

1. INTRODUCTION

- 1.1. On 7 December 2000, the Independent Communications Authority of South Africa (“the Authority”) published its Discussion Paper on the Review of Local Content Quotas (“the Discussion Paper”) and called for written representations. The National Association of Broadcasters (“the NAB”) welcomes the Discussion Paper and thanks the Authority for the opportunity to make these written representations. The NAB hereby notifies the Authority that it wishes to make oral representations at the hearings, which are scheduled to take place, in respect of the Discussion Paper.
- 1.2. To contribute to a well-informed level of discussion during the hearings, the NAB commissioned a research study by KPMG, which is attached as an appendix to this submission.
- 1.3. The NAB is the leading representative of South Africa’s broadcasting industry, representing:
 - 1.3.1. all television broadcasters;
 - 1.3.2. 19 SABC radio stations, 14 commercial radio broadcasters and over 30 community radio broadcasters.
- 1.4. Through its direct experience with the local content regulations in both radio and television, the NAB is well placed to comment on the review of the regulations.
- 1.5. South African broadcasters support local content quotas and are committed to both the letter and spirit of the regulations. We will show that broadcasters have allocated a wide range of resources to ensure the growth of the local production and music industries.
- 1.6. We will further show that the aims of local content regulation can best be met through a review of the current regulations to allow greater flexibility.
- 1.7. We will show that a move towards greater flexibility is in line with international trends and is also in line with the aims for local content regulation.

- 1.8. We will argue that this flexibility is necessary to guarantee the viability of the broadcasting industry.
- 1.9. Finally, we will provide a proposed legal framework for a more flexible local content system.

2. **AIMS FOR LOCAL CONTENT REGULATION**

- 2.1 In paragraph 2.2 of the Discussion Paper, the Authority reduces the goals of local content regulation to essentially three main aims, namely to:
 - 2.1.1 develop, protect and promote a national and provincial identity, culture and character;
 - 2.1.2 create vibrant, dynamic, creative and economically productive local industries; and
 - 2.1.3 redress historical imbalances in the cultural and broadcasting industries through commissioning independent production companies which are controlled by previously disadvantaged individuals.
- 2.2 The NAB agrees with and supports the Authority's identified aims of local content regulation. The NAB notes that these aims mirror and support the NAB's own stated goals for the broadcasting industry as a whole.
- 2.3 We further submit that our members have made major contributions thus far to the attainment of the above aims. These contributions can be measured through broadcasters' compliance (in almost all cases) with the local content quotas and through broadcasters' additional contributions in support of the South African music and production industries.

2.4 CONTRIBUTIONS OF THE RADIO SECTOR TO DATE

2.4.1 Telling evidence of the radio industry's support for South African music is the high level of compliance with the quota. In terms of ICASA's Monitoring Report, 85% of public and commercial broadcasters comply with the quota.

2.4.2 It should be noted that radio stations spend a great deal of time and energy ensuring this compliance. The average sound broadcaster spends 5.2 hours per week filling out log sheets and management spends another 4.7 hours per week checking that these are accurate.

2.4.3 However, it is in the industry's wide range of additional contributions to the South African music industry, beyond their compliance with the quota, that the radio sector's support can best be seen.

2.4.4 For instance, the 33 radio broadcasters that responded to the KPMG survey had, over the past year, held an average of:

- 239 interviews per month of South African artists and groups
- 215 competitions per month to promote South African music

This translates into a total of 5448 additional events over the past year, which contributed to the promotion of South African music.

2.4.5 In addition to this exposure, radio broadcasters in the course of the last year made substantial financial contributions to the development of domestic music. These contributions took the form of:

- Indirect contributions (such as free air time) to the value of R9 427 000
- Direct contributions (for example sponsoring of concerts) to the value of R11 078 000

2.4.6 The above contributions indicate the radio industry's support for South African music. This support frequently takes the form of additional contributions which are not mandated through licence conditions or

regulations and for which broadcasters receive no regulatory credit. As such, these contributions are an indication of good faith on the part of the radio industry.

2.5 CONTRIBUTIONS OF THE TELEVISION SECTOR TO DATE

- 2.5.1 Likewise, the television industry shows high levels of compliance with the existing quotas. Television broadcasters spend on average 1.5 person days per week and management days per week complying to regulation. This time commitment is indicative of the importance with which broadcasters view their obligations under the local content regulations.
- 2.5.2 The high levels of local content on screen have also led to financial support for the South African television production industry. The NAB submits that in their commissioning procedures broadcasters have advanced the local content policy goal of strengthening the independent production sector. The number of production companies that received commissions from individual broadcasters in the last year varied from 15 – 170.
- 2.5.3 South African broadcasters' considerable investment in building domestic television production is further demonstrated by the percentage of budget allocated to the independent sector. As a percentage of the total commissioning budget, television stations broadcasting in excess of 40% local content spend in excess of 70% of their commissioning budget on purchasing local content.
- 2.5.4 In addition to strengthening the production of South African television through broadcasting high levels of local content and commissioning work from the independent production sector, broadcasters have supported the production of South African television content through a variety of other initiatives, including:
- Support for the Sithengi film market;
 - Projects to build young talent in the industry, for example, the Close Encounters Young Directors Initiative and the New Directions series;
 - Various arts festivals.

