

Title: II BAM 160 – Domestic Distribution of Program Materials

Policy #: IBB-13-01

Effective Date: November 15, 2013

Originating Office: IBB Director’s Office, (202) 203-4515

(a) PURPOSE: This policy provides guidance and establishes procedures for making Agency programming available within the United States.

(b) AUTHORITY & SCOPE:

(1) Authority:

(i) Section 501 of the U.S. Information and Educational Exchange (Smith-Mundt) Act, as amended, as codified in [22 U.S.C. § 1461](#).

(ii) Section 208 of the Smith-Mundt Act, as amended, Clarification on Domestic Distribution of Program Material, [22 U.S.C. § 1461-1a](#).

(iii) The U.S. International Broadcasting Act, [22 U.S.C. 6201 et seq.](#)

(iv) The Radio Broadcasting to Cuba Act, [22 U.S.C. § 1465 et seq.](#)

(v) The Television Broadcasting to Cuba Act, [22 U.S.C. § 1465aa et seq.](#)

(vi) Office of Management and Budget Circular A-25, Revised, [Memorandum for the Heads of Executive Departments and Establishments, Subject: User Charges](#).

(2) Scope: This policy applies to all offices and divisions of the Federal Government which the Broadcasting Board of Governors supervises pursuant to the U.S. International Broadcasting Act (collectively, the Agency).

(c) POLICY:

(1) The Agency’s mission is to inform, engage, and connect people around the world in support of freedom and democracy. Amendments to the Smith-Mundt Act in [Pub. L. 112-239](#) re-affirm the Agency’s mission to broadcast to foreign audiences, while lifting some restrictions on disseminating information within the United States.

(2) The Agency may provide individuals, media entities, or other organizations with Agency program materials for use or distribution within the United States in accordance with law and the procedures in this policy. The Agency may not seek to syndicate its program materials through domestic media outlets with the intent to develop audiences within the United States. The Agency may provide program materials, prepared for dissemination abroad, to domestic broadcasters aimed at foreign diaspora communities as part of the Agency’s foreign policy mission. Unless these program materials are made available in the U.S. under a partnership or as part of the agency’s public affairs activities, (*See*, 22 U.S.C. § 1437; VI BAM 610,

Partnership Policy), then program materials must be provided upon request only. All domestic distribution shall fall within the following three categories:

(i) Public Affairs – The Agency may provide information about the Agency’s operations, programs, and program materials, including granting permission for a one-time use of Agency programming, when it serves the Agency’s public affairs functions.

(ii) Media and Organization Requests for an Ongoing Subscription to Agency Program Materials – Upon request, the Agency may enter an agreement to provide media entities, or other organizations, an ongoing subscription to Agency program materials on a case-by-case basis, as described below.

(A) A case-by-case determination shall include the following considerations:

(1) Whether such an ongoing subscription agreement is consistent with the public diplomacy and broad foreign policy objectives of the United States (*See* 22 U.S.C. §§ 6201, 6202(a)(1));

(2) Whether such an ongoing subscription agreement would serve the Agency’s mission to communicate to foreign audiences, or open communication of information and ideas among the people of the world (*See* 22 U.S.C. §§ 1461, 6201(2), 6204(a)(1));

(3) Whether such an ongoing subscription agreement would serve the Agency’s mission to promote human rights, including freedom of opinion and expression. The Agency shall consider whether a media entity’s intended use of Agency programming would support the Agency’s efforts to provide a variety of opinions or otherwise meet the needs which remain unserved by the totality of media voices available to people within nations and regions subject to censorship or repression (*See* 22 U.S.C. §§ 6201(1), 6202(a)(8), (b)(7));

(4) Whether entering such an agreement would be consistent with the highest professional standards of broadcast journalism, as outlined in an Agency broadcasting element’s charter or journalistic code (*See* 22 U.S.C. § 6202(a)(5), (c));

(5) Whether a media entity’s intended use of Agency programming would complement, rather than duplicate, adequate information dissemination from the Agency’s other broadcasters, private United States broadcasters, or government-supported broadcasting entities of other democratic nations. The Agency shall consider what, if any, broadcasts are available to the public in the relevant media market, in the same language and medium (e.g. radio or television) as the requested program materials, from private U.S. broadcasters or from government-sponsored broadcast entities from democratic nations (*See* 22 U.S.C. §§ 1462, 6202(a)(3)-(4); H. Conf. Rep. No. 103-482);

