>35</sup> Article 30 of the Law.

<sup>36</sup> Article 28 of the Law.

<sup>37</sup> *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 45..

<sup>38</sup> *Handyside v United Kingdom*, para. 49. See *ibid.* 13.



- The Law should clearly define the prohibitions and restrictions on freedom of expression including the acts of “[encouraging] citizen anxiety”; disturbing the public order, disregarding legitimate authorities, use of anonymity and encouraging murder and / or promoting the violation of legal order.

d) State Control Over the Internet

ARTICLE 19 notes with a concern that on the basis of the Law’s provisions, the State is able to control electronic and online communications.

The December 2010 amendment to the Law expanded its scope to cover not only radio and television but also text, image or sound to be broadcasted in Venezuela via “electronic media.” “Electronic media” are defined as “all forms of audiovisual media, audio and electronic broadcasting services arising from the development of telecommunications, through legal instruments that are deemed relevant.”<sup>39</sup>

As “electronic media” can be interpreted broadly to cover both the Internet and wireless services, it means that the state is given powers to control internet content in the same fashion as broadcast content and to impose similar sanctions for online expressions.

ARTICLE 19 is of the opinion that broadcast content and online content should not be approached in the same way, since expression on the two types of media is fundamentally different. While the regulation of broadcasting is justified in view of the inability of individuals to control the broadcast content transmitted into their homes, access to the Internet is controlled by individuals and is therefore less of a threat to them. Moreover, while traditional broadcasting is still a one-way communication, online media allows for the exchange of messages between individuals and within a group. Finally, electronic communication allows for privacy and anonymity and is for these reasons widely popular.

The present Law, after the 2010 amendment, fails to consider these different aspects of broadcast and online communication and, by regulating them in the same way, impedes both the right to freedom of expression and the right to privacy.

More specifically we are concerned about the following aspects of the control over the Internet:

The government powers to control the internet content: National Telecommunications Commission and the other bodies established by the Law are given the power to control communications between individuals through the Internet and to interfere with these communications;

The obligation of electronic media providers to restrict, without delay, the dissemination of messages reported to be prohibited under this Law, when requested to do so by the National Telecommunications Commission<sup>40</sup>: This provision is problematic because it does not require removals to be subject to a proper legal process;

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<sup>39</sup> Article 1 of the Law.

<sup>40</sup> Article 28 of the Law.

The responsibility of electronic media providers to restrict access as required by authorities<sup>41</sup>:  
Providers are here responsible even if the request for removal is made in violation of the law.

Like the regulation of the broadcast content, the regulation of electronic communication is not in compliance with international standards of free expression. The comments concerning the independence of the regulator and the lack of safeguards for free expression also therefore apply to the regulation of electronic media.

**Recommendations:**

- Internet regulation should not be subject to radio and TV broadcasting rules and principles.
- Requests for the restriction of access to online data should be subject to proper legal process including a decision by an independent body/court.
- Electronic media providers should not be responsible for failures to execute illegal requests for restriction of access to electronic messages.

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<sup>41</sup> Article 28 of the Law.

# Annex: The Law on Social Responsibility Radio, Television and Electronic Media

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## The Law on Social Responsibility Radio, Television and Electronic Media of the Bolivarian Republic of Venezuela

### Chapter I General Provisions

#### Section 1. Purpose and Scope of this Act

In broadcasting and receiving messages, this act aims at establishing social responsibility for radio and television suppliers, electronic media providers, sponsors, independent national producers, and male and female users, in order to encourage democratic balance between their duties, liberties and rights for the purposes of promoting social justice and help citizenry's development, democracy, peace, human rights, culture, education, health care, the country's social and economic development, pursuant to both the constitutional provisions and principles in the laws in order to achieve an comprehensive protection for boys and girls, and adolescents, culture, education, social security, free competition and the Organic Telecommunications Act.

Provisions hereunder are applicable to any text, image or sound to be broadcast within the Bolivarian Republic of Venezuela, and via:

Radio services: AM broadcasting; FM broadcasting; shortwave radio broadcasting; non-profit public-service community radio broadcasting; and national production audio services, spread via subscription-supplied broadcasting services

Television services: UHF television; VHF television; non-profit public-service community television; national production of audiovisual services to be spread through a subscription-supplied broadcasting service. Subscription-supplied broadcasting services.

Electronic media.

Within the scope of this Act lie any audiovisual, radio and electronic broadcasting service arising from the development of telecommunications through any legal instrument deemed relevant.

#### Interest, Public Order and Principles for Application and Construction

**Section 2.** Radio spectrum is a public domain asset; the subject matter of this Act pertains to public interest and its provisions are to be deemed as a matter of public order.

Construction and application hereof shall be subject to these principles with no exclusion of the remaining constitutional principles: freedom of thought, freedom of expression, and freedom of speech; free and plural communication; the banning on prior censorship; subsequent liability; democratization; participation; solidarity and social responsibility; sovereignty; Nation's security and free competition.

In the legal relationship to be established between the users and the suppliers of radio and television services and subscription-supplied services:

where two or more provisions or laws govern a case connected with the subject matter of this Act, the one which is most favorable to the male and female users shall be applied.

where a provision relating to the subject matter of this Act gives rise to two or more interpretations, the interpretation most favorable to the radio and television male and female users shall be used. In any case, the public order nature that this Act has shall have preference in interpreting and applying its provisions.

#### General Objectives

**Section 3.** General objectives in this Act are as follows:

To secure that families and individuals in general have any legal mechanisms which let them fulfill the role and the social responsibility they have as male and female users properly while cooperating with suppliers of dissemination services and the Government.

To secure respect for freedom of expression and information, with no censorship, within the limits typical of a democratic and social State of Law and Justice, and together with the responsibility arising from exercising the said freedom, pursuant to the Constitution of the Bolivarian Republic of Venezuela, the international treaties on human rights ratified by Republic, and the laws.

To further actual exercise of and respect for human rights, particularly those involving protection of honor privacy, image, confidentiality and good reputation and access to timely, truthful and unbiased information with no censorship.

To help the broadcasting of information and materials intended for boys and girls and adolescents, considered to have social and cultural interest and oriented to the full and progressive development of their personality, skills and mental and physical capacity, the respect for human rights, for their parents, for their cultural identity, and for the culture of civilizations different from theirs, and oriented to freely assuming a life with responsibilities, and to build awareness of social and personal understanding, peace, tolerance, equality of the sexes and friendship between the peoples and the ethnic groups and persons of a native descend, and in general, oriented to help boys, girls and adolescents and their families build social conscience.

To further the broadcasting of national productions and independent national productions, and to encourage the development of the audiovisual national industry.

To further the balance between the duties, rights and interests that persons, the suppliers of broadcasting services and the related services have.

To help the values of the Venezuelan culture disseminate within each and every cultural field and expression

To secure that the hearing-impaired have equipment so that they will be able to enjoy the broadcasting of messages to a greater degree.

To further citizenry's active and key participation to enforce their rights and help to achieve this Act objectives

#### **Language, Identification, Audio intensity and National Anthem**

##### **Section 4.**

Messages to be broadcast through radio and television services shall be in Spanish unless:

they are live and direct programs and cultural and educational programs; news programs; radio and television news magazines; entertainment or sports programs; and a combination thereof, which are in a foreign language and simultaneous translation into Spanish is used.

they are musicals.

they are terms universally known that cannot be translated because of its technical, scientific, artistic nature, *inter alia*.

brands, marks or trademarks are mentioned.

this is a case authorized by the National Telecommunications Commission pursuant to the laws.

For the messages broadcast through radio and television services, specially addressed to the native peoples and communities, the use of native languages shall also be official.

Messages broadcast through television services, excepting non-profit public-service community television services, shall have subtitles, interpretation into Venezuelan sign language or other measures that ensure the integration of hearing-impaired persons while a special emphasis should be laid on cultural and educational, and informational programs.

At least every thirty minutes, radio services suppliers are to identify themselves when broadcast their programs, announcing what the radio frequency and the name of the radio station are. Television services suppliers shall place their identifying logo in one of the corners of the screen, which shall be visible for as long as shows and promotions last.

Non-profit public-service community radio and television service suppliers shall also announce that they are community radios.

Subscription-supplied broadcasting service suppliers shall meet this requirement at least in the news channel.

Audio intensity level in programs, advertising, propaganda and promotions shall always be the same, and shall be set by the regulations to be imposed by the National Telecommunications Commission.

Radio and television service suppliers shall play the National Anthem when introducing and ending their daily programming. Should they offer 24-hour programming, suppliers shall play the national anthem at 6 am and 12 pm. On national holidays, they shall also play it at 12 am. Subscription-supplied service suppliers shall meet this requirement at least in the news channel.

Radio and television services suppliers who are at bordering areas, island and sea locations shall play the National Anthem at least three times a day.

## Section 5

### Type of programming

To the effects of this Act, programs are classified into the following:

**Cultural and educational program:** a program aimed at the comprehensive instruction of male and female users in the highest humanistic values, cultural diversity, and the principles of a citizen's key participation in society and Government for the purposes of making it possible, inter alia:

to be included and to take part in the Nation's economic, social, political and cultural development.

to further, to defend and to develop progressively human rights, civil liberties and duties, public health, ethics, peace and tolerance.

To preserve, conserve, defend, improve and maintain the environment in order to further the sustainable development of the habitat both for its own benefit and for the benefit of current and future generations.

to advance the arts, to develop science, jobs and professions, technology, as well any other expression of human knowledge, while working in cooperation with the educational system.

To strengthen the Nation's identity, sovereignty and security.

[To provide] critical education to receive, seek, use and select appropriately sufficient information for the development of human beings that radio and television services broadcast.

