



**THE NAB'S WRITTEN SUBMISSION TO ICASA ON THE
DISCUSSION DOCUMENT ON THE REVIEW OF
REGULATIONS ON THE SOUTH AFRICAN LOCAL
CONTENT: TELEVISION AND RADIO**

10 October 2014

1. Background

- 1.1. The National Association of Broadcasters (“the NAB”) is the leading representative of South Africa’s broadcasting industry, established over 20 years ago. The NAB aims to further the interests of the broadcasting industry in South Africa, by contributing to its development. The current NAB members are:
 - 1.1.1. the three television services and 18 radio services of the SABC;
 - 1.1.2. licensed commercial radio broadcasters (including: Primedia, Kagiso Media, Tsiya Group, AME, MSG Afrika, Classic FM, Kaya FM and YFM);
 - 1.1.3. licensed commercial television broadcasters (e.tv, Multichoice, M-Net, StarSat);
 - 1.1.4. a host of community radio broadcasters and one community television broadcaster;
 - 1.1.5. both the licensed broadcast signal distributor and the selective and preferential broadcast signal distributors, Sentech and Orbicom.
- 1.2. On 4 July 2014, the Independent Communications Authority of South Africa (“ICASA”) published for public comment, a Discussion Document on the Review on South African Local Content: Television and Radio (“the Discussion Document”). The Discussion Document is open for public comment, and the closing date is 10 October 2014. The NAB welcomes the opportunity to make its written submission, and we request to be given an opportunity to participate in oral hearings should these be conducted.
- 1.3. In its written submission, the NAB will not answer all questions posed in the Discussion Document, but will deal with overarching principle issues, then address television and radio issues separately.

2. Overarching Principle Issues

- 2.1. The NAB supports the Authority’s process to review the local content regulations. We further applaud the Authority for having conducted a research, which led to the publication a Discussion Document. The Authority has attempted to consult widely, by conducting provincial workshops on the Discussion Document and assessing whether or not there is a need to review the current SA local content regime in South Africa.

2.2. At the onset, the NAB wishes to point out that the basic principle of regulation in any market is to intervene where there is market failure. South African Local content regulations were introduced to address market failure in local content supply and acquisition in South Africa, and the approach worked well. On the other hand, the NAB cautions the Authority that if there is continued intervention, then the Regulator runs the risk of losing focus, and stifling free choice and commercial freedom.

2.3. SA local content has played a pivotal role in preserving the cultural identity and ethos of the South Africans society. The Electronic Communications Act 36 of 2005 as amended (“the ECA”) enjoins both television and radio licensees to:

“Promote the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all language and cultural groups, and provide entertainment, education and information;

Provide for regular-

- *News;*
- *Actuality programmes on matters of public interest;*
- *Programmes on political issues of public interest;*
- *Programmes on matters of international, national, regional and local significance;*
- *Cater for a broad range of services and specifically for programming needs of children, women and the youth and the disabled....”¹*

2.4. Both television and radio will for at least the next decade be the preferred electronic media platform for national access to information, education and entertainment in South Africa. The Authority has noted in its Discussion Document that locally produced South African content has been a key driver for the consumption of television programming. Broadcasters have effectively responded to local audience tastes, needs, languages and preferences. Arguably, even without any specific quotas for South African content, television broadcasters will continue to provide a broad range of local content as it drives audiences. The Television Audience Measurement Surveys (TAMS) all point to the most popular television programmes being South African – and these are in a range of local languages. Radio has similarly responded to the ever changing trends and genres and promoted, enabled and enhanced the growth of local music and home grown on-air talent. The Authority and the broadcasting industry have collectively delivered on the national policy

¹ Section 2 (s) of the ECA.

objective of creating a diverse and truly South African broadcasting system.