(6) Whether entering into such an agreement would help the Agency to effectively reach a significant target audience (*See* 22 U.S.C. §§ 6202(a)(7));

(7) The extent to which entering into an ongoing subscription agreement would be consistent with all other broadcasting standards, principles, charters, and objectives of the Agency (*See generally*, 22 U.S.C. §§ 1461, 1462, 6201-6206; and

(8) Whether distributing the requested program materials would be cost prohibitive to the agency because of an agreement with a third party who holds a copyright in the requested materials. (*See Pub. L. 112-239 §1078(b)*; 22 U.S.C. §§ 1461(b)(1)(C));

(B) The Agency may provide ongoing subscribers access to a professional distribution systems, such as the Direct system (“Direct”). Any agreement to grant a media entity an ongoing subscription to Agency programming:

(1) Must include limitations to ensure the subscriber keeps the Agency fully informed regarding its dissemination of Agency programming, to prevent further dissemination of Agency programming outside the scope of the agreement, and to prevent use or dissemination of Agency programming that does not meet the standards in paragraph (C)(ii)(1) above;

(2) Must place responsibility on the subscriber to secure any necessary licenses from all persons or organizations that hold a copyright in any portion of requested program materials;

(3) Must require the subscriber to credit the Agency broadcasting element which produced the programming in any and all uses of those program materials; and

(4) Must require the subscriber to play program materials unaltered and in full at least once; and

(5) May establish subscriber fees in order to recover reasonable costs.

(iii) Domestic Partnerships with Incidental Distribution - The Agency may pursue and enter contractual or partnership agreements to distribute its programming in any form, or via any medium of communication, including but not limited to satellite broadcasting and the Internet. The Agency may distribute its programming via any means, regardless of whether this distribution incidentally reaches the United States, so long as distributing programming by these means serves the Agency’s international broadcasting statutory mission. *See VI BAM 610, Partnership Policy; and BAM Title IX, Procurement for procedures on entering partnerships or contracts.*

(d) PROCEDURES AND PRIMARY RESPONSIBILITIES:

(1) Public Affairs – Each broadcaster will respond to its own public affairs requests through the broadcaster’s Public Relations Office.

(i) The Public Relations Offices at each broadcaster are responsible for keeping a record of all domestic public affairs programming requests. This record should be provided once a year to the IBB Director's Office.

(2) Media Requests for an Ongoing Subscription to Agency Program Materials –The procedures for reviewing and answering requests for an ongoing subscription agreement are below:

(i) The Office of Strategy and Development (OSD) responds to written requests to enter into an ongoing subscription agreement for Agency program materials in the United States, including requests for access to Direct.

(ii) After OSD receives a written request with sufficient information, OSD shall, within 15 calendar days, draft a determination regarding whether entering into an ongoing subscription agreement is in the Agency's best interests, based on the considerations in paragraph (c)(ii) above, and forward its recommendation to the IBB Director's Office.

(iii) Within 15 calendar days of receiving OSD's recommendation, the IBB Director will make a determination, in consultation with either the VOA or OCB Director, based on the considerations in paragraph (c)(ii) above, whether to allow the request to go forward to the next step or whether to deny it.

(iv) Decisions by the IBB Director not to enter into the subscription agreement will be communicated to the requestor by OSD in writing.

(v) If the IBB Director determines that a subscription request should be granted, OSD shall immediately communicate that determination to the Agency broadcasting element that produces the requested program materials, the Office of Digital Design and Innovation (ODDI), and the Office of Technology, Services and Innovation (TSI).

(vi) Within 15 calendar days of receiving the IBB Director's decision, ODDI and TSI shall consult with OSD and the Agency broadcasting element regarding the capabilities of Direct, or other Agency systems used to provide subscribers with ongoing access to Agency programming.

