

LICENSING VERSUS REGISTRATION

- the experience of Norway

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1. Definition

Generally speaking, a licence is a permission from the authorities for an individual to carry out a specific activity. A practical example in our context is a broadcasting licence. The right to give a licence also implies the right to deny someone a licence.

Registration means that no one can be denied to carry out the activities which fall under the registration. There is only the duty to register, and to keep within relevant legislation. If you succeed in registering, you may carry out the activity.

There are some general differences between the two activities which can be illustrated as follows:

Licensing	Registration
Individual	General
Conditions listed in the licence	Conditions listed in regulation
Content-orientated	Technical orientation
Limited in time	No time limits
Trad: broadcasting	Trad: telecommunications

Lately, there has been a tendency to introduce or extend the possibilities for registration in the broadcasting sector.

2. The situation in Norway

The Broadcasting Act contains the following general rules of making broadcasting available to the public:

- The Norwegian Broadcasting Corporation has a legal right to broadcast
- The ministry issues licences for other terrestrial broadcasting and local broadcasting
- The ministry issues licences for facilities for terrestrial broadcasting and retransmission of broadcasts
- Broadcasting activities which are not dealt with above, have to be registered
- Facilities and networks for broadcasting which are not dealt with above, do not need to be registered under the Broadcasting Act.

The Act has recently been amended, but secondary legislation has not been adjusted to the last amendments.

The Ministry of Culture has delegated the power to issue the following licences to the regulatory authority:

- Local broadcasting
- Facilities for local broadcasting
- National digital radio.

The area where a licence has been required has been reduced the last years. The activities which previously required a licence, but where a licence no longer is necessary, are the following:

- Broadcasting in general, irrespective of transmission platforms (only terrestrial broadcasting)
- Facilities for broadcasting or the retransmission of broadcasting, including cable (only for terrestrial broadcasting)

One important reason for reducing the use of a licence, is that there is no capacity problem in cable or satellite transmission. Another argument is that a broadcasting licence may affect the editorial freedom of the broadcasters, and that the use of licences therefore must be restrictive. The EU's Directives on Electronic Communication Networks and Services, the so-called "telecom regulatory package" also states that broadcasting networks will not need an individual licence but a general authorisation. Norway is bound by the directives through the EEA agreement.

Most countries seem to apply both licensing and registration. Networks seem on the whole to fall under registration, while the system varies regarding broadcasting activities. Denmark and the Netherlands have a similar division as Norway, while Ireland has a more extensive use of licences. In Germany licences are required in the broadcasting sector, but not regarding so-called media- and tele-services. Informal consultations with regulatory authorities in various countries indicate that there is no common approach to how the right to broadcast should be obtained, by a licence or by having registered.

3. Licensing versus registration

Licensing is usually preferred for issuing a right to broadcast, either nationally or locally. This is also the case in Norway. The use of a licence makes it possible to attach some conditions to the broadcasting activities which are more difficult to do in a registration system. Those conditions are primarily to promote cultural, social or other objectives. Some examples may be given:

- To carry a certain percentage of minority language programmes
- To carry a certain percentage of programmes for children
- To carry a certain percentage of locally produced programmes
- To reach at least a certain percentage of the population within the licence area.

Generally applicants for a broadcasting licence include in their applications policy statements or commitments as to what their goals are and what they are going to broadcast. The last licences to national radio broadcasting have included the application as a part of the conditions for the licence. It means that broadcasters of this category are "legally" bound by their promises in the application.

Conditions like these have to be adapted to the area in which the broadcaster operates and must bear in mind the possibilities of the broadcaster to fulfil the conditions. It is therefore

considered appropriate to deal with them on an individual basis in a licence. It should be added that broadcasting licences are issued on the basis of beauty contests, not through auctions.

Registration is definitely not a condition-free territory. A number of conditions in law or other regulation have to be met in order to be registered. The type of conditions will vary in accordance with the activity. If you for instance register as a network for cable television other parts of legislation may apply than if you register as a cable radio broadcaster. Examples of legal requirements are:

- To name a responsible editor
- To follow rules on advertising
- To follow must-carry rules
- To follow regulation of cable subscribers' choice.

The main difference between the two systems in Norway is, as the examples indicate, that a licensing system is more heavily regulated than a registration system. The licensed broadcaster will have to follow most of the regulation which applies to a registered broadcaster. In addition, conditions of a cultural or individual nature apply.

The situation for the press is different. Norway has no special register for newspapers, unlike for instance the situation in Italy. To start a newspaper you have to register as a limited company or an organisation, depending on what you are. In addition you have to publish the name of a responsible editor.

Media companies and organisations often criticise the system of broadcasting licences. The main argument against it is that it makes it possible to censor the broadcasters. Such censorship can be executed in two ways: First of all censorship can be executed through the conditions in the licence. But censorship can also be executed through the system itself: If you want a licence, it might help to be on friendly terms with the authorities. And since the licence period is limited in time, you may have to continue being on friendly terms with the authorities if you want a renewal of the licence. It is therefore in Norway considered to be of utmost importance that the procedures are transparent, and that as much as possible is spelled out in written requirements, which are made public. Such written requirements include both what is demanded from the applicant and what arguments and conditions the regulator may apply when deciding if an applicant shall get a licence. In addition there is use of external advisory boards. In Norway, no evidence of any censorship has been detected.

The main argument in favour of broadcasting licences is technical: there is not enough frequency capacity for all. It is also argued that the frequencies are public property, and that there has to be some sort of public control over the use of that property. The criticism from the media companies and organisations are often met by trying to make the procedure of issuing licences as transparent and independent as possible. In Europe, Norway is not a market leader in this respect, since the ministry traditionally issued licences. That has, however, gradually changed.

In Norway, two trends can therefore be observed. One is to move activities from the licence area to the registration area. The other is to delegate the power to issue licences from the ministry to the regulator. The natural next step is to ensure that the regulator is independent

from undue influence carrying out this work. Hopefully, that will also be in place in the near future.