2.5. Whilst there is national policy in place for the provision of broadband access, it is worth noting that although internet access both per household, and via mobile phones is increasing in South Africa, terrestrial broadcasting still remains the primary medium of access, particularly for marginalised communities, to which radio or television is the only source of information and entertainment. South Africa should however be alive to the fact that the uptake of broadband on-demand services is slowly increasing, and in the near future, consideration will have to be given on how to encourage local content on broadband platforms and alleviate the regulatory disparity that exists between online and licenced broadcast services. There seems to be growing demand by South Africans for content over the net. The high level of piracy for downloaded content in South Africa bears testimony to this demand. South Africa is slowly realising the emergence of content offerings over broadband. As a result, the reality of advocating for equal regulatory treatment of the myriad of offerings is increasing. For instance SA saw the launch of VIDI, a video on demand service (VOD) owned by Times Media which is the equivalent of Google, Apple and Netflix.

2.6. The Issues Paper on the Review of Broadcasting Regulatory Framework

2.7. On 8 December 2011, ICASA published an Issues Paper on the Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment (“the Issues Paper”)² for public comment. The objective for the Issues Paper was to identify broadcasting regulations that needed to be repealed and or amended, in order to address the transition to Digital Terrestrial Television (“DTT”) and increase digital convergence. In the Issues Paper, some of the broadcasting regulations that were identified for amendment were regulations for SA Local Content for Television and Radio³. In its submission to the Issues Paper, the NAB submission supported the proposed amendment of the SA Television Content Regulations 2006. This was because the 2006 amendment only reflected the findings of the Subscription Broadcasting Services Position Paper 2005. Thus, although the amendments updated the regulations and took a digital multi-channel approach in the context of

² published in Government Gazette 34828, General Notice 891 of 2011

³ 2006 ICASA SA Music Content Regulations published in government gazette 28453 and the ICASA SA Television Content Regulations published in government gazette 28454.

subscription television broadcasting services, they did not review or update the analogue channel approach for Public, Community and Commercial Free-to-air television broadcasting. It is the view of the NAB that the 2006 TV Local Content Regulations ought to have been reviewed, post the 2006 amendments, to adopt the 'digital ready' approach.

- 2.8. As there will be a period of dual illumination of both analogue and digital broadcasting services until a specific date when all analogue broadcasting services will be switched off, it is recommended that the South Africa content obligations for analogue broadcasting services only be repealed after the analogue switch-off and that a 'light touch' approach be adopted for the migrating broadcasting services during the dual illumination period to avoid over-burdening these broadcasters. The Authority is also reminded of the costs associated to dual illumination and the migration process.

2.9. The Copyright Review Commission

- 2.10. On 2 March 2011, the Minister of Trade and Industry ("the DTI") extended an invitation to all members of the creative industry and the public to make submissions to the Copyright Review Committee ("the CRC") on their views and recommendations regarding the collection and administration of royalties by collecting societies. This invitation was extended due to concerns and allegations which had been raised by interested parties in relation to the collecting societies' model in place for the distribution of royalties. Published with this invitation, were terms of reference which set out the framework against which the CRC would conduct its enquiry ("the Terms of Reference").
- 2.11. As an interested party, the NAB made its written submission, and addressed all questions raised under the various terms of reference⁴. The CRC subsequently held closed meetings with the selected stakeholders, including the NAB. Emanating from this session, the NAB was requested to provide further information to clarify specific issues for the CRC, and these included the NAB's views on:

⁴ The NAB's written submission on behalf of television broadcasters to the Copyright Commission dated 31 March 2011 and the NAB's written submission on behalf of the radio broadcasters to the Copyright Commission dated 31 March 2011.

- 2.11.1. Payment of mechanical reproduction royalties;
- 2.11.2. Escrow payments;
- 2.11.3. Recommendations on the functioning of the Copyright Tribunal.⁵
- 2.12. The issues the CRC sought clarity on were moot within the NAB quarters, as they had a direct bearing on broadcasters and their relationships with collecting societies.
- 2.13. The final report of the CRC was published in September 2012.⁶ The report amongst others made recommendations in relation to local music content quotas for radio⁷, and provides as follows:
- 2.13.1. *The local music target for public radio stations to be increased from 40% to 80%, within one year after the effective date of implementation;*
- 2.13.2. *The target for private radio stations to be increased from 25% to 50%, the new targets to be phased in over a five year period (to be increased by 5% per annum for a period of 5 years);*
- 2.13.3. *Community radio stations' targets be increased from 40% to 80%, within one year, after the effective date of implementation;*
- 2.13.4. *Local content to be incorporated into TV and to be in line with local content for other programmes, within three years after the effective date of implementation;*
- 2.13.5. *ICASA should include as a condition in broadcaster's licences that compliance with needletime and copyright obligations is compulsory and that repeated failure by the broadcasters to comply should lead to the cancellation of their licences.*
- 2.14. It is on these recommendations among others, the Authority relies on for embarking on the process of reviewing South African local content quotas. The NAB has concerns with the recommendations of the CRC, based on the following:

