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POSITION PAPER

REVIEW OF REGULATION ON SOUTH AFRICAN LOCAL CONTENT: TELEVISION AND RADIO

2015

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1. ACKNOWLEDGEMENTS

The Independent Communications Authority of South Africa ("the Authority") would like to acknowledge and thank all stakeholders who participated in the process aimed at reviewing the local content regulations.

The following stakeholders submitted written representations to the Discussion Document:

- 1) Commission for Gender Equality (CGE)
- 2) Deukom (Pty) Ltd
- 3) e.tv
- 4) Freedom of Expression Institute (FXI)
- 5) Jonathan G. Shaw
- 6) Kagiso Media (Pty) Ltd
- 7) M-NET and Multichoice
- 8) Media Monitoring Africa (MMA)
- 9) Megan Lee Clark
- 10) Moshito Music
- 11) National Association of Broadcasters (NAB)
- 12) Play Music SA/Music Industry
- 13) Pan South African Language Board (PanSALB)
- 14) South African Broadcasting Corporation (SABC)
- 15) South African Communications Forum (SACF)
- 16) Southern African Music Rights Organisation (SAMRO)
- 17) Support Public Broadcasting Coalition (SOS)
- 18) Vodacom (Pty) Ltd (Vodacom)

2. INTRODUCTION AND BACKGROUND

2.1 The emphasis on local content is premised on the principle that broadcasting must be regulated in the public interest – including ensuring that South African stories and music are reflected on air, as stated in the White Paper on Broadcasting Policy, published by the Department of Communications in June 1998. A key public interest objective, the White Paper notes, is that “broadcasting plays an integral role in developing and reflecting a South African identity, its character and cultural diversity within the framework of national unity”.¹ The Authority is guided by the dual aim for content regulation – ensuring that local programming and music is aired and that the independent production and music industries are developed. These are implemented in the context of a three tier broadcasting system (public, commercial and community), including both free-to-air and subscription services.

2.2 On 4 July 2014, the Authority published a **Discussion Document² on Review of Regulations on South African Local Content: Television and Radio** (“Discussion Document”) in General Notice 529 of 2014 (Government Gazette No. 37803) inviting interested parties to make written representations in respect of South African Local Content. Subsequent to the publication of the Discussion Document, the Authority held provincial workshops³ in order to solicit further views and comments from stakeholders that are not able to travel to the Authority’s head office in Gauteng or make a written submissions. The closing date for submissions was 10 September 2014, which was later extended to 10 October 2014. The Authority received eighteen (18) written submissions⁴. The submissions received are available on request at the Authority’s library in Block ‘D’ Pinmill farm in Sandton, Johannesburg and on the Authority’s website. Lastly the Authority published a Findings Document on the Review of South African Local Content providing a summary of salient issues raised by interested parties.⁵

2.3 Based on the study conducted by the Authority and the Findings Document, the Authority’s proposals with regard to quotas are stipulated in the sections below, culminating into a Position Paper. The proposals are not final decisions of the Authority as they are published for comments through draft regulations. However, unless

¹ Department of Communications, ‘White Paper on Broadcasting Policy’, 4 June 1998, Section 1.3.3: Public Interest

² In terms of section 4B of the ICASA Act (as amended).

³ In Nelspruit, Cape Town, East London, Umhlanga, North West, Polokwane, Kimberley, Bloemfontein and Gauteng

⁴ See Acknowledgements.

⁵ General Notice 348 of 16 April 2015 (Government Gazette No. 38700)

persuaded differently with valid reasons supported by empirical research, these proposals will become the final decisions of the Authority.

2.4 The Authority have not increased the local content quotas from 2002, with a minimal variation in 2006. Research shows that broadcasters are exceeding the quota thus the proposed increase in the quotas is based on research conducted and the input to the Discussion Document. In setting the new minimum quotas the Authority is striking a balance between the viability of broadcasters, consumer needs and the promotion of the independent production and music industries.

