

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE
INTERNATIONAL ASSOCIATION OF BROADCASTING**

CHILE

WHEREAS:

A draft bill that recommends to "decriminalize unauthorized broadcasting", Bulletin 10.456, is under discussion in Chile.

CONSIDERING:

That broadcasting operates on the airwaves that make up the radio spectrum, which is heritage of humanity, managed by the States by delegation of the International Community.

That the International Community, who owns the airwaves, recognizes the sovereign right of each State to regulate its communications in terms of the International Telecommunication Convention and World Radio Regulations.

That the International Telecommunication Convention is the instrument that regulates the use of radio spectrum and its regulation highlights two governing elements: **licenses** (artic.24), which issued appropriately must avoid **harmful interference** (artic.35- 1) and the need **to take every possible measure to prevent the operation of electrical installations and devices of any kind from causing harmful interference to radio electric services or communications** (artic.35- 1).

That the Inter-American Telecommunications Commission - CITEL has repeatedly decided, "**To urge Member Administrations to include in their National Legislation provisions in the criminal, administrative and civil order, which establish penalties for illegal stations and their managers.**"

That in the case of illegal transmissions, it is an anti-social behavior that affects both radio and interfered services, as well as citizens who cannot freely receive those services. It is very interesting the judgment of the Supreme Court of the United States in this respect, which in the case NBC and CBS vs. USA in 1943, concluded: "**the right to free speech does not include the right to the use of a broadcasting media without a license**".

That the installation and operation of an illegal radio station, is therefore an antisocial act, since knowingly and sometimes deliberately causes harmful interference in service areas granted by the State, not only on radio stations and their audiences, but also on other essential services such as air navigation and / or emergency.

That all the recommendations of the IACHR and the rapporteurs for freedom of expression explicitly and emphatically reiterate the importance of community radio "**when they act within the law.**"

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That the doctrine of the Inter-American Human Rights System tends to decriminalize crimes of opinion, whether derogating offenses such as defamation or contempt, and in the case of offenses against honour and privacy, filing their research in civilian courts, with civil penalties, that is, without corporal punishment, which has nothing to do with the antisocial act of installing and operating a radio without concession or license.

That sanctions related to illegal transmissions, must comply with the test of proportionality: "(1) that sanctions should have been accurately and clearly defined by means of a formal law and pre-existing material; (2) they should be aimed at achieving imperative objectives authorized by the American Convention; and (3) must be necessary in a democratic society for achieving the imperative objectives which are being sought; strictly proportionate to the aim pursued; and suitable to reach the imperative objective they aim to achieve. These conditions must be checked simultaneously and it is for the authority that imposes them to demonstrate that all of them have been fulfilled. "

That keeping the radio spectrum free from harmful interference is an imperative objective to allow radio broadcasting to serve democracy and the free flow of information.

That the penalties laid down in national legislation to prevent illegal transmissions are **necessary**, since if there were no such sanctions, illegal emissions would proliferate.

That the confiscation of equipment used in a clandestine transmission is a **suitable and proportionate** sanction, since it helps to stop the phenomenon of illegality in the context of an ordinary legal proceeding, with full guarantees of due process.

THE BOARD OF DIRECTORS OF THE INTERNATIONAL ASSOCIATION OF BROADCASTING – IAB – MEETING IN LIMA, PERU, ON MAY 12, 2016 RESOLVES:

To urge the Honorable Senate of the Republic of Chile, to keep in mind the recommendations of the ITU and CITELE in order that they comply with the obligation assumed by the State of Chile in signing the International Convention Telecommunications, in order to keep radio spectrum free from harmful interference, maintaining at least the confiscation of equipment, dictated by an independent regular court, as one of the minimum measures to prevent the proliferation of illegal radios.

Lima, May 12, 2016