- 2.6 Having considered the contributions of the radio and television industries to the music and production industries, we will now make specific submissions on the review of the regulations.

3. SOUTH AFRICAN MUSIC REGULATIONS

3.1 NO PROOF OF DIRECT CORRELATION BETWEEN QUOTAS AND GROWTH OF THE MUSIC INDUSTRY

- 3.1.1 While it is clear that the local radio industry has invested considerably in support of South African music, it is less clear whether there is a correlation between the quota and the growth of the South African music industry.
- 3.1.2 The difficulty of drawing this correlation is also experienced internationally. In the KPMG survey of four benchmark territories it is apparent that there is little evidence to support a direct correlation between growth of a recording industry and local content quotas.
- 3.1.3 Interestingly, in comparison to these benchmark territories, the percentage sales of domestic music by value in South Africa is on a par with that of Australia, Canada and Ireland, suggesting that the South African music industry is relatively healthy.
- 3.1.4 Of the countries surveyed, only Australia has experienced substantial growth in consumption of domestic music content, and even here, it is difficult to determine whether this is the result of local content quotas or other industry development initiatives.
- 3.1.5 In South Africa, domestic repertoire's share by value has declined over the course of the decade. Nevertheless, there has been a steady increase in the sales of domestic music by value since 1995, although this has been insufficient to offset the dramatic decline in market share by value that occurred in 1993/4.
- 3.1.6 In attributing reasons for the recovery since 1995, it is likely that, rather than any one factor being responsible, a combination of the following factors played a role:

- The introduction of local content quotas;

- The expansion in both the numbers of radio broadcasters and record companies;
- The emergence of radio stations serving regional or niche markets;
- Increased investments by record companies in domestic music;
- Heightened international exposure of the South African market;
- Increase in the variety of South African music genres being recorded and broadcast;
- Supply-side measures introduced by government;
- A variety of other industry development initiatives.

3.1.7 The supply-side measures which the South African music industry has benefited from over the last five years, include:

- Implementation of recommendations in the Department of Arts Culture Science and Technology's Cultural Industry Growth Strategy;
- The expansion of the Export and Marketing Export Incentive Scheme which now funds the attendance of South African record companies at international trade fairs;
- The inclusion of South African musicians in government trade and other missions;
- The Music Industry Development Initiative (MIDI) South African Music Day and Music Week. It should be noted that MIDI reports having received substantial support from both radio and television broadcasters to promote South African music.

3.1.8 In the light of all these factors and interventions, the recovery of the South African music industry over the last few years cannot be attributed to the local content quota alone.

3.1.9 **Since a number of factors, not just a quota, impact on the growth of a music industry, the NAB submits that any policy goal of stimulating the growth of that industry must take into account other, broader initiatives.**

3.1.10 **In this regard, the NAB submits that the Authority should broaden its focus to include consideration of other strategies, beyond an airtime quota. Any contemplation of increasing the quota should be made in the context of these other strategies.**

3.2 NEED FOR A VARIABLE QUOTA

- 3.2.1 While a direct correlation cannot be shown between a quota and growth of a local industry, many territories continue to apply a quota. Interestingly, the present quota in South Africa of 20% is generally in line with the percentage of local music which other territories enforce. The exception to this is in Nigeria where there is a quota of 60%. Anecdotal evidence suggests, however, that compliance with this quota is low.
- 3.2.2 What is striking in examining other territories is the trend towards variable quotas which acknowledge the peculiar conditions faced by individual or categories of broadcasters.
- 3.2.3 Australia, for instance, allows a quota ranging from 5-25% across 5 broad categories of music, with mainstream rock at 25% and smooth jazz at 5%.
- 3.2.4 The variable local content quota attempts to peg the quota to the availability of local product.
- 3.2.5 Figures on the availability of South African music per genre are difficult to obtain. Accordingly, to estimate the levels of domestic music production in various genres, broadcasters were asked in the KPMG survey, to estimate the number of local and international samples received, as a proxy for the supply of local content in various genres.
- 3.2.6 While this is clearly not an accurate reflection of the overall supply of local content it is a useful indicator of how much new local material radio stations receive. (In the interests of greater accuracy, the NAB requests the Authority to ask the recording industry to make available additional figures on the production of local music per genre).
- 3.2.7 In terms of the KPMG survey, it is clear that there is an absence of sufficient local content in the formats in which many broadcasters are licensed.