**News program:** a program broadcasting information about individuals or local, national or international events in a unbiased, true and timely manner.

**News magazines:** programs aimed at disseminating thoughts, ideas, opinions, criteria or judgements on persons, private or public institutions, local, national or international topics or events.

**Sports or entertainment program:** a program intended for male and female users's recreation and entertainment, which cannot be classified into a cultural and educational program, or a news program or news magazine.

**Combined program:** a combination of the programs previously stated.

## Section 6.

### Elements of classified contents

To the effects of this Act, the following classified elements are defined: language, health, sex and violence.

#### 1. The elements of language include:

a) Category "A". Texts, images or sounds ordinarily used, which could be seen by boys, girls and adolescents with no mother's, father's, guardian's or curator's guidance being required, and which do not classify as "B" and "C".

b) Category "B". Texts, images or sounds which, when ordinarily used, have a vulgar nature.

c) Category "C". Texts, images or sounds which, when ordinarily used, have an obscene nature, which are curses, which describe or represent or allude to sex organs or sexual practices or scatological expressions with no explicit educational purpose.

## 2. The elements of health include:

- a) Category “A”. Texts, images or sounds as used for disseminating information or opinions about or knowledge of preventing, treating or eradicating the consumption or use of alcohol, tobacco, narcotic or psychotropic substances, as well as the compulsive participation in games of chance and games of luck, and other addictive behaviour which could be seen by boys, girls and adolescents with no mothers’, fathers’, guardians’ or curators’ guidance being required.
- b) Category “B”. Texts, images or sounds used for disseminating information or opinions about or knowledge of preventing, treating or eradicating use or consumption of alcohol, tobacco, narcotics or psychotropic substances as well as the compulsive participation in games of chance and games of luck, and other addictive behaviour which could be seen by boys, girls and adolescents with no mothers’, fathers’, guardians’ or curators’ guidance being required.
- c) Category “C”. Texts, images or sounds in programs and promotions referring either in a direct or an indirect manner to moderate consumption or use of alcohol or tobacco, in which their harmful effects of are not explicitly referred to or which purpose is the eradication of the addictive behavior they give rise to; to the excessive consumption of alcoholic drinks or tobacco, in which their harmful effects are explicitly referred to; to the compulsive participation in games of chance and games of luck, in which their harmful effects are explicitly referred to; or to the use of narcotics or psychotropic substances, in which their harmful effects are explicitly referred to.
- d) Category “D”. Texts, images or sounds in programs and promotions referring either in a direct or an indirect manner to excessive consumption of alcohol or tobacco, in which their harmful effects on health are not explicitly referred to; to the compulsive participation in games of chance and games of luck, in which their harmful effects on health are not explicitly referred to or which associate consumption of alcoholic drinks or tobacco with [*gaining*] advantages in terms of economic position, social status or the exercise of sexuality; or which associate compulsive participation in games of chance or games of luck with [*gaining*] advantages in terms of economic position, social status or the exercise of sexuality; or which associate consumption of alcoholic drinks or tobacco with enhanced physical or psychological performances; which present soberness or abstinence from alcohol or tobacco in a negative manner; which refer to the consumption of narcotics or psychotropic substances, the harmful effects on health of which are not explicitly referred to; which associate the consumption of narcotics or psychotropic substances with [*gaining*] advantages in terms of economic position, social status or the exercise of sexuality; which associate the consumption of narcotics or psychotropic substances with enhanced physical or psychological performances; which present abstinence from narcotics or psychotropic substances in a negative manner

## 3. The sexual-content elements include:

- a) Category “A”. Texts, images or sounds used for disseminating information or opinions about or knowledge of sexual and reproductive health, motherhood, fatherhood, the promotion of lactation and artistic expressions for educational purposes, which could be received by boys, girls and adolescents with no mothers’, fathers’, guardians’ or curators’ guidance being required.
- b) Category “B”. Texts, images or sounds used for disseminating information or opinions about or knowledge of sexual and reproductive health, and artistic expressions for educational purposes, which would require their mothers’, fathers’, guardians’ or curators’ guidance if received by boys, girls and adolescents.
- c) Category “C”. Texts, images or implicit sexual sounds with no educational purposes; or remarks or innuendoes of an erotic nature which include no explicit sexual intercourse or practices.
- d) Category “D”. Texts, images or sounds of nudity with no educational purposes, in which sex organs are neither alluded to nor shown; enactment of sexual intercourse or practices, where sex organs are not shown; explicit sexual messages; or enactment of sexual intercourse or behavior which is deemed an unlawful act pursuant to the laws.
- e) Category “E”. Texts, images or sounds of actual sexual intercourse or practice; nudity, with no educational purposes, where sex organs are shown; enactment of sexual intercourse or practices, where sex organs are alluded to or shown; enacted or actual sexual intercourse or practices, where right to life, to health, to personal integrity is threatened-endangered or violated, or human dignity is undermined; or actual sexual intercourse or behavior falling within the unlawful acts pursuant to the laws.

## 4. The elements of violence include:

- a) Category “A”: Texts, images or sounds used for preventing or eradicating violence, which could be seen by boys, girls and adolescents with no mothers’, fathers’, guardians’ or curators’ guidance being required, provided that the violent situation or its consequences is not shown in detail or explicitly.

- b) Category “B”: Texts, images or sounds which show enacted violence or their consequences in a non-explicit manner.
- c) Category “C”. Texts, images or graphic descriptions used for preventing or eradicating violence, which in case they are seen by boys, girls and adolescents, they would require their mothers’, fathers’, guardians’ or curators’s guidance, provided that images or graphic descriptions of the violent situation or their consequences are not shown in detail or explicitly.
- d) Category “D”. Texts, images or graphic descriptions of actual violence or their consequences, shown in a way which is not explicit, or enacted violence or their consequences shown explicitly but in no detail
- e) Category “E”. Texts, images or graphic descriptions of actual or enacted violence or their consequences, shown explicitly and in detail; physical, psychological and verbal violence among the members of a family, committed against a boys, girls and adolescents or against women; sexual violence; violence as a central theme or as a repeatedly-used high-impact resort; or which show, promote, advocate for or incite to suicide or to harm their own personal integrity or health.

**Chapter II**  
**Broadcasting messages**  
**Types, Time slots and Restrictions**  
**Section 7.**

To the effects of this Act, the following types of time slots are hereby established:

1. **Any User:** only messages that could be received any female or male user, including boys, girls and adolescents, with no mothers’, fathers’, guardians’ or curators’ supervision being required shall be broadcast during this time slot.

This time slot is from 7 am to 7 pm.

2. **Supervision-required time slot:** Messages to be broadcast during this time slot shall require mothers’, fathers’, guardians’ or curators’ supervision in case they are to be received by boys, girls and adolescents. This time slot is from 5 am to 7 am, and from 7 pm to 11 pm.

3. **Adult-only time slot:** Messages to be broadcast during this time slot shall be aimed at adults only, older than 18 years-old, which should not be received by boys, girls and adolescents. This time slot is from 11 pm to 5 am on the following day.

Messages including: categories B and C of language elements, categories B, C and D of health elements, categories B, C and D of sexual-content elements, and categories C, D, E of elements of violence, messages attempting on the comprehensive instruction of boys, girls and adolescents, messages including any guidance or advice inciting to games of chance and games of luck, messages advertising games of chance and games of luck or lotteries unless they are charity raffles held for humanitarian assistance purposes, messages advertising sex products or services unless they are aimed at promoting sexual and reproductive health shall not be broadcast in radio or television services during any user time slot. Broadcasting radio dramas or soap operas which are no longer than two hours is allowed during this time slot, and at least fifty percent (50%) of these shall be national production.

Messages including: category C language elements, category D health elements, category D of sexual-content elements, and category E of elements of violence shall not be broadcast in radio or television services during supervision-required time slot . Broadcasting radio dramas or soap operas which are no longer than two hours is allowed during this time slot, and at least fifty percent (50%) of these shall be national production.

Infomercials which are longer than fifteen minutes shall not be broadcast in radio or television services during any user and supervision-required time slots.

Broadcasting messages including category E of sexual-content elements is not allowed in radio or television services.

Broadcasting messages using audiovisual or sound techniques which impede or hinder male or female users’s conscious perception of these messages is not allowed in radio or television services.

Promotions in programs aired during the adult-only time slot shall be broadcast within the same time slot that transmission of these programs is allowed.

Where messages to be broadcast during any ser and supervision-required time slots are live and direct, graphic descriptions or images of actual violence could be shown in case they are essential to the understanding of information, or to protect individuals’s physical integrity or as a result of unforeseen situations, in which it is not possible for radio or television service suppliers to avoid broadcasting them.

Graphic descriptions or images shall adhere to journalism ethical principles regarding the respect for human dignity of both male and female users and the individuals subject of information; no use shall be made of yellow press techniques as a distortion of journalism which has an effect on male and female users’ right to accurate information, pursuant to the relevant laws, and in no event they are to be subject of exacerbation, morbidity or emphasis on unnecessary details.



## Section 8

### Advertising, Propaganda and Promotions Time

In radio and television services, time for broadcasting advertising and propaganda, including live advertisements and propaganda, shall not exceed fifteen minutes per an hour of broadcasting. This could be divided into a maximum of five time blocks unless the source television or radio services interval schedule is used in live and direct transmissions of foreign programs or intervals are sports or entertainment news programming breaks requiring a different interval schedule on the basis of their nature and standard length. Advertisement insertion could only be made during live and direct broadcasting of sports or entertainment news programs, provided that viewing these is not blocked and advertisement insertion will not represent more than one sixth of the screen.