3. ANALYSIS OF SUBMISSIONS

3.1 GENERAL POLICY AND LEGISLATIVE FRAMEWORK

3.1.1 The Discussion Document provided the policy and legislative context of local content regulation in South Africa. It contains an analysis of the relevant international, regional and South African policies and legislative provisions relating to the regulation and thus sets the policy basis for the review and recommendations.

3.1.2 M-Net and Multichoice submitted that the Authority seems to consider itself bound by an outdated policy objective in the 1998 White Paper "to achieve a broadcasting system which is predominantly South African in content". They argue that they were not suggesting that previous policy objectives should be ignored, but that those objectives were set 16 years ago, and the Authority should reflect on whether they remain relevant and appropriate. Furthermore, they question the Discussion Document's adherence to foreign and outdated policy statements and its failure to assess the existing legislative framework are problematic. As a creature of statute, the Authority must act within the confines of the powers lawfully conferred upon it, and ultimately the Constitution.⁶

3.1.3 Kagiso Media was concerned that, overwhelming attention is given to the broadcasting sector at the expense of under - valuing the ability of other ICT platforms to the local content. They argued that broadcasting must not be turned into a Cinderella platform for content provision as a result of content providers competing to avoid a much regulated platform broadcasting in favour of providing the same content services over

⁶ M-net and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 18)

a non - regulated platform such as the internet, the Authority must focus on Platform Neutrality and Regulatory Parity as key concepts when reviewing the regulations. They added that the Authority must take note of the fact that, the current disruptions to the existing regulatory mechanisms caused by the realities of technological convergence pose challenges not just in relation to regulating new technologies and services but also in regard to the regulation of existing technologies and services such as broadcasting.⁷

3.1.4 Kagiso Media pointed out that ICASA must create an equal regulatory playing field on aspects of public interest and ensuring the non - distortion of the market for content services across a variety of platforms irrespective of technology used. Kagiso Media is quick to indicate that, it does not expect regulatory guidelines to be imposed on the internet platforms. Flexible regulation of inter platforms will assist in striking a balance between the television and radio streaming services so as to ensure platform neutrality. It urges all stakeholders to contribute towards the review of the governing legislation of the ECA, ICASA and Broadcasting Acts.⁸

3.1.5 Jonathan G Shaw was of the view that as part of global content, South African public are able to download and listen to largely international music content through streaming. This poses a question as to whether ICASA will be able to regulate this platform or not.⁹

3.2 LOCAL CONTENT OBJECTIVES

3.2.1 As part of the Discussion Document, the Authority highlighted some of the key public policy objectives for regulating local content in South Africa and pointed out that similar objectives drive content in other countries benchmarked as part of this study. Furthermore it emphasised that in South Africa however the added dimension is the need to actively redress the past where certain identities, languages and cultures were promoted at the expense of others. The Authority asked whether the overarching public policy objectives of local content had been met through the Authority's Local Content regulations.

⁷ Kagiso Media's submission to ICASA's Discussion Document on the Review of Regulations on South African Local Content: Radio and Television, 2014 (Page 2)

⁸ Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3)

⁹ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 2)

3.2.2 In their submission, e.tv stated that while the objectives for local content regulation have been met, however the advertising model supporting free-to-air (FTA) local content requires protection. e.tv criticized the way the dominant pay television operator unfairly competes for advertising against the FTA operators, saying this undermines the funding model for FTA broadcasting and, ultimately, for local content. Based on this, e.tv therefore felt that regulatory action is needed as an intervention for a healthy and efficient competition¹⁰.

3.2.3 M-net and Multichoice differed with the objectives as stated in the discussion document, arguing that they are not found within the broadcasting policy and legislative framework. The subscription broadcasters are concerned that the source of the public policy objectives set out in paragraph 4.2, in the discussion document, is not cited. The footnote explains that these are objectives articulated by government and policy makers in other countries. However, the subscription broadcasters stated that these objectives are not located within the context of the South African policy, legislative or regulatory framework for local content regulation¹¹.

