



GIBRALTAR REGULATORY
AUTHORITY

Right of Reply Code

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FOREWORD

A Code setting the procedure for any person to exercise his/her right to the correction of incorrect facts or information, as provided for under section 39 of the Broadcasting Act 2012.

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1. Introduction

This document has been developed by the Gibraltar Regulatory Authority (“the Authority”) to set out its procedures for the right of reply in television broadcasting (“right of reply”) and to explain its aim and objectives, and to outline to members of the public how the process for exercising a right of reply works and how they can utilise it. Though the Code is aimed at television broadcasters, radio broadcasters are strongly encouraged to comply with the principles and applicable rules contained herein.

The document also outlines the review process in cases where a right of reply has been refused by a broadcaster and also explains the review process which is conducted by the Authority.

Finally, this document outlines the technical aspects associated with the right of reply, it explains some of the definitions used in the document (see Appendix 1), and also includes general information for members of the public and for broadcasters.

1.1 What is understood by a right of reply?

A right of reply, as set out in the Broadcasting Act 2012 (“the Act”), can be exercised by any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a broadcasting service.

A right of reply does not provide for the broadcast of an alternative or contrary opinion. In other words, a person may not be satisfied with the manner in which a broadcaster has relayed information about him/her, but a right of reply will not be granted unless the facts or information are factually incorrect such that their reputation and good name have been damaged (see terms explained in Appendix 1).

1.2 Why has a right of reply been established?

The ability of any person to exercise his/her right to the correction of incorrect facts or information was established, as provided for under section 39 of the Act, in an effort to afford speedy redress without having to have recourse to legal proceedings which may prove time-consuming and costly.

1.3 Right of reply: Legislation

The Act has given the Authority responsibility for the development of a right of reply in television broadcasting. The right of reply applies to all broadcasters under Gibraltar jurisdiction. Though the Code is aimed at television broadcasters, radio broadcasters are strongly encouraged to comply with the principles and applicable rules contained herein.

A decision to broadcast a right of reply will hinge on two key factors: firstly, was there an assertion of incorrect facts or information and, secondly, has a person's reputation and good name been damaged because of this being broadcast? Therefore, in seeking to exercise a right of reply, the onus is on the person requesting the right of reply to provide as much detail as possible to show that the

information or facts broadcast about him/her were incorrect and, further, that it has damaged his/her reputation.

There are circumstances in which a right of reply will not be granted, as set out in section 39(5) of the Act. For more information refer to Sections 4 and 5 below.

Exercising a Right or Reply is free of charge and, as per section 39(3)(a) of the Act, the broadcaster concerned shall make the necessary arrangements to process a request at no cost to the complainant.

1.4 Right of reply: Aim and objectives

The aim of a right of reply is to have in place a timely process whereby a person can seek the correction of incorrect facts or information which have been broadcast about him/her, where such facts or information have damaged their reputation and good name.

The objectives of a right of reply scheme are:

- (a) To provide recourse other than, or in addition to, legal proceedings for a person whose reputation and good name has been damaged by the broadcast of incorrect information or facts;
- (b) To ensure that the process for the exercise of a right of reply, is transparent, fair, and clearly understood both by broadcasters and people seeking a right of reply request;
- (c) To ensure that the process for the correction of incorrect facts or information, is conducted efficiently and effectively and in line with the timeframe set out in legislation;
- (d) To provide a mechanism for the broadcast of a right of reply which is in proportion to the nature of the correction being sought.

2. Making a right of reply request: the process explained

2.1 How does a person make a right of reply request

A request for a right of reply may only be made by a person(s) who has a legally justifiable actual interest in the publication of a right of reply, i.e. only a person(s) who believes that their reputation and good name has been damaged by the broadcast of incorrect facts or information.

If a person becomes aware of any facts or information broadcast about them that they know are incorrect and which damage their reputation and good name, then that person has the right to apply to the broadcaster concerned to have the facts or information corrected. This section outlines the steps to be followed in seeking a right of reply. In this document, a person seeking a right of reply is referred to as "the complainant".