Where intervals are sports or entertainment news programming breaks requiring a different interval schedule on the basis of their nature and standard length, advertisement insertion time shall not exceed fifteen minutes per an hour of broadcasting.

In no event, total interval time, including promotions, shall exceed seventeen minutes. Total time for broadcasting infomercials shall not exceed ten percent of the total of the daily programming, and shall not be interrupted in order to broadcast a different advertisement.

## Section 9

### Restrictions on Advertising and Propaganda

On the grounds of public health, public order and respect for the human beings, broadcasting advertisements on the following list are allowed in no broadcasting period:

1. Cigarettes and tobacco products.
2. Alcoholic drinks and other drinks as set forth by the relevant laws on the subject.
3. Narcotics or psychotropic substances made illegal by the laws governing this subject.
4. Professional services to be rendered by individuals lacking or failing to comply with the requirements or conditions imposed by the laws.
5. Property, services or activities, the broadcasting of which has been outlawed or restricted either on a temporary or on a permanent basis on the grounds of public health or to secure individuals' rights by the laws or by the competent agencies or has not been allowed, as appropriate.
6. Games of chance and games of luck which belittle work as a social fact and fundamental process to achieve the Government's purposes or in which boys, girls or adolescents take part, unless they are charity raffles held to provide humanitarian assistance.
7. Property or services aimed at boys, girls and adolescents, which show or use any violence element set forth in this Act.
8. Weapons, explosives and similar or related items or services.

Advertisements for charity fundraising which are either a direct solicitation for economic resources or materials or a request for the purchase of a product or services shall identify clearly the name of the natural or legal person to manage the said funds and the charitable purpose to which these funds shall be applied.

Any advertisement of telephone numbers with extra charge shall state clearly the nature and the purpose of the services so offered. [*Letter size advertising*] call rates per minute shall represent visually at least fifty percent of the telephone number so advertised and, when they are orally announced, same shall be broadcast, using the same audio intensity.

No broadcasting shall be made of any advertisement failing to identify clearly and explicitly the products or services to be sold, using the same sentences, slogans, melodies or music, images, logos, symbols, emblems, distinctive signs and, in general, any sound or image establishing a relationship between a product, service or activity and another, the broadcasting of which is outlawed, restricted or disallowed pursuant to the laws, or which broadcast messages where faith, cults or beliefs are used for commercial purposes, or which encourage practices or facts to infringe transportation and traffic laws.

No broadcasting of product placement shall be made other than sports events, provided that advertisement shall not include products and services listed 1-8 herein or advertisement shall not seek to infringe the laws.

In teaser campaigns, all the relevant steps shall be taken in order for the consumer to know timely the product or service with which the campaign is dealing. Requirements and time for these campaigns shall be established by technical standards.

No broadcasting of anonymous propaganda, product placement and advertising insertion shall be made.

No broadcasting of the products listed 1,2,3 and 8 herein shall be made in subscription-supplied broadcasting services.



Upon consultation, the National Telecommunications Commission shall establish the restrictions on or authorizations for any other case outlawed by this section, which the said Commission deems relevant or necessary, as appropriate, pursuant to the laws.

### Section 10

#### Government Access to Compulsory and Free-of-Charge Airtime

The Government shall be entitled to broadcast its messages through radio and television services. For such purposes, and on a free-of-charge basis, Government shall be entitled to order these service suppliers the transmission of these:

1. Messages provided for by the Organic Telecommunications Act Notice of this order to transmit official messages or speeches in a mandatory and free-of-charge basis shall be validly given, *inter alia*, by means of merely broadcasting the message or speech through the radio or television services run by the National Executive Branch.

2. Cultural, educational, informational messages or public service alerts, which shall not exceed as a whole sixty minutes a week or fifteen minutes a day. For the purposes of securing access to radio and television services, the National Executive Branch governing communication and information agency shall give male and female users ten minutes a week of this airtime, pursuant to the laws.

The National Executive Branch governing communication and information agency shall be in charge of managing this airtime, determining the hours and length thereof as well as any other characteristic of these transmissions. This airtime shall not be used to broadcast advertisements or publicity of the Government bodies, agencies and entities.

Radio or television service suppliers and subscription-supplied service suppliers shall not prevent whatsoever the broadcasting of the Government messages and speeches to be transmitted by same pursuant to this section, and shall maintain quality and aspect of the image and sound existing in the original signal or format.

Prevention of messages shall mean the use of techniques, methods or procedures that modify, alter, distort, interrupt, edit [*out*], cut or block whatsoever the original image or sound.

Subscription-supplied broadcasting service suppliers shall meet the requirement imposed by 1 herein by means of a news channel, and the requirement imposed by 2 herein, by means of the advertising segments they have in each channel they broadcast. These sixty minutes a week shall be distributed among the channels, the signal of which originates outside the territory of the Bolivarian Republic of Venezuela, pursuant to the laws.

### Chapter III

#### Subscription-supplied radio and television services, and Access to and Applicability of Open Signal Channels and Signal Locking

### Section 11

#### Accessing and Locking Signals

For the purposes of securing that male and female users have access to any signal of UHF and VHF television services and non-profit public-service community television, received in areas where service is supplied on a subscription basis, subscription-supplied broadcasting service suppliers shall meet the following requirements:

1. On a free of charge basis, they shall broadcast the signals mentioned in the heading hereof, provided that these shall represent no more than fifteen percent of the channels so offered in accordance with the regulations concerning the channel conditions and maximum channel capacity. Subscription-supplied services suppliers shall be entitled to have over fifteen percent occupied with open signal channels.

UHF and VHF television service suppliers and non-profit public-service community television service suppliers referred to herein shall fulfil the conditions to be imposed by technical standards.

2. On a free-of-charge basis, they shall broadcast the signals of the Government television services, which shall be included for the purposes of estimating the percentage mentioned in the previous paragraph.

3. Upon request of male and female users, they shall provide technical equipment that immediately and easily allow for the reception of the said signals by the same terminal receiver with which [*users*] have the subscription-supplied broadcasting service.

Suppliers of the subscription-supplied broadcasting services broadcasting radio signals shall offer the same signal and programming to be broadcast via open signal.

Subscription-supplied broadcasting service suppliers shall provide the technical equipment to channel locking upon male and female users request and provided that these users shall bear the cost arising from this service.

Likewise, during the actual transmission time of a certain program, subscription-supplied broadcasting service suppliers shall not break, prevent or broadcast messages which are different from the contents of the program being transmitted.

In any case, they shall secure that images and sounds from channels broadcasting category “E” sexual-content elements can be properly locked. Chapter 4. Democratization and Participation

## Section 12

### Citizenry's Organization and Participation

For the purposes of promoting and defending their communication interest and rights, male and female users of radio and television services shall be entitled to organize themselves under any legal form, *inter alia*, in male and female users's organizations. Male and female users's rights are, *inter alia*, as follows:

1. Obtain from radio and television service suppliers information about programs and infomercials before these are broadcast, in accordance to the laws.
2. Submit requests or complaints relating to the general objectives fo this Act with the radio and television service suppliers, and have them received and replied to within fifteen business days after filing.
3. Promote and defend communication rights and interest individually, collectively or diffusely before relevant government agencies
4. Have access to the records of the messages broadcast through radio and television services, kept by the National Telecommunications Commission, in accordance with the laws.
5. Take part in the process formulating, implementing and assessing public policies aimed at the instruction in perceiving critically the messages broadcast by radio and television services.
6. Take part in public consultations to prepare legal instruments regarding the subjects that this Act governs.
7. File projects on education for the critical perception of messages or research projects relating to communicating and broadcasting messages through radio and television services, and receive funding pursuant to the laws.
8. Have access to free radio, television and subscription-supplied service airtime, pursuant to the laws.
9. Promote dialogue and exchange between radio and television service suppliers and the Government and the male and female users.

All male and female user organizations of radio and television services shall register with the National Telecommunications Commission. For the purposes of electing the Social Responsibility Fund financial support, they shall also meet formal registration requirements imposed by the Public Registry.

Organizations shall comply with these: they shall be non-profit organizations; they shall have at least twenty natural persons as members; their members shall not have any stake in and shall not be directors, managers, or legal representatives of radio and television services; they shall have no funding or receive no property, no donations, no grants and no capital from natural or legal persons either of a private or of a public nature, which may impose conditions on or impede their activities to promote and defend the rights and interests of the male and female users of radio and television services.

National Telecommunications Commission shall register any time the organizations mentioned herein. If an organization files for registration having met all the requirements, but registration has not been granted for a period of thirty business days as from filing, it shall be construed that the said filing for registration is accepted and the registration certificate shall be issued.

National Telecommunications Commission shall establish the procedures and other steps to be taken along with the registration filing, in accordance with the laws.

Registration of the male and female user organizations described herein is exempted from paying taxes, liens and assessments.

When male and female user organizations bring a case before administrative law authorities and a judgment is given against same, the Court shall exempt them from paying costs provided that, at the Court's criterion, these organizations had reasonable grounds for arguing a case.

## Section 13

### National Production, Independent National Producers

National Audiovisual or Sound Production shall mean the programs, the advertising or the propaganda broadcast by radio and television service suppliers, in which creation, direction, production and postproduction, the following elements could be identified:

- a) Venezuelan capital
- b) Venezuelan locations.
- c) Venezuelan scripts.
- d) Male or female Venezuelan writers.

- e) Male or female Venezuelan directors.
- f) Venezuelan artists.
- g) Venezuelan technical staff.
- h) Values of the Venezuelan culture

The Board of Social Responsibility shall be in charge of determining concurrent elements and percentages thereof using technical standards. In any case, the existence of the elements aforementioned shall not be fewer than sixty percent.