3.2.4 The National Association of Broadcasters (NAB) submitted that the South African local content regulations are a unique example of a well - functioning and effective regulatory intervention. The NAB argues that the uptake of SA local content by viewers and listeners bear testimony to this, as the top five most listened to stations are South African language stations, while the most viewed television programming is locally produced¹².

3.2.5 The Authority continues to be guided by these overarching national objectives and aims to uphold these policies through regulation. Therefore, any change made in the regulations will be made with the implementation of these objectives in mind.

3.2.6 In the absence of any new broadcast policy, the Authority's position on South African local content is still informed by policy objectives stated in the 1998

¹⁰ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014,(Pages 5-10)

¹¹ M-net and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Pages 26, 30, 44, 46-47)

¹² The NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 18)

White Paper on Broadcasting. The requirement that South Africans must own broadcasting services goes a long way to securing the tools for South African cultural determination. The choice of programming should entail a choice of South African programming. This [called] for a deliberate policy to ensure that the South African broadcasting system offers South African programmes about the conditions, life styles, behaviour and cultural heritage of all South Africans. This policy... [encouraged] the presentation of entertainment, educational and informational programming from the South African perspective in whatever format and distribution mechanism. Local content provisions arise out of a need to protect national cultural heritages, attitudes, norms, ways of behaviour and values from undue influence that cultural products from other countries may have on a nation's public life. Local content seeks to protect all of those socio-cultural, political and economic traits that could be characterised as unique to a sovereign nation and therefore make it distinct from another¹³.

3.2.7 As stated in the Discussion Document Local content regulations should be viewed in the context of broader government policies relating to the development of cultural industries and the principles of plurality of views, freedom of expression, cultural diversity, and access to information and language rights. As a creature of statutes, the Authority plays a critical role in ensuring that these policies are met; however the Authority acknowledges that it cannot alone ensure that the policy objectives are met in this regard. The recommendations set out in the Discussion Document were prepared taking into account the overarching country objectives in relation to these areas and the specific role of the regulator in achieving these and general principles of good regulatory practice.

3.3 DEFINITIONS

3.3.1 With regards to definitions the Discussion Document noted the suggestions made in the previous Position Paper¹⁴ and the current research process¹⁵ requesting that the definitions be amended. The Authority illustrated that it cannot vary these definitions as they are contained in the Electronic Communications Act, 2005 (Act No. 36 of 2005),

¹³ White Paper on Broadcasting, 1998, pages 35 - 37

¹⁴ The Authority, "South African Content on Television and Radio: Position Paper", 15 February 2002

¹⁵ The Authority's Final Study Report: Conducting a thorough assessment of the cultural, economic and social benefits brought about by the preservation of South African programming regulations and to perform a sound cost-benefit analysis, www.icasa.org.za

though it can make recommendations to the Minister in this regard. The Authority enquired on whether the definitions of local content and independent television production were still relevant to meet regulatory objectives. Stakeholders had raised that sport be included in the definition of local content and the Authority enquired from stakeholders whether sport should be included in the definition of local content, with the aim of gauging for reasons to this.

3.3.2 The South African Broadcasting Corporation (SABC/public broadcaster) requested that the Authority consider expanding the definition of 'South African content', to cover sport programming reasoning that this will ensure that a deserved acknowledgement and incentives are ascribed to programming of such a nature. The public broadcaster motivated that in producing sports programming, they employ local resources and that job opportunities are created for local technicians; for example camera operators and all suppliers are procured from local business. They submitted that if local content is to be increased in a digital space, the definition needs to be broadened particularly in respect of growing regional content. The public broadcaster expands that regional content cannot grow without regional development¹⁶.