- 3.2.8 KPMG shows that radio stations have received fewer samples of domestic music in genres such as adult contemporary, Pop and Rock - genres which form the backbone of many local commercial radio stations' formats.
- 3.2.9 Commercial radio stations estimate a 123% increase in production of local content would be needed in order to meet a 50% quota.
- 3.2.10 In contrast, in genres which are specifically South African such as Masakandi and Kwaito there is an overwhelming supply of local content samples to radio stations. Stations which broadcast in these genres are able to exceed the 20% quota.
- 3.2.11 Radio broadcasters attract audiences on the basis of their formats. A considerable part of broadcasters' formats are the genres in which they broadcast. If there is insufficient domestic production in the genres that constitute a broadcaster's product offering, the broadcaster's efforts to build and maintain audience may be compromised. It is at this level that local content legislation affects competition between stations for advertising revenue.
- 3.2.12 It is for this reason too that the NAB submits that it would be extremely difficult to regulate the number of repeats that a sound broadcaster can play. In this respect, television and sound broadcasting are different. Particularly with contemporary or hit format stations, playing current hits often is necessary to meet audience demand. Broadcasters themselves are in the best position possible to determine the optimal level of repeats.
- 3.2.13 Audience research conducted by individual radio stations confirms the demand by audiences for high quality music – whether foreign or local. In some genres though, the local recording industry does not appear to be making investments in producing high volumes of quality local music.
- 3.2.14 The limited supply of local content in some genres, forces stations licensed to broadcast in those genres to put local content on high rotation or play local content music of a quality lower than that of international product in the same genre in order to meet the quota.
- 3.2.15 This undermines the product offering of these stations, thereby negatively affecting their ability to attract audiences and advertising revenue.

- 3.2.16 For the reasons laid out above, the NAB does not believe that a single quota set at 50% is the best method for achieving the objectives of local content regulation.
- 3.2.17 We also do not believe that the White Paper on Broadcasting Policy compels the Authority to apply such a quota to each broadcaster. Our understanding is that the requirement is to develop a plan for predominant local content on the broadcasting system within 10 years. This does not necessarily mean each broadcaster must have 50% local content. The NAB notes that the need for this plan is accompanied by two other actions – a need for a production agency to support and promote production of local content in radio and television and a parliamentary investigation into the recording industry. The obligation to increase local content therefore is recognised as not resting on broadcasters alone.
- 3.2.18 We believe a fixed quota of 50% fails in three ways:
- (a) first, where a broadcaster easily meets the local content quota, the quota is likely to act as a ceiling and not a floor, thus there is little incentive and no regulatory mechanism for ensuring that a particular broadcasting service strives to make a greater local content contribution. The effect of this is that the maximum amount of local content is not broadcast;
 - (b) secondly, where a broadcaster cannot meet the quota because of a lack of suitable material in its format, being forced to meet it would result in the financial viability of such a broadcaster being threatened. In this regard, over three quarters of the members of the NAB have stated that there is insufficient local content to support the introduction of a 50% quota. If a fixed figure in the region of 50% were to be introduced, many
broadcasters would find their services financially threatened. This would occur because broadcasters would be forced to play music which is outside of their format or alternatively to play too high a percentage of repeats of South African music in their formats. In the highly competitive and fragmented markets which characterise the modern broadcasting environment, either of these scenarios would lead to listener switch off. The result of that is that advertisers will follow audiences and radio will suffer the loss in advertising revenue as advertisers seek other media

to reach audiences. A loss of revenue will mean that broadcasters will have less to spend on their contributions to local cultural industries and on jobs within the broadcasting industry itself. The long term effect of such a course will be inflict such damage on the broadcasting industry that the aims of local content regulation will be undermined.

- (c) a fixed quota would have to be set at a level that is achievable (in relation to overall financial viability) for broadcasters. If this is not the case, the reasonableness and indeed the very rationality of such a quota would be subject to challenge.

3.2.19 The NAB submits that the problems arising from the fact that a fixed quota will be too low for some broadcasters and too high for others, and that it is likely to result in the lowest common denominator quota, can be resolved through a flexible regulatory regime. The aim of such a system would be to hold broadcasters to playing the maximum amount of local content that is both viable and sustainable in respect of their particular broadcasting service.

3.2.20 Thus certain broadcasters will be broadcasting 100% local content while others might be broadcasting much less. In this regard, the NAB wishes to stress the importance of treating broadcasting services which are alike in the same manner. The differences in the local content obligations that will be imposed will depend on the differences in the actual broadcasting services being provided.

3.2.21 **The NAB submits that any review of the South African quota must take into account the availability of local product.**

3.2.22 **The NAB submits that the differing levels by which local stations are able to meet or exceed the quota, which mirrors the differing levels of production of local music per genre, is a compelling argument in favour of a variable quota.**

3.2.23 **The NAB accordingly recommends that a format specific quota be set which takes into account available South African music per genre and which sets similar quotas for like services.**

3.2.24 **The NAB submits that such a system is more likely to maximise the benefits of local content regulation than a uniform quota.**

3.2.25 **The NAB notes that the implementation of a format specific quota will require a thorough revision of the definitions of formats used by the Authority and is happy to assist in this regard.**

3.3 NEED FOR THE RECORDING INDUSTRY'S COMMITMENT

3.3.1 As can be seen above, any consideration of quotas must take into account the supply of South African music. In this regard, the involvement of the recording industry is vital. Setting a variable quota will require the domestic recording industry to commit to the production of new sound recordings for broadcast.