- (a) The request to exercise a right of reply must be made in writing to the broadcaster and must state that a right of reply is being sought under section 39 of the Act. Broadcasters are required to include on their website the details of the person(s) to whom a request for a right of reply should be directed.
- (b) The request for a right of reply should include the following information:
 - (i) Name and address of the complainant;
 - (ii) Name of the channel/service;
 - (iii) The date and time of the broadcast and the part of the programme in which the incorrect facts or information were broadcast which are the subject of the right of reply request;
 - (iv) An outline, in as much detail as possible, of why the information or facts were incorrect and detail of what the correct facts or information are, including the provision of documents or any relevant evidence;
 - (v) Details as to why the complainant believes their reputation and good name has been damaged, such that a right of reply is warranted;
 - (vi) A proposal as to the form and manner that a right of reply should take. (As outlined in section 3.1 of this document).

2.2 What happens once a request for a right of reply has been made?

Once a broadcaster has received a request for a right of reply, the broadcaster then has a responsibility to consider all the details in relation to the right of reply request, including, among other things:

- (a) The broadcast as specified by the complainant;

- (b) The reasons and other information provided by the complainant to demonstrate that the information or facts broadcast were incorrect, including any documents or other evidence submitted as part of the right of reply request;
- (c) Whether the nature of the broadcast was such that it damaged the complainant's reputation and good name so that a right of reply is therefore warranted;
- (d) Any other information which the broadcaster may have in relation to the making of the broadcast and which is of relevance to a right of reply request.

2.3 What are the potential outcomes for a right of reply request?

If a broadcaster has decided to grant a right of reply relating to a request, then it shall transmit the reply within a reasonable time after the request was substantiated and at a time and in a manner appropriate to the broadcast to which the request relates.

If a broadcaster refuses a request for a right of reply, then it should explain why the request has been refused. It should also inform the complainant of their right to apply for a review of its decision to the Authority and of the time limit within which an application for review must be made. Information on requesting a review of a refusal to broadcast a right of reply statement and the grounds for rejecting this request for a review are provided in Sections 4 and 5 below.

Broadcasters must immediately notify the Authority once a decision to refuse a request for a right of reply has been made.

3. What information should a right of reply statement contain?

If a broadcaster grants a request for a right of reply, there are a number of important points that must be taken into account:

- (a) Any right of reply broadcast must clearly state to what extent the original information or facts broadcast were incorrect or misleading, and;
- (b) Any right of reply broadcast must be limited to broadcasting only the factual assertions necessary to rectify the incorrect facts or information.

It is important to remember that a right of reply is, in essence, about the correction of incorrect facts which have the capacity to damage a person's reputation or good name and is not about differing opinions.

3.1 What form should a right of reply statement take?

A right of reply will generally take the form of a scripted statement drafted and delivered by the broadcaster and approved by the complainant.

As a general principle, a right of reply should be broadcast at a time and in a manner appropriate to the broadcast to which the request relates. Therefore, the broadcast of the correct facts should ideally receive an equivalent exposure to those incorrect facts or information which damaged the reputation or good name of the complainant.

- (a) A right of reply must be broadcast within a reasonable time after the request was substantiated;
- (b) Each request for a right of reply should be considered on its own merits, in recognition of the unique person to whom it pertains;
- (c) In determining the form that a right of reply should take, and in seeking to reach agreement with the complainant, broadcasters are required to adopt principles of proportionality and fairness when proposing the approach to the right of reply statement to be broadcast;

When applying the principles of proportionality and fairness, the form of reply to be broadcast can be determined by a number of factors, including, but not limited to:

- (a) The time at which the original programme was broadcast;
- (b) The likely audience for that programme;
- (c) The likely audience or the time when a right of reply is to be broadcast;
- (d) The style of the original broadcast: for example, whether images were used in relation to the incorrect information/facts;
- (e) The complexity of the information which is the subject of a right of reply request.

4. Reviewing the refusal of a request: the process explained

4.1 Can a broadcaster's refusal of a right of reply request be reviewed?

Yes, a person can apply for a review of a decision to refuse a right of reply request. A broadcaster may refuse if such a reply:

- (a) is not justified, i.e. a person's reputation and good name have not been damaged by an assertion of incorrect facts;
- (b) would render the broadcaster liable to prosecution;
- (c) would render the broadcaster liable to civil proceedings; or
- (d) would transgress standards of public decency.

