

# IALA Recommendation V - 102

## On The Application Of “User Pays” Principle To Vessel Traffic Services

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### Document Revisions

Revisions to the IALA Document are to be noted in the table prior to the issue of a revised document.

<b>Date</b>	<b>Page / Section Revised</b>	<b>Requirement for Revision</b>
December 2005	Entire document	Reformatted to reflect IALA documentation Hierarchy.

## **IALA Recommendation**

### **on the Application of “User Pays” Principle to Vessel Traffic Services**

(IALA Recommendation V-102, March 1998)

#### **THE COUNCIL**

**NOTING** that VTS is a powerful tool for enhancing safety at sea, particularly in those areas where traffic congestion increases the risk of a navigational incident or where the environmental consequences following an incident could be extensive and that, subsequently, VTS systems are increasingly being required throughout the world;

**NOTING ALSO** that regulation V/8-2 of the Safety of Life at Sea (SOLAS) Convention, 1974, as amended, requires, *inter alia*, that Contracting Governments undertake to arrange for the establishment of VTS where, in their opinion, the volume of traffic or the degree of risk justifies such services;

**NOTING FURTHER** that the International Maritime Organisation has adopted Assembly Resolution A.857 (20) on Guidelines for VTS;

**RECOGNISING** that as the demand for more vessel traffic services and operating capability increases, so potentially do costs, with the result that administrations are under increasing pressure to defray the expense of operating a VTS to the users or beneficiaries of the service;

**HAVING CONSIDERED** the proposals by the IALA VTS Committee on user pays principles related to vessel traffic services;

**ADOPTS** the Guidelines on the application of “User Pays” principle to Vessel Traffic Services set out in the annex to this Recommendation; and,

#### **RECOMMENDS**

1. National Members to encourage the installation of VTS where navigational safety would be enhanced irrespective of the funding mechanism.
2. National Members and other appropriate Authorities consider the principle of “User Pays” for vessel traffic services, taking into account the Guidelines given in the Annex, where:
  - a) it is deemed to be desirable by the authorities involved;
  - b) the cost to the user is reasonable in terms of the benefits gained by the user; and,
  - c) the administrative burdens of cost recovery do not outweigh the financial gains.

## ANNEX

# Guidelines on the Application of “User Pays” Principle to Vessel Traffic Services

## 1 GENERAL CONSIDERATIONS

The fundamental fairness and desirability of the “User Pays” principle is not in doubt. It is the application of that principle that gives rise for the need for caution. For example, there will be scenarios where it is not possible for a shore authority to identify all the beneficiaries of a particular service. The question then to be faced is whether to charge those whose identity is known at a rate which compensates for those who cannot be charged.

In situations where the identity of users can be readily established, the apportioning of costs to users may need to take account of other factors, such as:

- a) the extent to which the local environment potentially benefits from the reduction in navigational risks achieved by a VTS;
- b) in the case of a port VTS, the potential benefit to the port itself by way of more efficient operation and resource allocation;
- c) the degree to which it is both practical and acceptable politically to charge certain user groups. This problem is likely to be particularly acute where there are significant densities of recreational boat traffic in areas used by commercial navigation.

Even in situations where the apportionment of costs and their political acceptability have been established, there will be cases where it is excessively costly in administrative terms to actually recover payment. This is likely to be of particular concern where non or late payment of an invoice requires time consuming follow-up action or where traffic volume is insufficient to support the service. Again a balance may have to be struck in deciding whether it is cost effective to implement “User Pays” in some circumstances.

Consideration should also be given to the fact that in requiring payment for a service, those being charged may sometimes believe, not unreasonably, that they have the right to expect certain levels of service, and indeed to influence the scope of that service. Put more succinctly, “User Pays” can often lead to “User Says”.

In summary, the application of “User Pays” as a method for funding VTS may of necessity have to be less than total. Often a compromise will have to be accepted between what is justified and what is achievable in a practical sense. Partial application however can expose the charging authority to criticism of bias or unfairness. Mandatory payment for a service can alternatively lead to quantitative and qualitative demands from those being charged.

## 2 LEGAL CONSIDERATIONS

The legal framework that applies to a VTS “User pays” system depends in large part on the nature and scope of the VTS service under consideration. In broad terms, VTS can be divided into the following types:

offshore	in international waters
coastal	in territorial waters but covering traffic primarily transiting a sea area
approach	in estuarial or river situations
port	entry into specific ports.

Offshore VTS in international waters are usually associated with an object to be protected (such as an offshore platform or an environmentally sensitive area), or in international straits. Under SOLAS, participation in a VTS in international waters can only be voluntary, which precludes charging participating shipping. Even in combination with a mandatory ship reporting system no user charging is possible, as this is explicitly prohibited by IMO as a condition of a mandatory ship reporting system. The UNCLOS also prohibits any form of user charging in international waters. However, in case of protecting a particular object, the organisation or body responsible for the safety of that object may be charged. In addition, the sale of information to the participating shipping on a voluntary basis can provide a source of funding.

Coastal VTS in territorial waters are likely to include traffic bound for ports of the nation providing that VTS as well as traffic in transit for other destinations, including ports in direct competition with ports in the nation concerned. The effect of charging only the traffic arriving in those national ports can introduce a significant commercial disadvantage and hence limits the scope for introducing such a user charge.

A further constraint exists in that Article 26 of UNCLOS limits user charging to traffic in transit through territorial waters to “specific services” only. Legal opinion is that “specific services” may include pilotage and SAR but not the provision of lights and buoys. VTS is an “hybrid” position where the conventional law of the sea in respect to charging is not clear; it can be argued to be, or not to be “specific” to the ship depending on the quality and scope of the VTS. There is therefore a possibility that VTS offering very generalised advice may be held to be not chargeable in relation to ships in transit. Also the practical limitations of levying a user charge on ships in transit through territorial waters must be taken into consideration.

For ships making a port call in the state providing VTS, the state may seek to recover costs for coastal VTS services; though again the level of any cost recovery will need careful consideration. Where the VTS service is to be provided in a strait used for international navigation, joint funding by a number of states may be an option. Any such joint funding arrangements will however, need to address the issue of cost recovery.

Whilst in legal terms, there appear to be no difficulties with charging traffic for the provision of VTS (or other services) when visiting a port or using the approaches to it, this has yet to be tested fully in law.

### **3 CONCLUSIONS**

In reviewing the factors affecting the applicability of “User Pays” to VTS, it has been found necessary to address each type of VTS separately

#### **3.1 Offshore VTS.**

Recognising that offshore VTS systems require mandatory compliance to be effective, and that the consequential adoption by IMO precludes charging for participation, it is concluded that “User Pays” is not applicable to these systems.

#### **3.2 Coastal VTS.**

Whilst the application of “User Pays” in the context of coastal VTS has many attractions, the practical problems should not be underestimated. Such problems include:

- a) accurate identification of users,
- b) apportionment of costs,
- c) political and legal acceptability of charging users,
- d) related administrative costs.

On balance, it is possible that there will be many coastal VTS where the administrative difficulties to be met by introducing “User Pays” will outweigh the financial benefits of cost recovery.

#### **3.3 Port and Approach VTS.**

Although port and approach VTS are typically funded nationally, regionally or by the port itself there are cases where cost recovery from users can be achieved through such mechanisms as, port dues, pilotage charges, etc. However, the administrative obstacles to “User Pays” will differ from port to port. Furthermore, it may be necessary to decide what proportion of the costs should be borne by other potential beneficiaries, be it local environmental protection or port efficiency.