3.3.2 **The NAB therefore submits that the Authority should consider facilitating a mechanism similar to the Australian Music Performance Committee (AMPC) in Australia where the broadcasting and recording industries report regularly on compliance with the quota and on recording and production of new local music.**

3.3.3 **The NAB submits that the Authority could convene such a forum for the purpose of developing a long-term plan for meeting its local content aims, monitoring the impact of the quota and setting the variable quota.**

3.4 NEED FOR A MORE FLEXIBLE QUOTA

3.4.1 In terms of the Authority's stated aims for local content regulation, there are a variety of ways these aims can be met beyond airing the music which meets the fairly narrow criteria of the IBA Act.

3.4.2 As can be seen from section 2 above, radio broadcasters currently make significant contributions to the support of South African music in the form of interviews and promotions, for which they are not given credit.

3.4.3 In the face of increasing financial pressure, there is a risk that broadcasters will cease such support if they are not given credit for their additional initiatives in support of South African music.

3.4.4 In the light of the fact that the growth of the local music industry is supported by many initiatives, not just compliance with an airtime quota, other initiatives such as sponsorships and training should be encouraged.

3.4.5 **The NAB submits that the quota be expanded to take into account all on-air activities which clearly support the aims of local content regulation. These include interviews with local artists and the promotion of local music events.**

3.4.6 **Within these on-air activities, the NAB proposes that broadcasters be allowed to count African music towards their compliance with the quota. The definition currently makes no allowance for African (as opposed to South African) music to be recognised as local content. In terms of the regulations West African music is considered as foreign as British House or US Modern Rock. The NAB submits that this is short-sighted and hinders the development of a pan-African culture and a sense of South Africa being part of the continent.**

3.4.7 **As the present definition of South African music is cumbersome, in that broadcasters must show compliance with two of four criteria, it is recommended that it be simplified. In this way, South African music could be more easily be identified and labelled, easing the administrative burden on broadcasters and the regulator.**

3.4.8 **Finally, it is submitted that broadcasters also be given credit towards the quota for their off-air activities which support the aims of local content regulation, for example, the sponsorship of live music events.**

- 3.5.1 A weighting or points system, as is used in television content regulation internationally, could assist the Authority in implementing the above.
- 3.5.2 The Authority could stipulate in regulations the points which different contributions would garner. The Authority could give greater weighting for certain on-air activities e.g. playing of South African music as opposed to other on-air activities such as interviews with local artists. In this way, the Authority could promote the kinds of contributions it believes are most important. Empowerment considerations could also be worked into the weighting system.
- 3.5.3 In addition, broadcasters could get points towards their quota by undertaking off-air activities in support of local content.
- 3.5.4 **The NAB recommends that the Authority consider introducing a weighting or points system into the South African music regulations. The NAB proposes that the Authority could convene a music industry forum, as proposed above, to formulate such a system.**

3.6 EXEMPTIONS

- 3.6.1 The Authority has asked whether it should grant exemptions to the quota.
- 3.6.2 In the study of benchmark territories it is apparent that exemptions are sometimes granted to niche formatted stations. To the best of the NAB's knowledge, the Authority has not exercised its discretion to grant exemptions to broadcasters in respect of the existing quota.
- 3.6.3 The NAB submits that a flexible regulatory regime, taking into account all contributions to local content, would ensure that all broadcasters make contributions to the aims of local content regulation. In this way, some niche broadcasters might be exempt from an air-time quota but would still have other local content obligations. The specific obligation would be dependent on the nature of the broadcasting service actually being provided.

3.6.4 **The NAB submits that the Authority should maintain its discretion to grant exemptions to an airtime quota, especially for stations broadcasting in formats where the supply of local music is limited.**

3.6.5 **The NAB submits that in the absence of having granted such exemptions, the Authority should give guidelines as to when an exemption would be appropriate.**

3.7 PAYOLA, PIRACY AND NEEDLETIME

3.7.1 The Authority has asked a number of questions on the complex issues of piracy, needletime and payola. With regard to these issues, the Music Industry Task Team (MITT) was mandated to look at these and other matters. Regrettably, we were not consulted in these deliberations. The task team has yet to publish its final report and recommendations. The NAB has subsequently made detailed submissions to the Department of Trade and Industry on the negative impact the introduction of a needletime levy would have on broadcasters.