⁵ NAB correspondence to the CRC dated 16 August 2011

⁶ Published in government gazette 378903 of 4 July 2014.

⁷At pages 85 and 86 of the CRC Report:

- 2.14.1. The recommendations relating to the increase of SA music quotas are ultra-vires the powers of the CRC, and not in line with section 192 of the Constitution;
- 2.14.2. ICASA is not responsible for the regulation of Intellectual Property, nor should it have undue interference into the commercial activities of broadcasters.

2.15. Powers of the CRC

2.16. As indicated, the CRC was established by the Minister of Trade and Industry. Its roles and powers were set out in the Terms of Reference, which spelled out parameters within which the CRC could operate. None of the Terms of Reference empowered the CRC to prescribe regulations on broadcasting, nor was it empowered to make recommendations to ICASA. It is our view that the CRC's proposals are *ultra vires*.

2.17. Section 192 of the Constitution of South Africa

2.18. The authority to make regulations for the broadcasting sector and to regulate broadcasting lies solely with ICASA. This is by virtue of section 192 of the Constitution which stipulates:

“National legislation must establish an independent authority to regulate broadcasting in the public interest and to ensure fairness and diversity of views broadly representing South African society”

2.19. To give effect to this provision, Parliament enacted the Independent Communications Authority of South Africa Act 13 of 2000 (“the ICASA Act”). One of objects of the ICASA Act is *“to establish an independent authority which is to ... regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the Constitution”*.⁸ The independent authority in question is the Independent Communications Authority of South Africa (“ICASA”).

2.20. To the extent that the proposed recommendations by the CRC seeks to *“regulate*

⁸ Section 2(a)

broadcasting”, or is to have this effect if implemented in its current or any similar form, it must comply with section 192. As already stated, the recommendations by the CRC for the increase of SA music quotas, and proposal of how these may be introduced is *ultra-vires*.

2.21. Ministerial Policies and Policy Directives

2.22. It is worth pointing out that, the Authority in exercising its powers in terms of the ECA must consider policies made by the Minister. In other words, being an independent regulator, ICASA may accept policy directives only from the Minister and not from other bodies- the CRC in this instance.

2.23. Commercial activities of licensees

2.24. The ECA sets out as one of its objectives to “*refrain from undue interference in the commercial activities of licensees while taking into account the electronic communications needs of the public*”⁹. From the NAB’s point of view, the CRC’s recommendation to amongst others include as a licence conditions the obligation to comply with needletime and copyright obligations, amounts to an interference with broadcasters’ commercial activities.

2.25. Intellectual property

2.26. Discussions on intellectual property are not new to the Regulator, the broadcasting sector and the independent production sector. The recommendation by the CRC that ICASA must make Copyright obligations compulsory in licence conditions is *ultra-vires* ICASA’s powers. In its Findings Document on the Commissioning of Independently Produced South African Programming (“the Findings Document”),¹⁰ the Authority made the following finding on page 50 of the Findings Document:

“The Authority has noted the problem of full ownership of copyright that is brought about by the exception to ownership of copyright in the Copyright Act. Considering that the position can be negotiated in contract, the Authority is of the view that any discontentment arising from the copyright laws should be brought to the attention of the DTI and CIPRO [now the Copyright and

⁹ Section 2(y) of the ECA.

¹⁰ Published in government gazette 32762 on 1 December 2009.