4.2 How does the review process work?

The review process works as follows:

- (a) In order to review the decision of a broadcaster's refusal of a right of reply request, the complainant must apply in writing within 28 days of the broadcast or the broadcaster's refusal to the Authority for a review of the broadcaster's decision. This written request for a review should include all relevant information relating to the original right of reply request.
- (b) It is recommended that a complainant keeps duplicate copies of all documents relating to his/her dealings with the broadcaster and the Authority.
- (c) Upon receipt of an application for review, the complainant shall pass a copy of the complaint and any relevant materials to the broadcaster. The broadcaster shall then provide any written representations to the Authority within 14 days of having received the complaint.
- (d) Once a decision has been reached, the Authority shall convey in writing to the complainant and to the broadcaster within 14 days of the receipt by the Authority of the written representation from the broadcaster or within 28 days of the receipt by the Authority of the complaint, whichever is the sooner.
- (e) The broadcaster shall comply with the Authority's decision within 14 days of the receipt of that decision.
- (f) The Authority may require the broadcaster to provide a right of reply in respect of material broadcast by a programme contractor where in the opinion of the Authority such action is the only effective way to provide a right of reply. In such cases, the programme maker will replace the broadcaster.

4.3 Non-compliance by the broadcaster

In the event that a broadcaster fails to broadcast a decision reached by the Authority, the Authority will notify the broadcaster of its failure to broadcast the decision and, as stipulated in section 70 of the Act, is guilty of an offence and shall be liable to be proceeded against and punished accordingly.

5. Reviewing the refusal of a request: application rejected

When a complainant makes an application to the Authority to review the broadcaster's refusal to a right of reply, the Authority will have regard to all the information provided by the complainant and by the broadcaster. The Authority may have reasons to reject a request for review of a right of reply. Such reasons include but are not limited to:

- (a) The request is of a frivolous or vexatious nature or was not made in good faith;
- (b) The error contained in the broadcast was of minor significance and a right of reply is manifestly unnecessary;
- (c) The proposed right of reply itself contains untrue information or assertions;
- (d) The proposed right of reply is a personal opinion rather than fact;
- (e) The proposed right of reply is an assessment or warning against the future conduct of a person;
- (f) Satisfaction of the proposed right of reply would involve a punishable act;
- (g) Broadcasting the proposed right of reply would be harmful or offensive;
- (h) Broadcasting the proposed right of reply would result in the broadcaster being liable to prosecution;
- (i) Broadcasting the proposed right of reply would result in the broadcaster being liable to civil proceedings;
- (j) Broadcasting the proposed right of reply would result in the broadcaster breaching its statutory obligation;
- (k) The person who is injured by the contested information has no legally justifiable actual interest in the publication of a right of reply;
- (l) The original broadcast also contained a statement from the person affected and the contents of that statement are equivalent to a right of reply;
- (m) The broadcaster has already broadcast an equivalent correction and the person requesting the right of reply has already been informed of this broadcast;
- (n) The contents of the proposed right of reply would violate the rights of a third party;
- (o) To broadcast the right of reply would not be in the public interest;
- (p) The application for review to the Authority was not made within the time periods specified in the Act.

In addition to the reasons listed above why a request might not be granted, the Authority also reserves the right to reply on any further or other reasons and/or considerations in reaching its decision as it considers appropriate.

6. Recording of broadcasts

With effect from 8th November 2012, broadcasters, by means of their own facilities and in a manner approved of by the Authority, shall record every broadcast made by the broadcaster.

Such records must be kept for a period of 40 days and it is open to the Authority to request that any record in relation to right of reply requests is made available for inspection. This inspection provision is provided for under section 25(3) of the Act.

APPENDIX 1

Definitions

The definitions listed below are to be understood in accordance with the Broadcasting Act 2012 and/or their meaning in a broadcasting context.

Act: refers to the Broadcasting Act 2012

Authority: refers to the Gibraltar Regulatory Authority.