National audiovisual or sound production shall be deemed to be independent whenever it shall be carried out by independent national producers, duly registered with the governing communication and information agency of the National Executive Branch. Independent national producer shall be the natural or legal person fulfilling the following requirements:

1. In case producer is a natural person:

- a) Producer shall have residence and domicile within the territory of the Bolivarian Republic of Venezuela pursuant to the laws.
- b) Producer shall not be a shareholder either by producer himself or herself or by a “straw man” acting on his or her behalf of any of the radio or television service supplier.
- c) Producer shall not be a shareholder of legal persons which, in turn, are shareholders, controlled or controlling companies, partners or members of any radio or television service supplier.
- d) Producer shall not be a director or hold a high position, as established by the Organic Labour Law, at any radio or television service supplier.
- e) Producer shall state whether there is any subordination between producer and any radio or television service supplier.
- f) Producer shall not be an officer at any of the public bodies or entities governing the activities subject matter of this Act, pursuant to the relevant Regulatory Decree.

2. In case producer is a legal person:

- a) Producer shall not be a government corporation, a public independent entity and other public agency owned by the national state or a state or a municipality.
- b) Producer shall have domicile in the Bolivarian Republic of Venezuela pursuant to the laws.
- c) Producer shall be owned and managed by natural persons born or legally residing in Venezuela, and these natural persons shall meet the requirements established in 1. above.
- d) Producer shall not have a stake in any radio or television service supplier.
- e) Producer shall state whether producer has any relationship with, other than independent national production, or subordination to any radio or television service supplier.

In any case, with producer being either a natural person or a legal person, it is required that producer has experience or demonstrates ability to carry out quality national productions.

To the effects of verifying compliance with the requirements set in this Act, as well as the corresponding technical standards, the governing information and communication agency shall keep a register of independent national producers and shall be in charge of issuing and revoking their certificates. The said certificate shall remain effective for two years and be renewable upon verification of compliance with requirements. Failure to comply with any of the requirement shall be grounds for certificate revocation; in this case, the competent agency shall give a notice of revocation to the independent national producer, and producer shall have a term no longer than ten business days as of date of notice to submit evidence and reasons. Competent agency shall have thirty business days to assess the evidence so submitted and reach a decision on the revocation of certificate.

With all the requirements having been met, if a independent national producer applied for registration and this registration was not granted in thirty business days as of the application date, the said application would be deemed granted

Independent community producers broadcasting their productions through non-profit community radio or television services shall be exempted from compliance with the registration requirement referred to herein.

Neither message generated by the natural persons subordinated to the radio or television service supplier with which these persons shall enter into a contract nor any message generated by legal persons under a contractual relationship different from independent national production shall be deemed to be independent national production

Any issue relating to production and national film producers shall be governed by the special statute on the subject matter.

#### Section 14

### Radio and Television Service Democratization

During Any User time, radio and television service suppliers shall broadcast a minimum of three hours of cultural and educational, informational or news magazine, and entertainment programs, especially aimed at boys, girls and adolescents, in accordance with their comprehensive development, pedagogical approach and the highest quality. In broadcasting these programs, inclusion of adolescents as artistic, creative or production staff shall be preferred.

During Any User time slot, radio and television service suppliers shall broadcast a daily minimum of seven hours of national production programming, four of which shall be independent national production programs. Likewise, during Supervision-required time slot, the said suppliers shall broadcast a daily minimum of three hours of national production programming, an hour and a half of which shall be independent national production programs. Non-profit public-service sound broadcast radio and television service suppliers shall be exempted from the obligation imposed in this paragraph.

In the hours for broadcasting independent national production programs, radio or television service suppliers shall prefer cultural, educational and informational programs.

Those broadcast after two years, following the first day of its first broadcasting, shall not be included in the estimation of the national production and independent national production programming hours required. Likewise, programs made by independent producers lacking the relevant registration with governing communication and information agency shall not be included in the estimation of independent national production programming hours; in any case, the said programs shall be deemed to be national production programs.

In no case a single independent national producer shall have over twenty percent of a single radio or television service supplier's weekly broadcasting period pertaining to independent national production.

One hundred percent of the propaganda broadcast by radio or television service suppliers shall be national production, other than the obligations arising from international treaties entered into and ratified by the Bolivarian Republic of Venezuela. Radio and television service suppliers shall broadcast at least eighty five percent of national production advertising. Advertising, propaganda or promotions shall be made by qualified and related professionals, pursuant to the laws in effect.

Non-profit public-service sound community radio and television services shall be exempted from these requirements.

In Any User and Supervision-required time slots, radio or television services broadcasting musicals shall assign at least fifty percent of their daily music programming to broadcast Venezuelan musical works.

Venezuelan musical works shall be at least seventy percent, subject to increase by future regulations, in those radio or television services located in bordering municipalities and states of the national territory and those under Government bodies or entities.

At least fifty percent of the Venezuelan music broadcasting shall be assigned to broadcast musical works in the tradition of Venezuela, in which the following elements shall be evidenced:

- a) The existence of genres from diverse geographical areas of the country.
- b) The use of Spanish language or the official native languages.
- c) The existence of the Venezuelan culture values.
- d) The Venezuelan authors or composers.
- e) The existence of Venezuelan performers.

Determination of concurrent elements and percentages thereof shall be made by future regulations. In broadcasting Venezuelan musicals, their male and female authors, composers and performers, and their music genres shall be identified.

During Any User and Supervision-required time slots, radio or television services broadcasting foreign musical works shall assign at least ten percent of their daily music programming to broadcast Caribbean and Latin American male and female authors', composers' and performers' musical works.

Radio or television services shall be entitled to transmit messages from other radio or television service suppliers, prior consent of the latter, while giving notice of this to the National Telecommunications Commission. When starting and ending retransmission, [*the radio or television services*] shall announce where it originates from and the consent so granted. In no case, retransmissions shall be deemed to be national production or independent national production, and shall not exceed thirty percent of the weekly broadcasting.

### Section 15 Independent National Production Programming and Assignment Commission

A Television Programming Commission is hereby set up, and shall be in charge of establishing the mechanisms and conditions for assigning airtime to independent national producers for the purposes of securing democratization of the radioelectric spectrum, pluralism, creative freedom and ensuring the effective conditions for competition. This commission shall be chaired by a representative of the National Executive Branch governing communication and information agency and shall consist of a representative of the television services suppliers, a representative of the independent national producers and a representative of the male and female user organizations.

Resolutions by this commission shall be binding and shall be taken by a majority; in case of tie, the Chair shall have the deciding vote. The commission shall be summoned by its Chair when same deems it convenient or when any of its members request so. The organization and operation of this commission shall be determined by its own regulations. This commission may establish regional or local committees.

For the same purpose, a Radio Programming Commission is hereby set up, which shall be in charge of establishing mechanisms and conditions for the assignment of airtime to independent national producers. This commission shall be chaired by a representative of the National Executive Branch governing communication and information agency and shall consist of a representative of the radio services suppliers, a representative of the independent national producers and a representative of the male and female user organizations.

Resolutions by this commission shall be binding and shall be taken by a majority; in case of tie, the Chair shall have the deciding vote. The commission shall be summoned by its Chair when same deems it convenient or when any of its members request so. The organization and operation of this commission shall be determined by its own regulations. This commission may establish regional or local committees.

Radio and television service suppliers shall file with the National Executive Branch governing communication and information agency a monthly report within the first five days of each month which shall provide a detail of the national production programs, the independent national production programs, the hours and the percentages of the concurrent elements according to the previous section. These reports may be verified.

Contracts to be signed between radio and television service suppliers and independent national producers according to this section shall comply with the requirements set by the laws and, in no case, they shall affect the principle of parties on an equal footing or have clauses imposing obligations or duties that are excessive or disproportionate to the detriment of one of the parties; otherwise, they shall be deemed null and void on absolute nullity grounds.

## Section 16

### Non-profit Public-service Community Radio and Television Service Democratization

Non-profit public-service community radio and television service suppliers shall broadcast, *inter alia*:

1. Messages aiming at helping their community's development, instruction for the critical perception of messages, welfare and problem-solving [*skills*].
2. Messages encouraging their community's conservation, maintenance, preservation, sustainability and balance of the environment.
3. Programs which allow for the participation of the community members, for the purpose of making it possible for them to exercise their right to plural and free communication; to this effect, the ways in which the community could participate shall be announced.
4. Messages of community solidarity, humanitarian assistance and social responsibility.

Non-profit public-service community radio and television service suppliers shall broadcast a minimum of seventy percent of community production [*programs*] on a daily basis. In no case, a single community producer shall have over twenty percent of the daily broadcasting period of the service supplier.

In non-profit public-service community radio and television services, the total time for broadcasting advertisements, including live advertising, shall not exceed ten minutes per an hour so broadcast, and it is possible to divide these ten minutes into a maximum of five time slots per hour. Advertising lawful products and services offered by natural persons, microenterprises, cooperatives, small and medium-sized businesses from the community where the service is being rendered shall have benefits for the purposes of broadcasting same. The total time for broadcasting advertisements of the Government and big companies shall not exceed fifty percent of the total broadcasting time that this section allows for. One hundred percent of the advertising broadcast by non-profit public-service community radio or television service suppliers shall be national production. Simultaneous retransmissions shall not include the advertisements of the radio or television service supplier where the message originates from.

Non-profit public-service community radio and television service suppliers shall not broadcast propaganda.

In addition to the principles in this Act, non-profit public-service community radio and television service suppliers shall be ruled by the principle of rendering accounts to the community where the service is provided pursuant to the laws.