(vii) Also within 15 calendar day of the IBB Director's decision, the broadcaster shall initiate contact with any third party vendors to determine if the requestor needs to secure any domestic rebroadcast rights. Alternatively, the broadcaster may provide vendor contact information directly to the requestor (via OSD) for the purpose of securing the necessary domestic rebroadcast rights. The broadcasting element may not grant a request without approval from the IBB Director.

(viii) Once the broadcasting element communicates any vendor issues or costs for the request, OSD shall inform the Requestor, in writing, of this information.

(ix) Provided the domestic licensing issues are resolved, OSD may use a template agreement that has been previously cleared by the Office of General Counsel for all ongoing subscribers approved by the IBB Director. Alternatively, OSD may negotiate a

new agreement or amendments to a template agreement, as long as OSD receives legal clearance from the Office of General Counsel before entering such an agreement.

(x) OSD shall keep a copy of:

(A) The final determination regarding the best interest of the Agency based on the standards in paragraph (c)(ii) above;

(B) The final version of all subscription agreements; and

(C) Any other records related to the subscription agreement.

(xi) The relevant broadcasting element shall coordinate with ODDI and TSI to ensure that the programming the subscriber requests is available on Direct, or is available through another system.

(xii) Annual Review:

(A) Within one year of the effective date of each subscription agreement to allow continuing use or distribution of Agency program material within the United States, OSD shall review its original determination regarding the standards in paragraph (C)(ii)(1) and submit the results of that review to the IBB Director.

(B) If, for any reason, OSD or the IBB Director, in consultation with the OCB or VOA Directors, determine that providing an ongoing subscription is no longer in the best interest of the Agency based on the factors outlined in this policy, the Agency shall take appropriate action, including but not limited to amending or terminating a subscription agreement.

(3) Domestic Partnerships and Contracts with Incidental Distribution – Agency non-fee partnership requests will follow the procedures in VI BAM 610, Partnership Policy, which is managed by the IBB Office of Administrative and Secretariat Operations. The procedures for entering into Contracts are found in the Federal Acquisition Regulation and BAM Title IX. The Office of Contracts manages contracts and procurements, including Contracts to broadcast or make Agency programming available abroad, with incidental distribution in the United States.

(4) Determining Fees – The Office of the Chief Financial Officer (OCFO), Financial Operations Division, in consultation with OSD, ODDI, TSI and the Agency broadcasting element, shall draft the Agency's determination whether to charge fees, and the amount of fees, in accordance with OMB Circular A-25. OCFO shall conduct a review of the Agency's determination on fees, at least once every two years, or more frequently as necessary. OCFO shall keep all records associated with the Agency's determinations, and periodic reviews, as described in OMB Circular A-25 paragraph 8(g).

(e) DEFINITIONS:

(1) "Media Entity" means any person or entity, that actively gathers information of potential interest to a segment of the public, turns gathered information into a distinct work, or distributes that work to an audience within the United States.

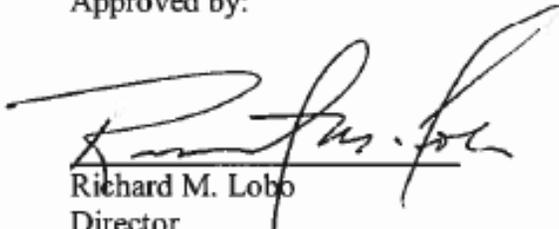
(2) "Organization" means any corporation, trust, association, cooperative, or other group organized primarily for scientific, educational, service, charitable, or similar purpose, including but not limited to institutions of higher education.

(3) "Programming" or "Program Material" means radio broadcasts, television broadcasts, and Internet content that the Agency disseminates to audiences outside of the United States, pursuant to: The U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. § 1461 et seq.); The U.S. International Broadcasting Act of 1994 (22 U.S.C. § 6201 et seq.); The Radio Broadcasting to Cuba Act (22 U.S.C. § 1465 et seq.); or The Television Broadcasting to Cuba Act (22 U.S.C. § 1465aa et seq.).

(4) "Syndicate" means to license the right to distribute programming to multiple media entities outside the network of the broadcaster that produced the programming.

(f) EFFECTIVE DATE AND APPROVAL:

Approved by:


Richard M. Lobo
Director
International Broadcasting Bureau

Effective Date:

NOV 15 2009