3.3.3 SABC submitted that the definition of 'independent television production needs to be re-defined to ensure local content is not stunted by the lack of infrastructure and training enabling broadcasters to recruit individuals to produce certain regional content in-house. They proposed insurance of limitation of abuse be in the form of legislation that is clearly defined in consultation with all critical stakeholders to agree on what is understood as independent television. This, they added should take into account period, type of production, cost of production, formalized training through SETA's with evaluations and releasing of recruited individuals with commissioning contracts to ensure local content is not stunted by the lack of infrastructure and training.¹⁷

3.3.4 The South African Communications Forum (SACF) shared similar views with the SABC that the definition of Local Content must be updated to embrace the current realities of a converged Information and communications technology (ICT) ecosystem. SACF also argues that the current definition of local sport should be revised and aligned with the Canadian local sport definition. The communications forum was of the view that there

¹⁶ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 22-23)

¹⁷ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Paragraph 6.3)

is no reason not to recognize sport as local content when South African teams or athletes participate, especially in view of significant costs that go into the production of sport content¹⁸.

3.3.5 Vodacom submitted that the definition of local content should be extended to include the production, coverage and acquisition of sports rights involving South Africans whether they compete in the country or not. Vodacom argued that organizations such as the South African Football Association, the Premier Soccer League, Cricket South Africa and the South African Rugby Union are demanding millions of Rands in exchange for the broadcasting of local sports. Despite this expenditure and the amount of work that goes into negotiating sporting rights the transmission of South African sports is still not recognized as local content¹⁹. Furthermore Vodacom suggested that the definition of independent television production should be extended to allow independent producers to retain their intellectual property rights after the expiry of the initial period²⁰.

3.3.6 In addition, Vodacom posited that the definition needs to be in line with technological developments. New media technology such as social networking, media sharing and video on demand, in addition to the increasing prevalence of cellular telephones, have made it possible for more people to access content produced by citizen journalists. Consumers, they believe will also be able to download a variety of content through the internet²¹.

3.3.7 M-net and Multichoice agreed with the SABC, SACF and Vodacom's positions that the definition of local content needs to be reassessed in the light of the multi-channel environment, particularly in respect of the focus on "programming". They argued that in an increasingly multi - channel environment, there will be less scope for "programming - based requirements", but rather, a more flexible approach will be required²².

3.3.8 M-net and Multichoice proposed that the Authority recommend an amendment to s61 (2) (a) of the ECA to remove the exclusion of sport from the definition of local television

¹⁸ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4)

¹⁹ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3 and 9)

²⁰ Ibid. (Page 10)

²¹ Ibid. (Page 3)

²² Mnet and MultiChoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 22)

content. The exclusion of sport is indeed unfortunate, in the light of the massive contribution to the local production industry made through the production of sporting events²³.

3.3.9 M-net and Multichoice posited that legislative amendments must include African content in the definition of local content. The subscription broadcasters substantiated that the inclusion of African content in the statutory definition of local content would accord with the position of various countries and it would also be in line with government's National Development Plan (NDP) which calls for greater regional [and African] economic integration²⁴.

3.3.10 The NAB was of the view that definitions cannot be amended by regulation. Amending 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 inadequate²⁵.

3.3.11 Ms Megan Lee Clark submitted that the current definition of the South African local content is clouded by the international content. Ms Lee Clark indicated that an appropriate definition of the South African local content is essential to achieving regulatory objectives. She further added that the definition must make reference to locally produced advertisements, sports events and continuity announcements as part of the Local Content quota²⁶.

3.3.12 The Media Monitoring Africa proposed that local content be defined as follows; a television programme and or audio visual content excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements, which is produced (i) by a broadcasting service licensee, (ii) by a person who is a citizen of, and permanently resides in the Republic, (iii) by a juristic person, sixty percent of the directors, shareholders or members of whom are citizens of, and permanently resides in, the Republic, (iv) in a co - production in which persons referred to in sub paragraphs (i) (ii) and (iii), have at least a certain percentage of financial interest, (v) by persons referred to in paragraphs (i) (ii) (iii) and (iv), in

²³ Ibid, (Page 23)

²⁴ Ibid,(Pages22-24)

²⁵ The NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 10)

²⁶ Megan Lee's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently reside in, the Republic; or (vi) by persons referred to in (i) (ii) (iii) and (iv) in circumstances where the sixty percent of the production costs are incurred in the Republic²⁷.