Intellectual Property Commission CIPC] [our emphasis] by the affected parties. As the legislative landscape evolves, the Authority shall continue to monitor the developments of Copyright law especially regarding its implication on broadcasting policy”

2.27. In the same Findings document, the Authority concluded that it shall not interfere in the dispute resolution as well as pricing and commercial negotiations between parties.¹¹ Both the broadcasting sector and the independent production sector recognise that copyright related issues fall under the domain of the DTI and CIPC.

2.28. Monitoring and Compliance

2.29. The Authority asks a question: whether its monitoring provides accurate results, and whether there are alternative feasible, and cost effective monitoring methods to be employed.

2.30. Currently, reporting is administratively onerous on both broadcasters and the Authority. It is done manually and is paper-based. Broadcasters are further concerned that often they are required to re-submit information already provided to the Authority. On the other hand, licensees are not confident that monitoring is satisfactorily done as it is based on spot checks, and this does not necessarily reflect a true compliance picture of a licensee.

2.31. It is apparent that there is a lack of alignment in ICASA’s systems, and that there is a need for standardisation of reporting mechanisms. NAB members are further of the view that ICASA ought to provide licensees with its monitoring reports speedily and timeously. ICASA must ensure that there is consistency in reporting timelines, and must eliminate onerous reporting mechanisms. In addition to the obligation to comply with their individual licence conditions, broadcasters are supposed to report in accordance with the Compliance Procedure Manual¹², which in our view introduces another tier of reporting. The Compliance Procedure Manual requires that reporting be done quarterly, while broadcasters’ respective licence conditions require annual reporting. A standardised and simplified approach to compliance can alleviate non-compliance and be less burdensome on the Authority in monitoring the sector. The Authority should also consider reducing non-compliance penalties, as it

¹¹ At page 51 of the Findings Document.

¹² Published in government gazette 34863 published on 15 December 2011

is often the Authority that does not respond to licensees in a timely fashion – if at all.

- 2.32. Furthermore, the NAB has noted a misalignment in penalties for non-compliance, and we propose that these be harmonised. The Compliance procedure Manual imposes a penalty of R 50,000, while the Standard Terms and Conditions for Individual licences Regulations impose a non-compliance fine of R1 million¹³.
- 2.33. The NAB is of the view that the Authority assesses whether or not the South African market is mature enough to self-regulate, as is done in other jurisdictions. In Australia for instance, the Australian Communications and Media Authority (“ACMA”) had to revoke its compliance standards, as broadcasters had demonstrated a culture of compliance to Australian local content programming standards.¹⁴ In Canada, licensees do online submission of their annual returns.¹⁵
- 2.34. The NAB further proposes that the Authority considers an independent audit mechanism to assist the Authority in its monitoring of compliance. To this end, an independent audit firm could provide a final report prior to the Authority publishing compliance reports of licensees. This will allow for a robust and credible verification process so that compliance reports are consistent and accurate.
- 2.35. Is the definition of local content still relevant to meet regulatory objectives? Is the definition of independent television production satisfactory? Should it be strengthened, if so please provide suggestions.**
- 2.36. The definition of “local television content”, “independent television production” and “South African music” are provided for in legislation.¹⁶ The NAB is of the view that these definitions cannot be amended by regulation. Amending these definitions will require a policy amendment, which has to be preceded by robust public consultation. The Policy Maker should initiate a process to amend these definitions, should it be found that they are inadequate. Alternatively, the Authority could make recommendations to the ICT Policy Review process led by the Department of Telecommunications and Postal Services (“DTPS”), to consider the amendments.

¹³ Regulation 12 of the Regulations published in government gazette 33294 dated 14 June 2010.

¹⁴ ICASA study: Conducting a thorough assessment of the cultural, economic and social benefits brought about by the preservation of SA programming regulations and to perform a sound cost-benefit analysis, at page 241.

¹⁵ Ibid at page 249

¹⁶ Section 61 of the ECA.

3. Issues Salient to Television Broadcasting

3.1. Should local sport be considered as local content? Please substantiate.

3.2. The NAB has considered the Canadian approach as referred to in the Discussion Document. South African sports of national interest and issues of sporting rights would need to inform any approach to include sport as local content. The NAB once again submits that any amendment to the definition of local content would require a public policy review by the relevant government department. Similarly, the inclusion of advertising in the calculation of local content would need broader consultation.