3.7.2 **In short, the NAB is committed to working with other stakeholders to jointly address the problems in the local music industry relating to payments of performers and piracy. We do not, however, believe needletime is the appropriate mechanism to do this. We would be more than willing to share our work on this matter with the Authority, should it be required.**

SUMMARY OF RECOMMENDATIONS IN RELATION TO THE SOUTH AFRICAN MUSIC REGULATIONS

4.1.1 Focus beyond a quota

In light of the fact that a number of factors, not just a quota, impact on the growth of a music industry, the NAB submits that any policy goal of stimulating the growth of that industry must take into account other, broader initiatives. In this regard, the NAB submits that the Authority should broaden its focus to include consideration of other strategies, beyond an airtime quota. Any contemplation of increasing the quotashould be made in the context of these other strategies.

4.1.2 Take into account the availability of quality local product

The NAB submits that any review of the South African local content quota must take into account the availability of quality local product.

4.1.3 **Set format specific quotas**

The NAB submits that the differing levels by which local stations exceed the quota, which mirrors the differing levels of production of local music per genre, is a compelling argument in favour of a format specific quota. The NAB accordingly recommends format specific quotas be set which take into account available South African music per genre. The NAB submits that such a system is more likely to maximise the benefits of local content regulation than a uniform quota.

4.1.4 **Revise definitions of formats**

The NAB notes that the implementation of a format specific quota will require a thorough revision of the definitions of formats used by the Authority and is happy to assist in this regard.

4.1.5 **Draw in the recording industry**

The NAB submits that the Authority should consider facilitating a mechanism similar to the one used in Australia where the recording industry reports on recording and production of new local music for the purposes of planning and implementing local content regulation.

4.1.6 **Give credit for other activities which support South African music**

The NAB submits that the quota be expanded to take into account other on-air activities which clearly support the aims of local content regulation such as interviews with local artists and promotion of local music events. The NAB also proposes that broadcasters be given credit towards the quota for their off-air activities which support the aims of local content regulation such as the sponsorship of live music events.

4.1.7 **Simplify definition of South African music**

The present definition of South African music is cumbersome and it is recommended that it be simplified. In this way, South African music could be more easily be identified and labelled, easing the administrative burden on broadcasters and the regulator.

4.1.8 Allow African music to be counted towards compliance

The NAB proposes that broadcasters be allowed to count African music towards their compliance with the quota.

4.1.9 Introduce a weighting system

The NAB submits that a weighting or points could be introduced whereby the Authority gives different weighting for different activities in support of South African music. The music industry forum could be used to consult further on the details of this system.

4.1.10 Maintain the discretion to grant exemptions

The NAB submits that the Authority should maintain its discretion to grant exemptions to an air-time quota, especially for stations broadcasting in formats where the supply of the local music is limited. The NAB also submits that in the absence of having granted such exemptions, the Authority should give guidelines as to when an exemption would be appropriate.

4.1.11 Look for other mechanisms, beyond needletime, to address music industry problems

The NAB is committed to working with other stakeholders to jointly address the problems in the local music industry relating to payments of performers and piracy. We do not, however, believe needletime is the appropriate mechanism to do this. We would be happy to share our work on this matter with the Authority, should it be required.

LOCAL TELEVISION CONTENT REGULATIONS**5.1 NEED FOR A BROADER STRATEGY TO GROW THE LOCAL PRODUCTION INDUSTRY**

5.1.1 As with the radio industry, it is clear that the South African television industry has been supportive of the local content regulations, the independent production regulations and consequently the local television production industry.

5.1.2 As audience figures demonstrate, this support has translated into benefits for broadcasters as local material is very popular with viewers. Local programming has succeeded in attracting large audience across the board.

- 5.1.3 The point needs to be made though, that high audience figures do not always translate into profitable programmes due to the high production costs of local material.
- 5.1.4 The Profile 2000 report quoted by the Authority in the Discussion Paper notes that it is a lot cheaper for a broadcaster to import productions than to commission production locally, especially when the local productions tend to be country-specific and not easily exportable.
- 5.1.5 The high production costs for local material can sometimes compound advertising rate hikes on television.
- 5.1.6 Internationally, the popularity of local television content is well documented. The Australian Film Commission has stated that local content has led to an increase in demand for local product and served to strengthen the production industry. Likewise Canadian local content regulations have had success in increasing the viewing of Canadian programming.
- 5.1.7 As with radio, local television content regulation in these territories has taken place in the context of broader government support for the film and production industries in the form of government grants, tax incentives and subsidy schemes
- 5.1.8 The need for such support from government is articulated clearly in the Profile 2000 report which highlights six key strategies for the National Film and Video Foundation to grow the local industry.
- 5.1.9 Strikingly, an increase in the local content quota is not mooted as one of the strategies in the Profile 2000 report.
- 5.1.10 In the context of the Profile 2000 report and in the context of the economics of the television and production industries, the NAB submits that in attempting to realise its aim of growing the local production industry, the Authority should not simply focus on a quota alone.
- 5.1.11 **In this regard the NAB submits that the Authority should broaden its focus to include other strategies. Any consideration of increasing the quota should be made in the context of these broader strategies.**

5.1.12 These strategies could include the sourcing new talent, paying increased attention to marketing South African productions overseas and popularising co-productions. The NAB believes that the potential of co-production treaties is not being realised and that broadcasters require more information on them to make them more effective.