Broadcaster: means a person licensed or authorised under the Broadcasting Act 2012 who supplies a compilation of programme material for the purpose of its being transmitted, relayed or distributed as a broadcasting service (whether that person transmits, relays or distributes that material as such a service or not).

Complainant: refers to a person who has requested a right of reply.

Damage: means to call into question, cast doubt upon, the reputation and good name of a person.

Incorrect facts or information: means facts or information which are not correct, erroneous or wrong, or are incomplete so as to result in a misleading impression as to the true factual position, or which are stated in such a manner so as to otherwise distort the true factual position.

Person: means any legal or natural person irrespective of nationality or residence.

Right of reply: means the broadcast by a Broadcaster of a statement prepared in accordance with a right of reply request.

APPENDIX 2

Part VI of the Broadcasting Act 2012

Right of reply

39. (1) All broadcasters under Gibraltar jurisdiction shall provide to any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme, a right of reply or a remedy judged by the Authority to be an equivalent remedy to a right of reply.

(2) Where a person (in this section referred to as "the complainant") is of the view that he is entitled, by virtue of subsection (1), to a right of reply or equivalent remedy, the complainant may require the broadcaster to make the arrangements necessary for that right to be exercised.

(3) The arrangements referred to in subsection (2)–

(a) shall be at no cost to the complainant; and

(b) shall not be of such a nature as to hinder the actual exercise of the right of reply, or equivalent remedy, notably, by the imposition of unreasonable terms or conditions.

(4) Where the request for a right of reply or equivalent remedy is justified, the broadcaster concerned shall transmit the reply within a reasonable time after the request was substantiated and at a time and in a manner appropriate to the broadcast to which the request relates.

(5) The broadcaster may refuse to provide a right of reply or an equivalent remedy if such a reply–

(a) is not justified by reference to the provisions of subsection (1);

(b) would render the broadcaster liable to prosecution;

(c) would render the broadcaster liable to civil proceedings; or

(d) would transgress standards of public decency.

(6) Where–

(a) the broadcaster refuses to give a right of reply; or

(b) the complainant is dissatisfied with the arrangements in respect of the exercise of his right of reply, the complainant may, within 28 days of the broadcast or the failure of arrangements, as the case may be, about which he is complaining refer the matter in writing to the Authority who shall itself or, in the event that it is unable to meet in the required time,

by three persons appointed by the Authority for this purpose, consider any written representations made by the complainant and by the broadcaster.

(7) The complainant, at the time that he makes a complaint to the Authority, shall pass a copy of the complaint and any materials attached thereto to the broadcaster and the broadcaster shall provide any written representations it wishes to make to the Authority within 14 days of having received the complaint.

(8) The decision of the Authority shall be given and conveyed in writing to the complainant and to the broadcaster within 14 days of the receipt by the Authority of the written representation from the broadcaster or within 28 days of the receipt by the Authority of the complaint, whichever is the sooner.

(9) The broadcaster shall comply with the decision of the Authority within 14 days of the receipt of that decision.

(10) The provisions as to time set out in subsections (5) to (9) may be varied by the Authority where it is satisfied that it is appropriate to do so in order to give an effective right of reply to persons resident or established in a Member State.

(11) The Authority may require the broadcaster to provide a right of reply or a remedy equivalent thereto in respect of material broadcast by a programme contractor where in the opinion of the Authority such action is the only effective way to provide a right of reply and in such case the provisions of this regulation shall apply by substituting the broadcaster for the programme maker.

Recording of broadcasts.

25. (1) A broadcaster, by means of its own facilities and in a manner approved of for the purposes of this regulation by the Authority, shall record every broadcast made by the broadcaster.

(2) Recordings made in compliance with subsection (1) shall be retained by the broadcaster for such period as may be determined by the Authority for the purposes of this regulation.

(3) When a complaint is being investigated by the Authority under section 39, the recording of a broadcast to which the complaint relates, together with the recording, made and being retained under this regulation, of any other broadcast which in the opinion of the Authority is relevant to that broadcast, shall be supplied by the broadcaster to the Authority on a request made by the Authority at any time during such period.

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