3.3. Should the authority continue differentiating local content quotas for FTA and subscription broadcasters, to what extent should the differentiation be?

3.4. The NAB is of the view that the need to differentiate in the local content quotas for free to air (“FTA”) and subscription broadcasters is increasingly weak, given the fundamental changes which have occurred in the SA television market structure. When the local content regulations were originally conceived, pay TV was viewed as a niche service as most South Africans relied on a handful of FTA channels. However, over the years, pay TV has grown into a mainstream service, in millions of South African households. In addition FTA broadcasters are no longer confined to a handful of channels but are beginning to offer multi-channel bouquets to audiences. Therefore the need for two distinct regulatory approaches appears to be outdated.

3.5. Currently only subscription television broadcasters are exempt from the requirement to provide local content per channel¹⁷. In a fully digital environment, where all broadcasters (both FTA and pay) are providing multiple channels, there appears to be no sound reason why FTA broadcasters should not enjoy the flexibility offered to pay TV broadcasters to meet the local content quotas across the bouquet, rather than per channel. This is particularly in light of the fact that it will be prohibitively costly for FTA television broadcasters to provide SA local programming across all licenced channels.

¹⁷ Regulation 5 of the ICASA SA television Content Regulations.

- 3.6. It should be noted that from a monitoring point of view, with the myriad of channels that ICASA will licence television broadcasters in the digital environment, it will be administratively difficult for the Authority to monitor compliance on individual licenced channels.
- 3.7. **Since the Authority's and broadcasters' reports on compliance show that radio stations and television service generally meet or exceed the minimum quotas set in regulations, should the Authority increase current quotas, if yes, to what percentage? Please elaborate on community, public, public commercial and subscription broadcasting service licensees.**
- 3.8. Though costly for television broadcasters to meet their SA local content quotas, and due the limited supply of locally produced programming, television broadcasters consistently meet the quotas. The SAARF TAMS release have proved that viewers are attracted to viewing SA local programming vis-à-vis other type of programming. The regulations work very well, and have helped stimulate the local production sector and there is no need to increase the quotas.

Market	Target	Activity				
National	Adults Age 15+	Live + VOSDAL				
Counter	Description (grouped)	Channel	Level 1	Level 2\Variable	AMR %	(r) AMR
1	GENERATIONS	SABC 1	Soap opera	LOCAL	22.9	7 503 354
2	MFOLOZI STREET	SABC 1	Drama	Drama	16.3	5 341 728
3	SOUL CITY	SABC 1	Drama	Drama	15.4	5 023 894
4	ORANGE AFRICA CUP OF NATIONS QUALIFIER:SOUTH AFRICA VS NIGERIA	SABC 1	Sport	FOOTBALL(SOCCER)	14.5	4 759 844
5	SHREDS AND DREAMS	SABC 1	Drama	Drama	12.7	4 144 716
6	STICKS AND STONES	SABC 1	Drama	Drama	12.3	4 017 204
7	MUVHANGO	SABC 2	Drama	Drama	12.1	3 963 848
8	MTN 8 KAIZER CHIEFS VS ORLANDO PIRATES	SABC 1	Sport	FOOTBALL(SOCCER)	12.0	3 928 221
9	SES'TOP LA	SABC 1	Sitcom	Sitcom	11.5	3 766 790
10	IHAWU	SABC 1	Drama	Drama	11.3	3 691 555
11	ZAZIWA	SABC 1	Variety	Variety	11.2	3 669 163
12	CAF QUALIFIERS:SUDAN VS SOUTH AFRICA	SABC 1	Sport	FOOTBALL(SOCCER)	11.0	3 606 674
13	SELIMATHUNZI	SABC 1	Variety	Variety	10.8	3 521 842