### Section 17

#### Subscription-supplied Broadcasting Services Democratization

On a free of charge basis, suppliers of subscription-supplied broadcasting services shall make it available for the National Executive Branch governing communication and information agency a channel for the transmission of a national production audiovisual service, one hundred percent of which shall be aimed at national independent production and community production, where cultural and educational, and informational and news magazine shall prevail. The Government shall bear the cost arising from taking the signal of this audiovisual service to the head end of the subscription-supplied broadcasting service network which is to offer this service, and this supplier shall bear the cost arising from broadcasting same.

### Section 18

#### Responsible Program Selection and Reception

Radio or television service suppliers shall comply with the following:

1. In advance and at least once a week, suppliers shall publish in print mass media their program guides stating program name, type, broadcasting time and date, and classified-content elements pursuant to the regulations to be imposed on this subject.

Radio service suppliers are hereby exempted from compliance hereof. Subscription-supplied broadcasting service suppliers shall broadcast name, type, and broadcasting time and date in advance with no exclusion of any other medium.

2. In promoting programs, they shall announce program broadcasting time and date.

3. In introducing each program or infomercial, they shall announce name, program type, the existence of any classified-content elements, and whether this program is a national production or a independent national production, in accordance with the regulations to be imposed on this matter.

Television or radio service suppliers shall publish and announce program type and the existence of classified-content elements, pursuant to sections 5 and 6 hereof. If a combination of the characteristics of the programs provided for by section 5 herein is in the same program, this circumstance shall be announced.

Television or radio service suppliers shall broadcast programs in agreement with the publications, promotions and announcements provided for in this section, except for the changes arising from the mandatory and free Government access to radio or television services that the laws provide for, or changes arising from force majeure or Act of God, or changes arising from [the need for] exceptional live and direct broadcasting of unscheduled informational messages.

In informational or news magazine programs of radio or television services, a visual or sound signal shall be used to identify the time and date of original recording when [programs] involve audiovisual or sound records which are not broadcast live and direct. Should time and date be unknown, they shall inform [viewers] about its archive material nature.

In radio or television services, whenever the same set design, setting or elements of a program are used in advertisements or publicity, the word advertisement or publicity, as appropriate, shall be visible in one of the screen corners and this shall not prevent the station ID or, regarding radio services, in introducing the advertisement or publicity, the word advertisement or publicity shall be announced intelligibly, as appropriate. Time for this type of advertisement shall be added to the total advertising time referred to by section 8.

In radio or television services, the word *advertisement* shall be visible in one of the screen corners for as long as infomercial is broadcast, and this shall not prevent station ID or, regarding radio services, in introducing advertisement, the word *advertisement* shall be announced intelligibly.

## Chapter V. Agencies governing Radio and Television Social Responsibility Matters

### Section 19

#### Powers of the National Telecommunication Commission

The governing telecommunications body by body [sic] of the National Telecommunications Commission shall have the following powers:

1. Implement radio and television social responsibility regulation and promotion policies
2. Implement policies to encourage national productions and programs aiming at boys, girls and adolescents, within the scope of this Act.
3. Encourage professional training and betterment of national producers.



4. Encourage the instruction for the critical perception of messages broadcast by radio and television services.
5. Implement policies to encourage research concerning communications and message broadcasting through radio and television services.
6. Put forward the regulations arising from this Act.
7. Manage the fund, and monitor and assess any project funded pursuant to the laws.
8. Keep a public audiovisual and sound archive of the messages broadcast through radio and television services.
9. Issue certificates and uncertified copies of the documents and audiovisual and sound records kept in its archive.
10. Keep a register of organizations of male and female users of radio and television services.
11. Upon the request of a party or by its own initiative, institute proceedings under administrative law arising from this Act, as well as impose sanctions and order any other action applicable pursuant to this Act.
12. Require that radio and television service suppliers, subscription service suppliers, electronic media providers, national producers, independent national producers, audiovisual and sound national producers, sponsors and third parties submit information relating to the facts involved in the proceedings that may be instituted.
13. Order, modify or revoke precautionary measures provided for in this Act.
14. Other powers arising from this Act.

Powers granted in 2-5 shall be exercised in coordination with governing agencies in cultural and education, and communication and information, and promotion and defense of the rights of boys, girls and adolescents matters and the rest of competent agencies in their respective matters.

## **Section 20**

### **Board of Social Responsibility**

A Social Responsibility Board is hereby appointed, which shall be chaired by the General Director of the National Telecommunications Commission, and shall have a representative from each of the following entities and bodies: the department or agency dealing with communication and information matters, the department or agency dealing with cultural matters, the department or agency dealing with education and sports matters, the body or agency dealing with consumer's and user's defense matters, the National Women's Institute, the National Council on the Rights of Children and Adolescents, a representative of Church, two representatives from male and female user organizations registered with the National Telecommunications Commission, and a teaching professional from the Communication schools at the national universities.

Each Government department or agency head shall designate its representative and deputy. The National Council on Rights of Children and Adolescents representative and deputy shall be designated by its members. The representative from the Church, the male and female users, and the schools of Communication at national universities provided for in this section shall be determined by the meeting of each sector to be called for such purposes by the National Telecommunications Commission in accordance with the respective rules for ensuring the representativeness of the members to be appointed. Deputy members of the Board shall cover the temporary absence of the respective representative.

Social Responsibility Board shall hold a valid meeting with the Chair or deputy and five members attendance. Decisions shall be made by a majority. The Chair of the Board shall designate an officer from the National Telecommunications Commission to act as secretary to the Social Responsibility Board, but this officer shall not have voting rights. Their own regulations shall establish the procedures the Board shall follow.

This Social Responsibility Board shall have the following powers:

1. Debate and adopt the technical standards arising from this Act.
2. Establish and impose any corresponding sanction pursuant to this Act.
3. Debate and adopt the recommendations to be submitted with the officer in charge of the agency depending from the National Telecommunications Commission regarding permit revocation or denial of concession renewal
4. Authorize expenses from the Social Responsibility Fund
5. Other powers arising from this Act.

## **Section 21**

(The Social Responsibility Council legal entity has been eliminated, for it has not been created to this date, which makes it inapplicable).

## **Section 22**

### **Incompatible offices**

No member of the Social Responsibility Board shall enter into contracts or engage in talks with third parties either by themselves or by a “straw man” or by an acting as agent for third parties, the purpose or object of which relates to the subject-matter governed by this Act. The members of the Social Responsibility Board shall be jointly and severally liable in civil, criminal, property and administrative matters unless they state their dissenting vote in writing within the five business days following the decision so adopted.

Individuals up to the fourth degree of consanguinity or second degree of affinity or having permanent cohabitation relationships or living with any member of the Social Responsibility Board or Council shall not be members or deputy members of the said agencies. No person shall be a member or a deputy member of the Social Responsibility Board or the Social Responsibility Council at the same time.

## **Section 23**

### **Available information**

In accordance with the powers so granted by this Act, radio or television service suppliers and subscription-supplied broadcasting services suppliers shall make the following available for the governing agency:

- a) Information, documents, agreements or contracts relating to broadcasting either their own or third party messages subject to the requirements to be established by the respective technical standards.
- b) Intelligible and clear, uninterrupted recordings, which shall have no prior edition, of all the messages broadcast during the term to be established by the technical standards, which shall not exceed six months as from the message broadcasting date. Subscription-supplied broadcasting suppliers shall be exempted from this requirement.
- c) Any other information that may be required pursuant to the laws.

Radio and television service supplier shall have a fifteen business day period to submit the information so required, as from the date on which the official order is received.

Recordings referred to by this section shall be submitted using the format that the technical standards are to establish.

## **Chapter VI. Social Responsibility Fund and Charges**

### **Section 24**

#### **Social Responsibility Fund**

A Social Responsibility Fund is created as separate property, dependent on the National Telecommunications Commission, the purpose of which shall funding projects for developing and encouraging national production, the training of national producers of audiovisual or sound works for radio or television, the instruction for the critical reception of the messages broadcast by radio and television, and research relating to communicating and broadcasting messages through radio and television services [*existing*] in the country

Technical standards shall determine the resources available for each aim, and preference shall be given to audiovisual or sound works from new independent national producers or the radio or television programs especially aiming at boys, girls or adolescents Funds shall be resourced as follows:

1. The sum of parafiscal charges and related charges, pursuant to this Act.
2. Donations made by any natural or legal person either of a public or a private nature.
3. Fines so imposed pursuant to this Act.
4. The interest to be accrued by deposits, placements or other concepts arising from using the Fund resources.
5. Any other to be established by the laws.

The financial resources of this Fund shall be deposited in specific bank accounts to be designated by the National Telecommunications Commission and shall be placed in investments providing the highest security, return and liquidity Charges arising from this account shall be deducted from its balance.

The National Telecommunications Commission shall prepare and publish an annual report concerning the contributions received in the Fund and the amounts allocated or used, requiring any information it deems necessary for this purpose.

## **Section 25**

### **Parafiscal charges**

Radio and television services suppliers, being either legal or natural persons, or de facto corporations, regardless their domicile or nationality, shall pay a parafiscal charge for broadcasting images or sounds



produced within the national territory. The sum of these parafiscal charges shall be for the Social Responsibility Fund and the taxable income shall be the quarterly gross income from the taxable business activity, to which a 4% basis for calculation shall be applied. A 0.5% deduction shall be applicable to the percentage so established when broadcasting of independent national productions is fifty percent higher than [*the percentage*] that this Act requires, and a 0.5% charge shall be applicable when retransmitting messages exceeds the weekly broadcasting time by 20%. Taxpayers of this parafiscal charge shall make the tax return, self-assessment and quarterly payment within fifteen days after each quarter of the year is due. Subscription-supplied service suppliers and non-profit public-service community radio and television services shall be exempted from this charge.

