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GENERAL NOTICE

NOTICE 3002 OF 2002

REGULATIONS REGARDING FINES AND PENALTIES RELATING TO NON-COMPLIANCE OR NON-ADHERENCE BY LICENSEES TO PROVISIONS OF THE INDEPENDENT BROADCASTING AUTHORITY ACT, THE BROADCASTING ACT, REGULATIONS ISSUES THEREUNDER AND LICENCE CONDITIONS.

The Independent Communications Authority of South Africa Authority has under section 66(1) (d) of the Independent Broadcasting Authority Act (Act No. 153 of 1993) made the regulation in the Schedule.

SCHEDULE

1. Definitions

1.1 "category one contravention" means a contravention of:

- 1.1.1 sections 35(1), 35(2), 36, 38A(1), 38A(2), 48, 49(1), 49(2), 49(3), 49(4), 49(5), 50(1), 50(2), 58, 59(1), 59(5), 59(6), 59(7), 59(8), 60 and 61 of the Act;
- 1.1.2 section 30(6) of the Broadcasting Act;
- 1.1.3 regulations issued by the Authority from time to time, relating to compliance by licensees with such technical specifications or requirements as are set out;
- 1.1.4 regulations issued by the Authority in respect of broadcasting activities during election periods;
- 1.1.5 the provisions of the licence conditions defining the broadcasting service as community, public, commercial or subscription as set out in section 1 of the Act and the Broadcasting Act;
- 1.1.6 the provision of the licence conditions defining the technical specifications of a licensee and imposing obligations on a

- licensee in respect of the operation of technical equipment and use of the frequency spectrum, and as set out in the relevant schedules to the licence;
- 1.1.7 the provision in the licence conditions setting out the ownership and control structures of a licensee in the relevant schedules of the licence;
- 1.1.8 regulations issued by the Authority in relation to the broadcasting of South African Music Content by licensees;
- 1.1.9 regulations issued by the Authority in relation to the broadcasting of South African Television Content by licensees;
- 1.2 "category two contravention", means a contravention of:
- 1.2.1 sections 37, 55(1), 56, 57(1) and 72 of the Act;
- 1.2.2 regulations issued by the Authority in relation to the regulation of advertising, infomercials and programme sponsorship;
- 1.2.2 any licence conditions pertaining to programming and advertising as set out in the relevant schedules to the licence;
- 1.2.3. any licence conditions pertaining to the promise of performance by the licensee, as set out in the relevant schedule to the licence; and,
- 1.2.4 any licence conditions pertaining to human resources requirements to be fulfilled by the licensee as set out in the relevant schedule to the licence.

- 1.3 "category three contravention" means a contravention which does not include any contravention listed in categories one or two and which relates to formal requirements in the licence conditions and/or to any other requirements the Authority might publish, by way of regulation, from time to time.
- 1.4 Category four contravention means a contravention contemplated under section 44(6) (b) of the Act.
- 1.5 "Contravention" means an instance of non-compliance or non-adherence referred to in section 62(3) of the Act and "contravenes" and "contravening" shall have corresponding meanings.
- 1.6 "licensee" means any licence issued under the provisions of the IBA Act or the Broadcasting Act.
- 1.7 "the Act" means the Independent Broadcasting Authority Act 153 of 1993, as amended;
- 1.8 "Broadcasting Act" means the Broadcasting Act 4 of 1999, as amended

And any word or expression to which a meaning has been assigned in the Act shall bear such meaning.

2. Fines and Penalties

- 2.1 A licensee who contravenes a provision of the Act, regulations or licence conditions, as contemplated under category one, shall be liable to a fine not exceeding R 1 000 000 (One million rands).
- 2.2 A licensee who contravenes a provision of the Act, regulations or license conditions as contemplated under category two shall be liable to:

- 2.2.1 a fine not exceeding R 500 000;(Five hundred thousand rands)or,
 - 2.2.2 where applicable, in the case of a contravention contemplated in 1.2.2, 1.2.3, 1.2.4 or 1.2.5 of these regulations, increasing its programming quota, as determined by the Authority but not exceeding the percentage quota which the licensee has failed or neglected to broadcast in terms of its minimum programming requirements in the licence conditions; or,
 - 2.2.3 both 2.2.1 and 2.2.2 above.
- 2.3 A licensee who contravenes a provision of the regulations or licence conditions as contemplated under category three shall be liable to a fine not exceeding R100 000(hundred thousand rands).
- 2.4 A licensee who contravenes the provisions of section 44 of the Act shall be liable to a penalty not exceeding R50000.00 (fifty thousand rands), for each day the licensee fails to comply with the provisions of the section.

3. Method of Payment

- 3.1 Any fine or penalty imposed on a licensee in terms of these regulations shall be paid to the Authority within 30 days of the order under section 66(1)(d) of the Act.
- 3.2 Payment made under regulation 3.1 shall be by means of a crossed bank-guaranteed cheque made out to the Independent Communications Authority of South Africa or such payment as approved by the Authority in writing from time to time.
- 3.3 Failure by a licensee to effect payment within the prescribed period shall render such licensee liable to:

- 3.3.1 interest on the fine or penalty at a rate of prime plus 2%, or
- 3.3.2 prosecution for an offence under section 67(2) of the Act; or
- 3.3.3 both 3.3.1 and 3.3.2 above

4. Short Title

These regulations may be cited as the Independent Communications Authority of South Africa Fines and Penalties Regulations 2002.

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