14	SKEEM SAAM	SABC 1	Drama	Drama	10.5	3 448 601
15	ZULU NEWS	SABC 1	News	News	10.2	3 333 041
16	1'S AND 2'S SHOW	SABC 1	Music	Music	9.8	3 220 647
17	XHOSA NEWS	SABC 1	News	News	9.7	3 181 033
18	PREDATORS	e.tv	Movies	ACTION/ADVENTURE	8.8	2 879 371
19	POWERBALL	SABC 2	Variety	Variety	8.3	2 724 836
20	ABSA PREMIERSHIP ORLANDO PIRATES VS BIDVEST WITS	SABC 1	Sport	FOOTBALL(SOCCER)	8.1	2 634 739

Figure 1 SAARF TAMS data September 2014 report

- 3.9. As discussed earlier, it is worth noting that broadcasters respond to audience tastes and preferences, so even if there are no quotas in place, local content will still thrive as we have seen the top TV programmes are all local SA productions.
- 3.10. Community broadcasting licences are on the other hand generally either community broadcaster of geographic nature or community broadcasters of interest. As a result of this, in prescribing quotas, there has to be some recognition by the Authority as to the essential and inherent differences between these licence categories. Community of interest licensees often receive licence conditions that are similar, if not the same as those given to licensees with a “geographic” licence category. This model does not address the unique position these licensees are in. In the case of community television broadcasters of interest, the SA local content should specifically relate to the “interest” of the community served, and not general in nature as would be the case with geographic community television licensees.
- 3.11. Community broadcasting licensees generally rely on donations and sponsorships for funding; as a result, it is costly for this class of licensees to commission SA local content. The revenue models pertaining to these licensees both in television and radio simply do not enable sufficient revenue to afford the current SA local content quotas, let alone the proposed increase. More specifically, in the case of community television of interest, the most successful revenue model for the commissioning of SA local content is one where the community television broadcaster acquires local content but not by purchase or commission but rather by selling airtime on the television station itself. In this way an external programmer seeking to acquire airtime is responsible for its own local production costs. This is generally a more successful revenue model for the community broadcaster as it concentrates on the revenue side of the business and limits costs completely. It is therefore our view that

the proposed increase in quotas is extraordinary high, unachievable and financially not viable for community television broadcasters.

3.12. Which television genre should be lightly regulated, and which ones should be strongly regulated, and why?

3.13. The regulations focus on the provision of SA drama, SA documentary programming, and children's programming as well as information and knowledge building programming. Though the snap-shot in Figure 1 above demonstrates uptake in locally produced soap opera, the NAB notes that the trend is the same across most genres. The NAB therefore believes the current quotas on these genres are adequate, and should be re-visited post the digital migration.

3.14. The NAB is also cognisant of the fact that certain categories, like children's programming and educational/knowledge building programming, do not attract advertising revenue and must therefore be protected and adequately funded. Quotas for these specific categories that are at risk must be prioritised. It is likely that local South African drama and entertainment programmes will thrive regardless of quotas.

3.15. Should the authority amend the points awarded for repeat programmes? Which genres should be awarded more? Which ones should be awarded less?

3.16. During the dual illumination phase, and soon after analogue switch off, television broadcasters will need more SA local content than ever before. Television broadcasters have a wide range of archive programming that can be broadcast during this period. Further, it is the very nature of multi-channel broadcasting that there is a high level of repeats. This is critical to ensure that the multi-channel broadcaster remains viable and is consistent with programming patterns for multi-channel broadcasters across the world.

3.17. It is on this background that the NAB recognises the importance of repeat programming, and proposes that the current restrictions on repeats be relaxed¹⁸, as

¹⁸ For the for repeats of SA programme= 50%
For a SA programme originally screened on another SA television channel= 50%
For a broadcast of the week's episode= 50% and
Any further repeats of the programme shall not count towards compliance with the SA content quotas.

they do not provide licensees an opportunity to recoup a return on investment (ROI) in programming.

3.18. How can the Authority improve on programming in marginalised languages and production areas?

3.19. The NAB is of the view that the current regulations adequately cater for marginalised languages. For instance, regulations 8.2 of the SA television local content regulations, outlines the scoring for production of African languages genres for the public and community television broadcasters. We believe that language issues can adequately be addressed in the multi-channel environment.