The President of the Republic, along with the Council of Ministers, within the fiscal policy measures applicable under the circumstances existing in the sectors and the regions of the country economy shall be entitled to exempt [*one or many persons*] from payment of the parafiscal charge provided for herein, either in full or in part, according to executive order to be issued in this matter.

#### Section 26

##### Transience of the Tax Liability and the Relationship between Law and Tax

It shall be construed that a taxable event reaches completion and it shall be construed that tax liability exists when any of the following situations arise:

1. Invoices or similar documents are issued.
2. Consideration for broadcasting of images or sounds is received in advance.
3. The corresponding contracts are entered into.

When contracts so entered into provide for meeting term liabilities, the taxable event shall reach completion in accordance with the terms and conditions of the contract. When transactions are cancelled or reversed in a contract modifying taxable gross income, taxpayers shall be entitled to set-off any amount paid in excess, pursuant to the Organic Tax Code

Self-assessment shall be made in paper or electronic forms by means of the systems and before the banks and other agencies duly authorized by the governing agency [*arising from*] the application of this Act.

When taxpayers have more than one business, they shall file one single tax return and make one payment with the [*agency at*] the district where the head office has its domicile for tax purposes.

The relationship of a tax-legal nature and its consequences shall continue to exist although there is no origin for the tax liability.

#### Section 27

##### Charges

Services of searching, recording, certifying and analysing the audiovisual or sound records, kept in the archive of the National Telecommunications Commission, relating to the images or sounds broadcast through radio and television services shall make it applicable the payment of the following charges:

SERVICE	CHARGE
Uninterrupted recording of an audiovisual or sound base record	Up to 0.5 tax units per recorded transmission hour
Edited recording from several audiovisual or sound base records	Up to 0.3 tax units per recorded transmission hour multiplied by number of base records.
Certification of Recordings	Up to 0.5 tax units per certification

(The 0.1 tax unit per transmission hour charge, applied to any search of audiovisual or sound records, has been eliminated.)

This Act regulatory decree shall detail the amount of the applicable charges for each of the elements so mentioned within the limits established by this section.

### Chapter VII. Punitive Administrative-Law Proceedings

#### Section 28

##### Prohibitions

In electronic media services and radio and television services, it is forbidden to broadcast messages which:

1. incite to or promote hatred and intolerance on religious, political, gender, race or xenophobic grounds
2. incite to or promote, and/or advocate for the commission of crimes.
3. are war propaganda.
4. encourage anxiety among citizenry or alter the public order
5. disregard legitimate authorities

6. incite to the commission of homicide
7. incite to or promote violation of the current body of laws.

Electronic media providers shall establish mechanisms to restrict, without delay, the broadcasting of messages already broadcast that fall within the prohibitions herein, whenever this is required by the National Telecommunications Commission in the exercise of its powers, in which case the procedure provided for by section 33 herein shall be applied.

Electronic media providers shall be liable for the forbidden information and contents that this section refers to, when providers send out transmission, modify the data, select the target users or fail to restrict access to same, in view of the requirement imposed by the governing agencies in this matter.

First paragraph: Persons in charge of the electronic media shall be imposed a fine ranging from 50 to 200 tax units whenever they violate any of the prohibitions established herein.

Second paragraph: The electronic media providers failing to meet the requirements imposed by the governing agencies for the purposes of complying with this Act shall be imposed a fine amounting up to 4% of the gross income generated during the fiscal year immediately preceding the one in which non-compliance occurred.

### Section 29 Sanctions

In addition to civil and criminal liability, sanctions may be imposed for the provision of spaces for broadcasting cultural and educational messages; fines, permit suspension, revocation of permit and concession.

1. Radio and television service suppliers or subscription-supplied broadcasting service suppliers shall be imposed the sanction, where applicable, of providing spaces for broadcasting cultural and educational messages whenever said the supplier fails to meet one of the following requirements:

- a) inclusion of measures that secure integration of hearing-impaired persons, as provided for by section 4 herein.
- b) maintain the same audio intensity, as provided for by section 4 herein.
- c) fail to meet the station ID requirement during broadcasting programs as provided for by section 4 herein.
- d) receive and reply to the male and female user complaints, according to section 13 herein.
- e) identify the Venezuelan musical works that are broadcast, according to section 15 herein.

2. The radio and television service supplier and the subscription-supplied service suppliers shall be imposed a fine, where applicable, ranging from 1% to 2% of the gross income generated during the fiscal year immediately preceding the one in which non-compliance occurred whenever:

- a) supplier fails to meet the requirement of broadcasting the National Anthem, as provided for by section 4 herein.
- b) supplier fails to meet the requirement of broadcasting messages using Spanish language or Native languages, as provided for by section 4 herein.
- c) supplier broadcasts infomercials longer than fifteen minutes during Any User or Supervision-required time slots, according to section 7 herein.
- d) supplier fails to meet the time restriction or division concerning broadcasting of advertising, propaganda, promotions or infomercials, provided for by section 9 herein.
- e) supplier fails to meet the requirements imposed on broadcasting advertising or promotion insertion, as provided for by section 9 herein.
- f) supplier broadcasts advertisements of professional services to be rendered by individuals lacking or failing to comply with the requirements or conditions imposed by the laws, and violating section 9 herein.
- g) supplier fails to meet the requirements imposed on the broadcasting of advertisements for charity fundraising which fail to identify clearly the name of the natural or legal person to manage the said funds and the charitable purpose to which these funds shall be applied, as provided for by section 9 herein.
- h) supplier fails to meet the requirements imposed on the broadcasting of advertising of telephone numbers with extra charge, as provided for by section 9 herein.
- i) supplier broadcasts product placement [*advertising*], according to section 9 herein.
- j) supplier fails to take the relevant steps in order for the consumer to know timely the product or service with which the teaser campaign is dealing, as provided for by section 9 herein and the respective technical standards.
- k) during the actual transmission time of a certain program, supplier fails to meet the requirement of not breaking [*or*] preventing [*the message being broadcast*] or broadcasting messages which are different from the contents of the program being transmitted, as provided for by section 12 herein.

- l) supplier fails to meet the requirement of obtaining consent for transmitting messages [*from other radio or television service suppliers*], of giving notice of this to the National Telecommunications Commission or of making the corresponding announcements, as provided for by section 15 herein.
- m) supplier fails to meet the time restrictions or division concerning the broadcasting of advertising, propaganda, promotions or infomercials in non-profit public-service community radio and television, as provided for by section 17 herein.
- n) supplier fails to meet the requirement of publishing program guides, as provided for by section 19 herein.
- o) supplier fails to meet the requirement of announcing program broadcasting time and date when promoting programs, as provided for by section 19 herein.
- p) supplier fails to meet the requirement of making announcements when introducing each program and infomercial; supplier fails to meet the requirement of announcing program type or fails to meet the requirement of announcing the existence of classified-content elements, as provided for by section 19 herein.
- q) supplier fails to meet the requirement of broadcasting programs in agreement with publications, promotions and announcements, as provided for by section 19 herein.
- r) supplier fails to meet the requirement imposed for broadcasting infomercials, as provided for by section 19 herein.
- s) supplier fails to meet the requirement of making the word *advertisement* or *propaganda* visible whenever the same set design, setting or elements of a program are used, as provided for by section 19 herein.
- t) supplier fails to meet the requirement of submitting recordings, information, documents and any other information so required, as provided for by section 23 herein.
3. Radio and television service suppliers and the subscription-supplied service suppliers shall be imposed a fine, where applicable, ranging from 3% to 4% of the gross income generated during the fiscal year immediately preceding the one in which non-compliance occurred whenever:
- a) supplier broadcasts during Any User time slot messages which are restricted for that period, as provided for by section 7 herein.
- b) supplier broadcasts during Supervision-required time slot messages which are restricted for that period, as provided for by section 7 herein.
- c) supplier broadcasts during Any User time slots advertisements of lottery, games of chance and games of luck, as provided for by section 9 herein.
- d) supplier broadcasts over two hours of radio drama or soap opera during Any User and Supervision-required time slots, as provided for by section 7 herein, or fails to meet the requirement of national production percentage established therein.
- e) supplier broadcasts messages attempting on the comprehensive education of boys, girls and adolescents during Any User time slot, as provided for by section 7 herein.
- f) supplier broadcasts during Any User time slot advertisements of sex products and services, as provided for by section 7 herein.
- g) supplier broadcasts advertisements of games of chance and games of luck which belittle work as a social fact and fundamental process to achieve the Government's purposes or in which boys, girls or adolescents take part, as provided for by section 9 herein.
- h) supplier broadcasts messages where faith, cults or beliefs are used for commercial purposes, as provided for by section 9 herein.
- i) supplier broadcasts advertising which encourages practices or facts to violate transportation and traffic laws, as provided for by section 9 herein.
- j) supplier fails to meet the requirement of securing that male and female users have access to any signal of UHF and VHF television services and non-profit public-service community television, received in areas where service is supplied on a subscription basis, or securing the access to State television services, as provided for by section 12 herein.
- k) supplier fails to meet the requirement of providing the technical equipment to channel locking upon male and female users request, as provided for by section 12 herein.
- l) supplier fails to meet the requirement of broadcasting the programs specially aimed at boys, girls and adolescents, as provided for by section 15 herein.
- m) supplier fails to meet the requirement of broadcasting national production programs or independent national production programs, as provided for by section 15 herein.
- n) supplier fails to meet the prohibition against assigning to a single independent national producer over twenty percent of the daily broadcasting period intended for independent national production, as provided for by section 15 herein.