3.3.13 MMA submitted that it supports ICASA's decision that local sports not be recognised as part of local content²⁸.

3.3.14 Ms. Clark was of the view that locally produced and developed sporting codes must be considered as part of local content. She added that since such sporting codes would require packaging, production and promotion by local production companies and massive sponsorships together with broadcast rights licenses, local sporting events should be regarded as part of South African local content²⁹.

3.3.15 SOS recommended that local sports programming should be included in the definition of local content but ICASA needs to investigate this further. They suggested that caps should be included on the amount of sport that can be calculated as part of local content so that it doesn't dominate. They also added that ICASA must explore the incentivizing of coverage of women's and minority sports; that the definition of "television content" should now refer to "audio-visual content"; that the definition of "independent TV production" must emphasize the issue of control. They felt that independent producers and independent production companies need to ensure genuine control over their creativity, intellectual property and working conditions if their work is to be seen as independent and this should be emphasized in the definition.

3.3.16 In addition, SOS proposed that the definition of South African music should have stricter requirements, needing majority input from citizens on all levels of production for a song to be classified as local³⁰.

3.3.17 JG Shaw submitted that South African music should be defined as "filmed in the republic" under music content ..., as he would not want South African music videos to

²⁷ MMA's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 8)

²⁸ Ibid. (Page 10)

²⁹ Megan Lee Clark's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

³⁰ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 12)

be overlooked in the definition of local television broadcasting. He further poses a question on whether music videos are "television programmes"³¹.

3.3.18 The Authority notes that some of the submissions advocates for the inclusion of local sport as local content however, the definition of local content in the legislation excludes sport.

3.4 SOCIAL AND CULTURAL ISSUES

3.4.1 The Discussion document assessed the social and cultural objectives of local content to assess if local content in South Africa reflects the rich social and cultural diversity of the population. This then also allows for identification where caveats still exist and where regulations might be needed to encourage broadcasting or production of specific types of content. The Authority enquired whether stakeholders believed that the overall socio-cultural objectives been achieved by the South African content regulation and what the Authority could do in this regard.

3.4.2 The SABC submitted that radio in a digital era should be ushered in a dispensation that will ensure equitable allocation of frequencies for Public Broadcasting Services (PBS) radio stations to cater adequately for their different cultural groupings. The public broadcaster highlighted this because of the dissenting voices recently questioning the issues of "dialects" versus "formal" languages³².

3.4.3 The SABC also argued that, certain dialects were elevated to be the "main" languages by the colonialists. The serious questions therefore at SABC PBS Radio services are whether the stations should seek presenters coming from a particular clan who are purported to be speaking the "formal" language or whether the radio station should not ensure that it has representatives of the various dialects of that language, for instance Northern Sotho. As a public broadcaster, the SABC believes it needs to promote a common cultural South African identity whilst still reflecting the diversity of, languages and cultures. Another critical cultural aspect is that of "adult" culture versus "youth culture". It is difficult to juggle and balance one single radio station to cater for both cultures.

³¹ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page1)

³² SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 21-22, 28, 30 and 39-40)

3.4.4 The SABC is concerned that the overall social and cultural objectives have not yet been achieved by the South African Local Content regulations. The public broadcaster suggested that more frequency spectrum should be allocated to ensure targeted programming regarding “adult” and “youth” cultural programming³³.

3.4.5 The NAB is confident that the licencing in all three tiers of broadcasting and especially the 16 public service radio stations have responded to the social and cultural objectives of the country³⁴.

3.4.6 Mr. JG Shaw encouraged the Authority to work with policy makers to introduce production and market building incentives for national matters such as language and music. He believes that whatever and whenever it is played, local music should seek to promote and encourage cultural pride. For instance, he adds, public spaces such as schools, malls, airports, government offices museums and national parks, should be utilized as habitats to play local music. He is of the view that if local content music was to be spread more evenly it could lead to cultural diversity and plurality. Closely related to this should be one language based radio and television programming, and a focus on multi - lingual content could assist in promoting marginalized and minority cultures³⁵.

