



2. FORMAL RECOGNITION OF COMMUNITY BROADCASTING

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AT A GLANCE

- ~ For community broadcasting to thrive, it must be **formally recognised in law as a distinct sector** from public and commercial broadcasters.
- ~ Community broadcasters should be provided with the **same general media protections** as other media sectors.
- ~ Care should be taken when imposing general conditions on community broadcasters, whether as to institutional form or otherwise, although a general requirement that they be non-profit in nature is legitimate.

INTRODUCTION

Today, community broadcasting has been and is being formally recognised by law in a growing number of countries. This is an important change over the early days of the development of this sector, which has been described as follows:

Community broadcasting was initially developed, often without state authorization, by social movements and community-based organizations seeking to express their own issues, concerns, cultures, and languages, and to create an alternative both to public broadcasters, who were often under government control, and to private commercial media.

There are obviously very important benefits for community broadcasters to formal legal recognition, which **opens the door to proper licensing and a range of possible support measures**. In this respect, formal recognition and differentiation of community broadcasting in the national legislative framework helps to **guarantee the right to freedom of expression, to ensure diversity and pluralism and to promote the overall development of the sector**.

In addition to defining the sector, the process of formal recognition may establish some **conditions on entities operating in this broadcasting sector**. In principle, this is legitimate. However, where these conditions are unduly onerous or limiting – for example because they impose unrealistic and excessive constraints on transmission power – this can actually curtail or retard, rather than support, the development of this sector and is thus counterproductive.

In practice, far more countries have recognised community radio than community television. Formally, there is no particular justification for this, although it is often more challenging for communities to run television stations. There may also be cost barriers, especially in terms of distribution systems, and, in some contexts, there may be competition for scarce distribution resources, such as frequency spectrum.



KEY POLICY ISSUES

International standards arguably require States to **formally recognise community broadcasting as a distinct, third, broadcasting sector**, alongside public service and commercial broadcasting. This flows from the obligation of States to promote media diversity, and the invaluable contribution that community broadcasting makes to diversity. Inherent in this analysis is the fact that **it is only via formal recognition that tailored licensing systems for community broadcasters**, which are essential to the success of this sector, can be put in place, and the same is true of the public funding systems that are the financial lifeblood for many community broadcasters around the world.

Beyond simple recognition, better practice is to ensure that community broadcasters benefit from all of the legal rights and privileges that apply to other media outlets. On the other hand, as noted above, care must be taken when imposing conditions on this sector, whether this is in terms of establishing requirements regarding the institutional form which community broadcasters may take or imposing general limitations on their operations.

1. Formal recognition as a distinct sector

As noted above, it is important for community broadcasters to be formally recognised in law as a distinct type or tier of broadcasting. Only in this way can the door be opened to the sorts of specific licensing arrangements that make it possible in practice for these broadcasters to operate, as well as to other arrangements, in particular financial arrangements, that are also necessary for the sector to thrive. In essence, **the success of community broadcasting depends on sector-specific rules and policies**, and these are possible only following explicit recognition.

2. Extension of general media protections to community broadcasting

In most countries, the mainstream media benefit from certain special legal rights and protections, and **these should also be extended to community broadcasters**. For example, insofar as journalists have a right to protect the secrecy of their confidential sources of information, this should also apply to journalists working for community broadcasters. The same is true of any special systems or arrangements relating to protection of journalists.

The right to freedom of expression also has some general implications for media outlets, which should again also apply to community broadcasters. **No conditions should be placed on who may work as a journalist**, including as

to the minimum age of a journalist. And governments should always respect the **autonomy and editorial independence** of all media outlets, including community broadcasters.

3. No vague or aspirational requirements

Some countries place special conditions on the form or operations of community broadcasters, and these may be legitimate as long as they are **rationally connected to the goal of promoting a strong, effective community broadcasting sector**. However, like all restrictions on freedom of expression, such conditions must be clear, precise and realistic. Unduly vague conditions are problematical both because it is difficult for community broadcasters to know what they have to do to comply with them and because they can be abused by officials. Aspirational or excessively onerous conditions are problematical because community broadcasters will struggle to respect them. Unfortunately, many of the conditions placed on community broadcasters fail to respect these basic standards.