- n) supplier fails to meet the requirement of broadcasting national production advertising or propaganda, as provided for by section 15 herein.
  - p) supplier fails to meet the requirement of broadcasting Venezuelan, Latin American and Caribbean musical works, as provided for by section 15 herein.
  - q) supplier broadcasts over 30% of other radio or television suppliers transmissions daily, as provided for by section 15 herein.
  - r) supplier fails to meet the requirement of broadcasting programs and messages, as provided for by 1, 2 and 3 of section 17 herein.
  - s) supplier fails to meet the requirement of broadcasting community production [*programs*], as provided for by section 17 herein.
  - t) supplier fails to meet the prohibition against assigning to a single community producer over twenty percent of the broadcasting period, as provided for by section 17 herein.
  - u) supplier fails to meet the requirement against assigning to big companies's advertisements or Government advertisements over 50% of advertisement broadcasting time, as provided for section 17 herein.
  - v) supplier fails to meet the requirement of broadcasting national production advertising, as provided for by section 17 herein.
  - w) supplier broadcasts retransmissions including the advertisements of the radio or television service supplier where the message originates from, violating section 17 herein.
  - x) supplier broadcasts propaganda, violating section 17 herein.
  - y) supplier fails to meet the requirement of making it available for the National Executive Branch a channel for [*the transmission of*] a national production audiovisual service, as provided for by section 18 herein.
  - z) supplier fails to meet the requirement of identifying time and date of original recording of audiovisual records, as provided for by section 19 herein.
4. Radio and television service suppliers and the subscription-supplied service suppliers shall be imposed a fine, where applicable, ranging from 3% to 4% of the gross income generated during the fiscal year immediately preceding the one in which non-compliance occurred whenever:
- a) supplier broadcasts messages with category "E" sexual-content elements, violating section 7 herein.
  - b) supplier broadcasts messages through audiovisual or sound techniques the purposes, intention or result of which impede or hinder male or female users' conscious perception, violating section 7 herein.
  - c) supplier broadcasts advertisements of cigarettes and tobacco products, or alcoholic drinks and other drinks, violating section 9 herein.
  - d) supplier broadcasts advertisements of narcotic or psychotropic substances, violating section 9 herein.
  - e) supplier broadcasts advertisements of property, services or activities, the broadcasting of which is outlawed or restricted either on a temporary or on a permanent basis on the grounds of public health or to secure individuals' rights by the laws or by the competent agencies or is not allowed, as appropriate, violating section 9 herein.
  - f) supplier broadcasts advertisements of property or services intended for boys, girls and adolescents, which show or use violence in any manner, violating section 9 herein.
  - g) supplier broadcasts advertisements of weapons, explosives and similar or related items or services, violating section 9 herein.
  - h) supplier broadcasts advertisements failing to identify clearly and explicitly the products or services to be sold, violating section 9 herein.
  - i) supplier broadcasts advertisements using the same sentences, slogans, melodies or music, images, logos, symbols, emblems, distinctive signs and, in general, any sound or image establishing a relationship between a product, service or activity and another, the broadcasting of which is outlawed, restricted or disallowed pursuant to the laws, as provided for by section 9 herein.
  - x) supplier broadcasts anonymous propaganda, violating section 9 herein.
  - k) supplier broadcasts product placement [*propaganda*] or propaganda insertion, violating section 9 herein.
  - l) supplier fails to meet the requirement of broadcasting Government messages, as provided for by section 10 herein.
  - m) supplier prevents Government's messages and speeches, violating section 10 herein.
  - n) supplier fails to meet the requirement of securing that images and sounds from channels broadcasting category "E" sexual-content elements can be properly locked, as provided for by section 11 herein.
  - o) supplier fails to meet the requirement of complying with the decisions reached by the Television Programming Commission as regards the establishment of the mechanisms and conditions for assigning airtime to independent national producers, as provided for by section 15 herein.

- p) supplier fails to meet the requirement of complying with the decisions reached by the Radio Programming Commission as regards the establishment of the mechanisms and conditions for assigning airtime to independent national producers, as provided for by section 15 herein.
- q) supplier fails to meet the requirement of filing a monthly report, as provided for by section 15 herein.
- r) supplier submits recordings, information or documents deemed to be false by a final judgment with the governing agency or entity.
- s) supplier fails to meet the requirement of pay the parafiscal charge, as provided for by section 24 herein.
- t) supplier broadcasts, during Any User time slot, messages in which boys, girls and adolescents act, perform or dramatize situations where they use language or there are sexual or violent attitudes unsuitable for their age
- u) supplier broadcasts discriminatory messages, especially messages in which boys, girls and adolescents are mocked or object of ridicule or disdain.
- v) supplier broadcasts, during Any User time slots, messages promoting attitudes which, if copied by boys, girls and adolescents, could threaten their own physical, psychological and moral integrity as well as any other person.
- w) supplier broadcasts messages showing that violence is an easy or appropriate solution for human problems or conflicts.
- x) supplier broadcasts messages inciting to violation of the body of laws in effect.
- y) supplier broadcasts messages which impede or hinder the action of citizen security organisms and the Judicial Branch necessary for securing the right to life, to health or to personal integrity.
- z) supplier broadcasts secret or private messages using coded signs [*previously*] agreed to.

In case of recurrence of any of these violations by radio, television or subscription-supplied service suppliers, fines shall be increased by fifty percent (50%)

Where the sanction of assigning free space for broadcasting cultural and educational messages is applied, this airtime shall not be longer than thirty minutes or shorter than five minutes pursuant to the decision taken by the Social Responsibility Board.

The independent national producer is jointly and severally liable for the messages in its productions, which violate this Act upon being broadcast by radio, television or subscription-supplied service suppliers.

The sponsor is liable only for the messages in its advertisements or propaganda, which violate this Act upon broadcasting of same by radio, television or subscription-supplied service suppliers.

In this case, fines shall be estimated between twenty percent and two hundred percent of the price for purchasing the total advertising time used in broadcasting the message subject to the sanction.

Radio, television or subscription-supplied service supplier or any other audiovisual or sound broadcasting service shall be jointly and severally liable for the violation by the independent national producer or sponsor, in which case a sanction shall be imposed upon same pursuant to 1,2,3 and 4 of this section, where applicable.

When radio service suppliers are in Groups of radio stations, the fines shall be estimated on the basis of the gross income generated, which arise either from direct or from indirect sale of advertising or propaganda.

The facts heard by the governing agency or entity in exercising the powers provided for in this Act or other laws, or the facts stated in the files, documents or records that the said agency or entity has may be used as grounds for the sanctions to be imposed on the violations against this Act.

## Section 29

### Suspension and Revocation

Where applicable, the persons governed by this Act shall be sanctioned:

1.- A fine of up to 10% of the gross income generated in the fiscal year immediately preceding the one in which violation occurred, and/or suspension of transmission up to seventy-two uninterrupted hours when they broadcast messages that:

- a) promote, advocate for or incite to alterations of the public order;
- b) promote, advocate for or incite to the commission of crimes;
- c) incite to or promote hatred and intolerance on religious, political, gender, race or xenophobic grounds
- d) promote discrimination;
- e) use anonymity;
- f) are war propaganda;
- g) encourage anxiety among citizenry or disturb the public order;
- d) disregard legitimate authorities.

2.- Revocation of permit and concession when they broadcast messages that:

- a) promote, advocate for, incite to or are war propaganda;

- b) are adverse to the Nation's security;
- c) incite to the commission of homicide.

Likewise, the sanction of revocation of the permit and concession shall be imposed on same when there is recurrence of the sanction described by 1 herein, referred to the suspension for up to seventy-two uninterrupted hours.

Sanctions provided for in 1 shall be applied by the Social Responsibility Board, pursuant to the procedure established in this Act. The sanction provided for in 2 shall be applied by the agency dependent on the National Telecommunications Commission; in both cases, decision shall be taken within the thirty business days following the reception of the file by the governing agency.

In any case, the Legal Consultancy Office of the National Telecommunications Commission shall be in charge of substantiate the administrative file and apply supplementally the procedural rules set forth by the Organic Law on Telecommunications.

### **Section 30**

#### **Limitations period**

The possibility of imposing the sanctions set forth herein shall be barred by the statute of limitations five years after the occurrence of violation which gives rise to sanctions. The requirement of paying the fines so imposed shall be barred by the statute of limitations as from the date of sanction notice. Limitations period shall be interrupted by any proceedings heard by the National Telecommunications Commission, duly notified to the sanctioned supplier, which leads to the acknowledgment, regularization, investigation and related actions aimed at verifying of the violation giving rise to sanction or at verifying sanction enforcement. Any procedural step taken by the sanctioned supplier shall also interrupt the limitations period, either by acknowledgment of the violation, commission of new or similar violations giving rise to sanctions or by lodging appeals.

### **Section 31**

#### **Instituting Proceedings, and Defence and Notice Term**

Proceedings shall be brought either *sponte sua* or by statement in writing. The procedural step instituting the proceedings shall state the reasons for bringing a case. No anonymous statement, which is manifestly groundless, has defamatory content, is adverse to public order or which statute of limitations has lapsed shall be given a leave to proceed.

With the leave to proceed being granted, the alleged violator shall be summoned so that within ten business days as from the date of notice same submits the defence arguments either orally or in writing.

[*Summons and subpoenas and other*] notices shall be served in any of the following manners with no order of precedence:

1. Personal service by delivering same by hand upon receipt of alleged violator
2. Delivery by any officer of the National Telecommunications Commission, upon receipt of any person residing or working at the alleged violator's domicile. In case of refusal to accept service by any of the said persons, the officer shall evidence the said circumstances and affix the said notice to the door, gate or main entrance of the corresponding room, domicile, registered office or office of the alleged violator.
3. By private or public mail, by telegrams, by fax, by electronic and related systems, provided that return of service of same shall be evidenced on the file. When notices are served using a fax or electronic systems, the National Telecommunications Commission shall agree with the alleged violator the establishment of a fax or electronic site or address
4. Service by publication, where notice shall be published once in a newspaper of national circulation; in this case, the alleged violator shall be deemed to have been served notice fifteen days after publication of notice.