4. Issues salient to Radio Broadcasting

4.1. Should the Authority increase the current music quotas on radio? If yes, to what percentage should there be an increase for public, community and commercial radio?

4.2. As alluded to by the Authority, broadcasters where possible, exceed the legislated quotas. However, research has also shown that certain stations are struggling to reach their quotas, mainly due to limited supply of SA local content (e.g. Radio Lotus and Classic FM). Radio stations that meet their quotas do so purely due to the availability of music genres they are licenced to broadcast.

4.3. The NAB believes that the current SA local content quotas are adequate. These quotas were developed to ensure that there is a minimum threshold for new entrants to the market. However, the Authority has successfully licenced radio broadcasters (through competitive licensing processes), to exceed the basic threshold. Radio broadcasters have, in addition to these quotas, also made promises of performance with the Authority to go beyond the minimum quota, which are captured in their specific licence conditions. Many licensees find it challenging to meet their unique quota's (these exceed the minimum threshold), and therefore cautions ICASA from applying a one size fits all approach. The radio industry continues to support local music; however they are dependent on the availability/supply of local music and development of new music genres.

4.4. Radio members of the NAB have raised a number of challenges relating to the increase of quotas:

4.5. For community radio broadcasters of interest, the pool of SA local music is limited, depending on the interest group the station caters for. The same applies with niche commercial radio stations such as Classic FM (broadcasting classic music), and Lotus FM (broadcasting Indian music), which have a limited supply of locally produced South African music. The Authority has had to consider an application for the reduction of SA local music quotas for Lotus FM. To this end the NAB supports the exemption of stations as outlined in Regulation 3.6 of the SA Music Content Regulations.

4.6. In the event that the Authority seeks to increase the quotas it would have to continue to apply exemptions and concessions where licensees are able to provide evidence of the non-availability of music. The music industry's growth is organic and unpredictable, the Authority must consider this in weighing up the reasonableness of any increased quotas.

4.7. The expectations on the public broadcaster are on the other hand unique. While the SABC notes that it is costly, and sometimes difficult to increase its quotas to above the threshold, the SABC is conscious of its public mandate. To this end the SABC is prepared to increase its SA local music broadcasted on its 14 public service stations (language stations) excluding Lotus FM up to 60%, while an increase by 5% over a period of three years, on the commercial sound services of the SABC is recommended. This should of course be subject to there being sufficient supply of the music.

4.8. **Should music quotas be introduced to talk radio broadcasters?**

In order for a station to qualify as a "music station" the station must devote more than 15% of its broadcasting time to music. In our view, the distinguishing factor between music and talk station is the percentage of music played. By increasing music quotas on talk stations, the stations will no longer be in the threshold of talk stations, and will be forced to compete with music stations for advertising revenue.

4.9. **What is your view on horizontal integration between recording companies and licensees? Should the authority intervene in those? Please substantiate.**

To the extent that the Authority sees it necessary to intervene in the integration of recording companies and broadcasters, the Authority must have regard to competition issues. The Authority is further alerted to the provisions of section 2(y) of the ECA, which prohibit ICASA from interfering in commercial activities of licensees.

4.10. Have the regulations resulted in more diverse SA language being used in various programming?

4.11. As far as the NAB is aware, it is only the public service broadcaster that has an obligation to broadcast in all 11 official languages. The SAARF RAMS release show that the most listened to stations are language stations, and this is evidenced in the figure below, which depicts that the top 5 most listened to stations are language stations:

	RAMS 2013 AUG '13	RAMS 2014 JUN '14	RAMS 2014 AUG '14		
	(Mar - Jun '13) ^	(Jan - May '14) ^	(Mar - Jun '14) ^		
	'000	'000	'000		
PAST 7 DAYS				Diary on Diary	Year on Year
Ukhozi FM	7426	7623	7616	-0.1%	2.6%
METRO FM	5805	6309	6282	-0.4%	8.2%
Umhlobo Wenene FM	4166	4467	4503	0.8%	8.1%
Lesedi FM	3759	3968	3923	-1.1%	4.4%
THOBELA FM	3008	3335	3318	-0.5%	10.3%
MOTSWEDING FM	3181	3324	3292	-1.0%	3.5%
Jacaranda 94.2 **	1854	2089	2056	-1.6%	10.9%
5FM	2068	1878	1962	4.5%	-5.1%
RSG	1847	1893	1882	-0.6%	1.9%
GAGASI FM	1817	1860	1857	-0.2%	2.2%

Figure 2 SAARF latest Aug 2014 diaries

4.12. By virtue of their licence category, community radio stations are expected to, and in certain instances make commitments to the Authority to broadcast in the local languages of the communities they serve.