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4. Formal conditions as to form

In some countries, formal conditions are placed on the institutional and legal form which community broadcasters must take. As noted in *Policy Brief One*, it is legitimate to require these entities to be non-profit in nature, which is an important part of what distinguishes them from commercial broadcasters. Beyond that, however, **any other conditions must be strictly justified**. Requiring community broadcasters to be established as formal legal entities, for example, would be very difficult to justify. For certain communities, meeting even this relatively low barrier to establishing a community broadcaster may be unduly onerous.



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5. General limitations

It is normal for broadcast regulators to include a number of technical requirements, including as to the power and placement of transmitters, on individual broadcasters as part of the licensing process, among other things to limit frequency interference and to make optimal use of the available spectrum. Such conditions are perfectly legitimate, as long as they respond to real needs and are realistic for the broadcaster in question.

In a number of countries, however, general conditions are placed on all licensed community broadcasters, for example as to the power, range or height of transmitters. The rationale for such conditions appears to be that community broadcasters should by definition be small in terms of transmission strength. This is a misconception. **Limitations on the transmission power of a broadcaster should be based on**

real rather than theoretical considerations. A community broadcaster needs to be able to reach the members of its community. Where the community is geographically confined, limited transmission power will be sufficient. But for larger, more dispersed communities, and especially where the terrain is difficult (for example because it is mountainous), more powerful transmission systems will be needed. Conditions on transmission systems need to **take into account the wider question of spectrum availability**, which may or may not be limited. Instead of imposing blanket conditions on all community broadcasters, these sorts of conditions should be set through the licensing process and should be tailored to the needs and situation of each individual broadcaster.

INTERNATIONAL STANDARDS

International statements supporting the idea of a three-tier system of broadcasting, including specific recognition of community broadcasting as one of those tiers, abound. Several of UNESCO's 3 May World Press Freedom Day declarations call on States to do this. For example, the *2008 Maputo Declaration* calls on States:

To create an environment which promotes the development of all three tiers of broadcasting and, in particular, to improve conditions for the development of community media and for the participation of women within the community media framework; ...

The *2012 Carthage Declaration* similarly calls on States:

To promote a diverse media landscape that recognises the distinctive contribution to democracy by all three tiers of broadcasters – public service, community and commercial; ...

The *African Charter on Broadcasting 2001* noted:

The legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for



freedom of expression, diversity, and the free flow of information and ideas, as well as a three-tier system for broadcasting: public service, commercial and community.

Similarly, the 2009 Council of Europe's Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue "[r]ecognises community media as a distinct media sector, alongside public service and private commercial media".

Finally, the Recommendations by Participants of the *International Seminar on Community Media Sustainability: Strengthening Policies and Funding* also call on governments and regulators to: "Recognize and legally define community broadcasting in a way that clearly distinguishes it from commercial and public service broadcasters".

RECOMMENDATIONS

1. States should formally recognise community broadcasting in their legal systems as a **distinct tier of broadcasting, alongside public service and commercial broadcasting**. In principle, such recognition should extend to both radio and television, although it may make sense to start with recognition of community radio.
2. Community broadcasters and journalists working for community broadcasters should benefit from the **same rights and protections as are applicable to other media outlets**, including as to protection of sources, any general measures of protection, the absence of conditions on who may work as a journalist, and respect for their autonomy and editorial independence.
3. Any general conditions placed on community broadcasters should be **unambiguous and precise** so that their implications and meaning are clear to both broadcasters and officials. Such conditions should also be **fair and realistic**, and not unduly burdensome or aspirational.
4. While it is legitimate to require community broadcasters to be non-profit in nature, care should be taken before imposing any other specific requirements regarding form, including any requirement that they have an established legal form. In particular, **no such requirements should be imposed unless they serve to promote the development of the sector** and do not pose a significant barrier to aspirant broadcasters.
5. No general limitations on the nature of transmission systems, including as to power, range or height of transmitters, should be imposed on community broadcasters. Instead, such technical conditions should be applied on a **case-by-case basis as part of the licensing process**, taking into account the size and distribution of the target community, wider pressure on frequencies and other relevant considerations.

POLICY CHECKLIST



- Community broadcasting formally recognised as a sector distinct from public and commercial broadcasters
- General protections for the media also apply to community broadcasters
- Requirements are specific, relevant and not unnecessarily vague or onerous