5.2 INCENTIVES RATHER THAN INCREASING THE QUOTA

5.2.1 The Authority questions how it can ensure a majority of local television content. In this regard, the NAB submits that all free-to-air broadcasters already have a majority of local content or will have close to a majority of content within this year.

5.2.2 The NAB therefore submits that instead of focusing on increasing the quota, the Authority should consider maximising the impact of the quota by allowing for greater flexibility.

5.2.3 An analysis of the benchmark territories shows that the South African television quotas are on a par with those that exist internationally and that the South African system of a variable quota according to the category of licence also exists internationally.

5.2.4 However, it is clear that there is a trend towards increased flexibility internationally.

5.2.5 As well as expanding the definitions of what counts as local content, flexibility is largely concerned with promoting specific forms of programming. Both the Australian and Canadian regulations incentivise the production of particular forms of programming by providing extra points or time credits towards the local content quota. The authorities have adopted these systems in recognition of the higher production costs incurred in commissioning local content in programming such as drama. The extra points or time credits thus compensate the broadcaster for their investment in these forms of programming.

5.2.6 The NAB submits that the introduction of a points or weighting system could be of benefit in the South African scenario and would assist the Authority in

meeting its stated aims of improving the quality and diversity of broadcasting content.

5.2.7 The NAB submits that further consultation on the mechanics of such a system will be required. Through this consultation, priority programming could be identified and formulas agreed upon.

5.3 A MORE FLEXIBLE QUOTA

5.3.1 A more flexible regulatory system could also allow for an expanded definition of what can contribute towards the quota. Presently, only certain programming qualifies towards the quota.

5.3.2 As was seen in section 2, broadcasters provide a number of in-kind contributions to the local industry for which they presently do not get credit.

5.3.3 In the face of increasing financial pressure, there is a risk that broadcasters will cease such support if they are not given credit for their additional initiatives in support of the South African production industry.

5.3.4 In the light of the fact that the growth of the industry is supported by many initiatives, not just compliance with a quota, other initiatives such as sponsorships, exposure to new talent and marketing projects should be encouraged.

5.3.5 The NAB therefore submits that the regulations be expanded to take into account other activities which clearly support the aims of local content regulation.

5.3.6 The NAB submits that broadcasters should be given credit for all on-air activities which support local production. This should include sport.

5.3.7 The NAB further submits that broadcasters should be given credit towards the quota for their off-air activities, such as payments into

production funds and the sponsorship of events and awards which promote the South African production industry.

5.3.8 The NAB again submits that a weighting system could be introduced whereby the Authority gives greater weighting for certain activities e.g. broadcasting of South African content as opposed to lesser weighting for the sponsorship of an event if it so wishes. Empowerment considerations could be taken into account in the weighting system.

5.3.9 The Authority could also apply such a weighting system to broadcasters' promotional material if it so wishes although the NAB submits that this material serves the broader aims of local content regulation as it is usually contracted to independent producers and gives exposure to local talent.

5.4 THE PAY OR PLAY OPTION

5.4.1 An aspect of increased flexibility is the play or pay option whereby broadcasters can pay into a fund or spend a specified amount on local content in lieu of meeting an airtime quota.

5.4.2 The NAB submits that the Authority's regulations should provide for broadcasters to get credit towards the quota for their payments into funds and various financial contributions. These contributions could include 'in-kind' contributions in support of the local production industry. This can work to maximise benefit for the local industry. For instance, great benefit could be accrued by securing a financial contribution to market South African productions overseas. Likewise if a portion of programming budget is specified, this will still result in local programming being aired.

5.4.3 The NAB submits that the Authority is well placed to make a judgement on the appropriateness of pay or play contributions and should reserve the right to do so.

5.5 REPEATS

- 5.5.1 The Authority asks whether there should be a limit on the number of repeats that are used when calculating compliance with the quota.
- 5.5.2 The NAB notes that in both Australia and Canada repeats are recognised in contributing towards the overall quota.
- 5.5.3 The NAB submits that the issue of limits on repeats should not be dealt with only in regard to local content but should be considered in relation to all content. The NAB submits that it is preferable for broadcasters to repeat local material rather than foreign material and that a limit on local repeats only would not serve the Authority's aims.

5.5.4 The NAB therefore recommends that the issue of repeats (both foreign and local) be dealt with in broadcaster's licence conditions.

5.5.5 In relation to counting repeats in compliance with the local content quota, the NAB proposes that if the Authority wishes to place a restriction here it again applies a weighting system. The weighting system could give 100% credit for the first repeat and a sliding scale thereafter.

5.6 MONITORING OF INDEPENDENT PRODUCTION AND COMMISSIONING PRACTICES

- 5.6.1 The Authority asks whether the independent production quotas are being met and whether they are resulting in a sufficiently diverse range of companies being commissioned.
- 5.6.2 As is stated in section 2 above, the NAB estimates that between 15 and 170 companies received commissions from individual broadcasters in the last year. The NAB submits that this indicates that work is distributed widely through the sector.