4.13. In relation to commercial radio broadcasting on the other hand, the Authority has not to our knowledge, specifically called an invitation to apply for applicants focusing on specific “marginalised” or African languages. The focus of applicants has for some time been on music formats with the provision of news and current affairs.

4.14. Broadcasters respond to audiences, and multi-lingual programmes have become popular, particularly on television with the aid of sub-titles. It is generally agreed that

much more can be done in the area of language diversity. However the debate on language policy for the electronic media requires the participation of key stakeholders to include the Department of Education, the Department of Arts and Culture, the Pan South African Language Board, language experts, researchers, and even early childhood development specialists. The NAB would welcome an ICASA consultative process on language policy for the future.

4.15. Do you believe the Authority is meeting the objectives for local content through local content regulations?

The NAB commends the Authority for meeting its local content objectives. The SA local content regulations are a unique example of a well-functioning and effective regulatory intervention. The uptake of SA local content by viewers and listeners bear testimony to this. As indicated the top five most listened to stations are South African language stations, while the most viewed television programming is locally produced.

4.16. Have the overall socio-cultural objectives been achieved by the SA content regulations? If not what can ICASA do to ensure the objectives are achieved?

The licencing in all three tiers of broadcasting and especially the 16 public service radio stations have responded to the socio-cultural objectives of the country. Furthermore community radio broadcasting has a very important role to play in socio cultural issues, as it touches communities at grass-root level. In future ICASA should consider requesting licensees to report on the manner in which they have effectively addressed socio cultural and language issues. More importantly however, the Authority should be conducting regular impact assessments on the role played by broadcasters and the ICT sector as a whole.

4.17. What has been the impact of advertising of local content music?

From the NAB's point of view, there is no correlation between advertising and local music played by a station. Talk stations are a clear testimony to this. Talk stations in certain instances remain profitable, and still attract advertising though they broadcast limited amounts of music. The NAB has repeatedly demonstrated that a station's profitability is not linked to music played, but is attributable to a number of factors, such as on-air personalities and sponsorships the station attracts.

4.18. If the licensees have been meeting/exceeding the local content requirements, what could be the barrier if the quotas are increased?

As indicated before, the demand and limited supply of SA local music is a barrier to licensees achieving their quotas.

4.19. Should ICASA intervene in music formats? Research has showed that focus is on producing particular formats eg Afrikaans, music, gospel and kwaito.

There is no doubt that with the passage of time, and new and emerging artists entering the music industry, new formats have emerged. The NAB therefore proposes that a consultative committee, comprising of all key stakeholders, ranging from radio broadcasters, music producers, musicians, as well as government departments including the DTI, be established to consider music formats that are unique to South African music formats, and establish a strategy to encourage the creation of good quality music.

4.20. How should the Authority review regulations to ensure that they are in line with technological developments?

4.21. Technology is advancing at a rapid pace, and it is necessary for the regulatory environment to keep up to speed with these developments. Traditional radio broadcasting now has to compete with unlicensed and unregulated internet based broadcasting services such as internet radio, streaming and podcasting. Listeners are spoilt for choice in the manner in which they access music content. The NAB therefore proposes a light touch approach to the regulation of SA local content quotas in order to level the playing fields. Though Digital Audio Broadcasting (DAB) may help to a certain extent, the NAB is concerned that the Authority will only start making an inquiry into digital radio broadcasting regulatory and licencing framework in 2019.

5. Closing remarks

5.1. The NAB welcomes the opportunity to make its submission and trusts that the inputs made will add value to the authority's deliberations.