When the alleged violator takes any procedural step in the administrative file which implies that same has knowledge thereof, the alleged violator shall also be deemed to have been served as of the day on which the said step was taken.

### **Section 32**

#### **Evidence**

With the term established in the previous section having expired, a ten business day term shall begin for submitting the evidence and a fifteen business day term for examining the evidence. During the proceedings, any means of evidence admitted by the laws shall be used, except examination of civil service officials and sworn employees when this involves answering written interrogatories.



During substantiation, the Legal Consultancy Office of the National Telecommunications Commission shall have the broadest investigation powers, and its activity shall be governed by the principle of freedom of evidence.

To these effects, this Consultancy Office shall be entitled to, *inter alia*:

1. order any [summons and subpoena] notices to answer interrogatories or give testimony
2. require any document and information to establish the truth
3. subpoena or cite through the media the interested persons or groups or communities capable of providing information relating to the alleged violation In the course of investigation, any person shall be entitled to submit any document deemed to be relevant to the effects of clarifying the situation in the administrative file.
4. require the public agencies or entities and the private bodies to provide any relevant information or document relating to the interested persons, provided that the information is not classified or secret pursuant to the laws.
5. order any expert witness opinion necessary for helping decision criteria
6. conduct any inspection deemed relevant for the purposes of this investigation

### Section 33

#### Precautionary measures

During the proceedings for the imposition of sanctions or any other proceedings, even at the trial of the case, the National Telecommunications Commission shall allow for the following precautionary measures *sua sponte* or upon the request of the party:

1.- Order the radio, television, subscription-supplied broadcasting or electronic media service suppliers to refrain from broadcasting messages in violation of the provisions of this Act.

In addition, the National Telecommunications Commission shall allow for innominate precautionary measures *sua sponte* or at the request of a party for the purposes of securing protection of the rights of the male and female users of radio, television, subscription-supplied and electronic media services, especially the protection of the rights inherent in boys, girls and adolescents, and the Nations' security, during the proceedings for imposing sanctions, even at the trial of the case.

Any precautionary measure shall be allowed for by means of an order with an statement of grounds, and notice thereof shall be served upon the alleged violator within two business days as of the date on which precautionary measure order was issued. In order to allow for the precautionary measure, the National Telecommunications Commission, in view of the *fumus bonis iuris* arising from the case, shall weigh up interests while taking into account any damage that may be sustained by the alleged violator and by the reporting party, by the user or by the community affected by the alleged violator's commission or omission.

With the precautionary measure being allowed for, the alleged violator shall be entitled to file opposition against same in the proceeding directly affected by the precautionary measure, in writing within the five business days following the date on which the alleged violator was served notice. In case of opposition, a five business day term shall begin for submitting anything deemed relevant for the purposes of defence, and a five business day term shall begin for the examining the evidence. Upon expiration of the said term, the National Telecommunications Commission shall reach a decision with statement of grounds within the subsequent eight business days, which may be subject to extension for a period which shall be equal in length.

Failure to comply a precautionary measure allowed for by the National Telecommunications Commission pursuant to this Act shall be imposed the sanction of revocation of permit and/or concession, where appropriate.

### Section 34

#### Sanction Determination and Exemption

To the effects of determining applicable sanctions pursuant to this Act, the following shall be taken into account:

1. Acknowledgment of violation before or during the proceedings.
2. [Alleged violator's] own initiative to remedy violation.
3. The message violating [this Act] should have been broadcast through for-profit or not-for-profit radio or television services
4. Repetitions and recurrence.
5. Other aggravating or mitigating circumstances arising from the proceeding.



When broadcasting live and direct, radio or television service supplier shall only be liable for the violations provided for in this Act or for the continuation thereof when Administrative authorities demonstrates in the course of a proceeding that the said supplier failed to act with reasonable care.

### **Section 35 Decision**

The Social Responsibility Board shall award judgment in the administrative proceeding within thirty business days as of the day following the expiration date of the trial of the case or, should that be the case, of the expiration date for deciding the opposition filed against the precautionary measure in case the first date is previous to the latter. When there are sufficient reasons, this term may be extended, by an order with statement of grounds, only once up to a maximum of thirty business days,. The Social Responsibility Board shall be entitled to order any action relating to substantiation within the term provided for to render judgment.

The person on whom a sanction is imposed shall serve the sanction voluntarily. Failure to pay the economic sanction shall accrue default interest at the lending interest rate set by Central Bank of Venezuela until the date of fully repayment thereof. The National Telecommunications Commission shall be entitled to demand payment judicially.

Failure to serve with any other sanction imposed by the Social Responsibility Board shall entitle same to request the assistance of law enforcement agencies for judgment enforcement.

The decisions taken by the Social Responsibility Board exhaust the administrative remedies and an appeal may be lodged against same within forty five business days following notice date by the *Corte de lo Contencioso Administrativo* [*Contentious-Administrative Court of Original Jurisdiction*], and as appellate court the *Sala Político Administrativa* of the *Tribunal Supremo de Justicia* shall hear the case [*Political-Administrative Division at the Supreme Court of Justice*]. Lodging the contentious appeal shall be without stay of the execution of judgement rendered by the Social Responsibility Board.

### **Temporary Provisions First**

Compliance with the requirement established in section 7 herein, referred to the broadcasting of two hours of radio dramas or soap operas during Any User and Supervision-required time slots, respectively, in accordance with the percentage of national production established therein shall be compulsory within the term of six months as from effective date of this Act pursuant to the respective technical standards.

#### **Second**

1. Compliance with the requirement set in section 4 herein, referred to the inclusion of programs that broadcast the subtitles, the translation into the Venezuelan sign language or other necessary measures to secure the integration of hearing-impaired persons shall be gradually compulsory within the term of three years as from the effective date of this Act pursuant to the respective technical standards.

2. The following shall be required as from the three months subsequent to the effective date of this Act:

a) The requirements set in section 7, referred to the messages to be broadcast during Any User time slot relating to categories B and C of elements of language; categories B, C and D of elements of health; categories B, C and D of sexual-content elements and categories C, D and E of elements of violence, as well as those relating to games of chance and games of luck, and lotteries; maximum broadcasting time set for radio dramas and soap operas.

b) Requirements set in section 7, referred to the messages to be broadcast during Supervision-required time slot relating to category C of elements of language; category D of elements of health; category D of sexual-content elements, and category E of elements of violence.

c) Requirements set in section 11 relating to securing the access to UHF and VHF television signals and non-profit public-service open community television; to broadcast Government television services and to the provision of technical devices which allow for the reception of open television signals in the same terminal receiver.

d) Requirements set in section 14 relating to the national production propaganda and relating to Venezuelan music, to music in a Venezuelan tradition and to Latin American and Caribbean music.

e) Requirements set in section 18 relating to the publication of guides, the announcements in programs and the broadcasting of programs in accordance with announcements and guides.

3. The following shall be required as from the six months subsequent to the effective date of this Act:

a) Requirements set in section 9 relating to product placement advertising, as well as those relating to advertising in subscription-supplied television services.

- b) Requirements set in section 11 relating to channel locking and those channels broadcasting category E of sexual-content elements in subscription-supplied television services.
  - c) Requirements set in section 14 relating to national advertising percentage, the maximum percentage of retransmission [of programs] from other service suppliers and the duty to provide the National Telecommunications Commission with a report.
  - d) An hour and a half of programs specially aimed at boys, girls and adolescents during Any User time slot.
  - e) Fifty percent of the minimum so required for national production during Any User and Supervision-required time slots.
4. The following shall be required as from the twelve months subsequent to the effective date of this Act:
- a) Three hour programming specially aimed at boys, girls and adolescents during Any User time slot.
  - b) Seven hour national production programming during Any User time slot, and three hour national production programming during Supervision-required time slot.
5. Independent national production provided for by section 14 herein shall be required in the following terms:
- a) In nine months as from the effective date of this Act, minimum daily broadcasting shall be one hour long during Any User time slot and one hour long during Supervision-required time slot.
  - b) In twelve months as from the effective date of this Act, minimum daily broadcasting shall be two hours long during Any User time slot and one hour long during Supervision-required time slot.
  - c) In eighteen months as from the effective date of this Act, minimum daily broadcasting shall be three hours long during Any User time slot and one hour and a half long during Supervision-required time slot.
  - d) In twenty four months as from the effective date of this Act, minimum daily broadcasting shall be four hours long during Any User time slot and one hour and a half long during Supervision-required time slot.
6. Contracts signed by the radio and television service suppliers and the sponsors, as well as those signed by retransmission service suppliers shall adjust to the provisions of this Act within the three months following effective date.
7. Until a special statute on this subject is passed, the National Executive Branch governing agency in communication and information matters shall be entitled to formulate and develop policies and actions aimed at the promotion and development of public-service radio and television services.
8. Within the thirty-day period subsequent to the effective date of this Act, the National Executive Branch shall designate its representatives at the Social Responsibility Board and at the Council on Social Responsibility, as well as at the radio and television programming commissions, respectively. Social organizations and entities with representatives at the Social Responsibility Board and at the Council on Social Responsibility shall begin designating their representatives immediately after the effective date of this Act.

**Final Provision**  
**Single provision**

1. This Act shall be effective on the day following its publication in the Official Gazette of the Bolivarian Republic of Venezuela.
2. The Department of Communication and Information and the National Telecommunications Commission shall revamp themselves in order to adjust to the new powers arising from the application hereof and other sets of regulations relating to this Act.