5.6.3 The NAB submits that the spread of commissioning has improved over the last few years as broadcasters' commissioning procedures have been revised and submits that this is likely to continue to improve.

5.6.4 The NAB notes that the Authority has not queried with broadcasters the validity of their reports on compliance with the quota and that should the Authority do so, these reports can be easily verified.

5.6.5 **The NAB therefore does not believe the proposal in the Discussion Paper that broadcasters should submit certified statements to ICASA to show compliance with the independent production quota is necessary. We believe this will result in an additional time**

(between 10 and 15 hours per month) and cost burden on broadcasters.

5.6.6 **The NAB does also not believe the Authority should play a role in considering broadcaster's commissioning practices, as the obligation to develop fair and transparent commissioning procedures is that of broadcasters.**

7 PROGRAMME DEFINITIONS

5.7.1 The Authority asks for comment on the appropriateness of the definitions of programme categories. The NAB has not been able to look at this matter in detail but notes that the existing definitions may need to be more flexible in order to accommodate the emergence of programmes which do not fall neatly into the existing definitions.

5.7.2 NAB members have suggested the following definition of information programming:

"Information programming means current affairs, documentary, informal knowledge building, including magazine programmes, talk shows and any other programme which directly or indirectly, has as its purpose the communication of facts and events of interest to viewers".

SUMMARY OF RECOMMENDATIONS IN RELATION TO THE LOCAL TELEVISION CONTENT REGULATION

6.1 Broader focus needed

The NAB submits that the Authority should broaden its focus to include other strategies. Any consideration of increasing the quota should be made in the context of these broader strategies. These strategies could include the sourcing of new talent, paying increased attention to marketing South African productions overseas and popularising co-productions.

6.2 Incentives

The NAB submits that the introduction of a points or weighting system to incentivise certain programming types could be of benefit in the South African scenario and would assist the Authority in meeting its stated aims of improving the quality and diversity of broadcasting content. The NAB submits that further consultation on the mechanics of such a system will

be required. Through this consultation priority programming could be identified and formulas agreed upon. Empowerment considerations could also be taken into account.

6.3 More flexible quota

The NAB submits that the regulations be expanded to take into account other activities which clearly support the aims of local content regulation. This should include other on-air activities such as sport. The NAB further submits that broadcasters should be given credit towards the quota for their off-air activities, such as payments into production funds and the sponsorship of events and awards which promote the South African production industry.

6.4 Repeats

The NAB recommends that the issue of repeats (both foreign and local) be dealt with in broadcaster's licence conditions. In relation to counting repeats in compliance with the local content quota, the NAB proposes that if the Authority wishes to place a restriction here it again applies a weighting system. The weighting system could give 100% credit for the first repeat and a sliding scale thereafter.

6.5 Pay or play

The NAB submits that the Authority's regulations should provide for broadcasters to get credit towards the quota for their payments into funds and various financial contributions. This does not necessarily have to result in less local content being broadcast but can instead work to maximise benefit for the local industry. The NAB submits that the Authority is well placed to make a judgement on the

appropriateness of pay or play contributions and should reserve the right to do so.

6.5 **Monitoring independent production**

The NAB does not believe the proposal in the Discussion Paper that broadcasters should submit certified statements to ICASA to show compliance with the independent production quota is necessary. We believe this will result in an additional time and cost burden on broadcasters. The NAB does also not believe the Authority should play a role in considering broadcaster's commissioning practices, as the obligation to develop fair and transparent commissioning procedures is that of broadcasters.

MONITORING

- 7.1 The issue of whether the Authority's current monitoring systems are effective is a theme which runs through the Discussion Paper.
- 7.2 The NAB submits that it is difficult to make an assessment of whether the current systems are accurate. What can be said is that the current systems are burdensome to broadcasters. Any revised monitoring and compliance strategies ought to ease and not increase this burden.
- 7.3 **The NAB proposes that the monitoring periods be standardised for all broadcasters and that they be measured for compliance over a year.**
- 7.4 **As it is clear that broadcasters support the concept of local content quotas, it is submitted that ICASA can rely on broadcasters' records, in the form of annual reports, which can be spot-checked for accuracy.**

THE OVERALL LEGISLATIVE AND REGULATORY FRAMEWORK WITHIN WHICH LOCAL CONTENT OUGHT TO BE REGULATED

- 8.1 With regard to implementing the above recommendations, the NAB lays out below a legislative and regulatory framework.
- 8.2 To this end, the NAB welcomes the suggestions contained in the Discussion Paper to the effect that the IBA Act be amended to contain a statement setting out the goals of local content regulation.

- 8.3 In this regard, the NAB submits that the nature of the relationship between broadcasting legislation, regulations and the individual licence conditions of broadcasters ought to be examined.

8.4 THE ROLE OF LEGISLATION

- 8.4.1 The NAB submits that it is essential for Parliament to retain the power to set national goals for local content regulation. It is for the democratically elected representatives of South Africa's people to determine what such goals are and if and how these will change over time.
- 8.4.2 The current local content provisions in the IBA Act do not clearly set out the goals of local content. This is no doubt a result of the IBA Act's special place in the history of South Africa's transition to democracy.
- 8.4.3 The NAB submits that it would be appropriate to amend section 53 of the IBA Act such that it constitutes an enabling section, empowering the Authority to make regulations and set licence conditions to foster the achievements of the aims of local content regulation. In this regard:
- 8.4.4 This section should specify what the aims of local content regulation are. The NAB supports the inclusion of wording in the IBA Act which specifies the goals of:
- (a) developing a vibrant local culture;
 - (b) assisting economically-productive local cultural industries, including artistic and production industries; and
 - (c) empowering historically disadvantaged persons in the cultural industries.

8.4.5 This section should also set out the broad parameters of the Authority's powers in respect of its implementation of local content regulation. The NAB suggests that these parameters ought to be drafted in such a manner that the Authority is given flexibility to achieve the aims of local content regulation.

8.4.6 In this regard, the NAB submits that inflexible provisions, such as section 53(3) of the IBA Act which provides for a quota system where a single set percentage of air-time for South African musical works is required to be determined, be repealed and replaced with general enabling provisions.

8.4.7 The NAB submits that this be done by including a provision which would list a variety of means and methods through which the aims of local content could be achieved.

8.5 THE ROLE OF REGULATIONS

8.5.1 With the aims of local content regulation and the mechanisms available to it as set out in legislation, the NAB submits that the Authority should regulate local content issues in its own regulations rather than through a mechanistic application of detailed provisions set out in legislation.

8.5.2 The NAB submits that the Authority's local content regulations should:

8.5.2.1 provide for a weighting or points system in respect of the different methods which can be used by a broadcaster to achieve the aims of local content regulation;

8.5.2.2 provide a range of local content quotas; and

8.5.2.3 set out the characteristics of a broadcasting service which may be taken into account when setting local content requirements in the licence conditions of a particular broadcaster.

8.5.2.4 The NAB submits that when the Authority determines the specific local content requirements that will apply to a particular

broadcaster, the following characteristics of the broadcasting service ought to be taken into account, namely:

- (a) the audience of the broadcaster, whether same is national and/or international;
- (b) the nature of the service, whether same is radio and/or television;
- (c) the format of the service, for example if it is a radio station, whether its format is Adult Contemporary or Smooth Jazz;
- (d) the language the service is being broadcast in;
- (e) whether the broadcaster is a public, commercial or community service;
- (f) whether the service is a free-to-air or subscription service.

8.6 THE ROLE OF LICENCE CONDITIONS

8.6.1 Finally, the NAB submits that each broadcaster's licence conditions should contain the specific local content requirements that it is required to comply with, depending on the characteristics of the broadcasting service in question.

8.6.2 The effect of this may be that two broadcasters with different service characteristics could have very different local content requirements, including different local content airtime quotas. One broadcaster might have only a particular airtime quota whereas another might have a lower airtime quota and promotional and financial contribution obligations. In order to avoid the licence conditions from being arbitrary or capricious, it will be important for the Authority to ensure that broadcasters with the same service characteristics have the same or similar local content licence conditions.

9 CONCLUSION

- 9.1 The Authority's Discussion Paper titles itself a "Review of Local Content Quotas". During the course of its submission, the NAB has shown there is more to local content regulation than the application of quotas. We have argued that effective local content regulation has a broader focus, maximising benefit from other strategies which support the local production and music industries. Our case is not only supported by international trends towards flexibility but by an analysis of the dynamics in our own television and radio sectors. Broadcasters, by and large, comply with the quotas. Even in cases where they struggle to comply, they support the principle of quotas and the principle of local content regulation. They have invested time and money in compliance and in support for the local industries. What broadcasters ask in return is that the Authority develop a regulatory framework which is cognisant of, and responsive to, the constraints they face. In short, these constraints relate to the supply and cost of South African content.
- 9.2 The NAB is not arguing for the abolition of the quota system. Rather, we are arguing for it to be applied more flexibly. Such flexibility will necessitate changes to existing legislation and regulations. In some cases, those changes are complex but we submit that this should not act as a deterrence. The industry is committed to working with the Authority in refining the legislative and regulatory system required.
- 9.3 As with any proposal for change, a more flexible system holds both benefits and dangers. In this context though, we submit that the benefits are certain and that they far outweigh the potential dangers. We submit that the Authority has the opportunity to look more creatively at how to secure contribution to local cultural industries and that it is joined in its endeavours by a local broadcasting industry that has grown in its appreciation for, and understanding of, the need for such contribution.
- 9.4 We therefore end our submission by restating our commitment to this process and wishing the Authority well in its deliberations.