3.4.7 Furthermore, Mr. Shaw stated that South Africa's children dreams of being star celebrities is closely related to the international celebrities but not local ones. This is partly because the local South African broadcasters do not play local music and thus reject any new productions meant to introduce new musical talents. He argued the Authority may have to establish a committee whose objectives should be to investigate and regulate any cultural prejudices in the industry³⁶.

3.4.8 SOS submitted that while present local content regulations have encouraged cultural diversity, for instance through language diversity, broadcasters note the vagueness and complexity of terms like cultural diversity and national identity in the South African

³³ submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5, 31 and 33)

³⁴ The NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

³⁵ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

³⁶ Ibid (Page 6)

context, which makes it hard to quantify their effectiveness. Thus SOS believes that the Authority should consider elaborating on these descriptions. They also advised that in order for the Authority to ensure increased diversity they would have to actively intervene in the kinds of players in the industry, for instance by putting out a call for certain types of stations representing minority communities³⁷.

3.4.9 The Authority acknowledges that there is no universal definition of social and cultural objectives such as cultural diversity, national identity. However local content programmes should recognize and reflect the diversity of all social and cultural backgrounds in South African society. Broadcasters should seek assistance from experts to ensure that their programming of local content is in line with the country's social and cultural objectives. For example, in terms of language the Authority aims to encourage the use of local languages in local content programming.

3.4.10 Furthermore the Authority will incentivize the programmes produced outside the metro areas to encourage social and cultural diversity this brings in programming, as illustrated below under section 3.9 on Incentives. A more refined jurisdiction of community broadcasting sector is likely to address some of the local content problems especially around issues of music, beliefs, language and identity that reflect South Africa's diverse cultural traditions.

3.5 LOCAL CONTENT AND DIGITAL TELEVISION

3.5.1 The Discussion Document prompted responses on ensuring that local content programming is not compromised during the migration to digital broadcasting. Concerns have been raised about the impact the digital migration period would have on the viability of terrestrial broadcasters and their financial capacity to meet requirements. It was noted that it will be in broadcasters' own interest to air programming that would attract viewers as incentive channels would run at a loss without significant uptake by audiences of Set Top Boxes (STBs). As indicated below, stakeholders continue to raise challenges they foresee with the local content for digital television and furthermore relate this to other platforms that provide content.

³⁷ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 13)

3.5.2 The SABC submitted that the Authority should bear in mind the amount of content that needs to be provided for all the channels on the Digital Terrestrial Television (DTT) platform. Provisions for an extended period for content acquirement should be placed. The reason is that migration of channels will be burdensome on broadcasters. The SABC reminded the Authority to consider that South Africa being a multi - lingual country with over 11 languages, a duplication of shows into different languages on different channels could ease the amount of time and resources that need to be put into one product. But even that does not guarantee the duplication of a show will be well received by all the languages intended to be catered for³⁸.

3.5.3 The public broadcaster also cautioned that with more and more people having access to broadband, smart phones, Wi-Fi connection, internet television and video streaming, the Authority may want to consider that the public now views different content on all these platforms. Therefore the reduction of local content requirements should be considered. Provisions for broadcasters that dual illuminate to have a wide range of content including overseas content for an extended period should be put in place. This they added, would then allow the channels to push for more local content without the pressure from the Authority to be within certain local content quotas.

3.5.4 Furthermore, the SABC elaborated that with the new channels on the DTT platform, strategies would then be implemented with regards to acquiring new local content that is both appealing and of good quality to the viewer. The Authority should also consider that the new strategies may take some time to implement and longer time frames may need to be placed on that. For quite a number of years local content has proved to be a winner for most public broadcast viewers, however good quality local content is necessary for the public to remain at a channel offering local content³⁹.

3.5.5 The SABC also proposed that the Authority should set the percentage based on audiences as this is the only way to ensure financial sustainability. New broadcaster licensees regulations should be linked to the number of audiences the licensee has and either increase or decrease in line with their audience numbers. This means the greater the audience share, the more parity it will get with more established

³⁸ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 40-42)

³⁹ Ibid (Page 21)

broadcasters. There should be parity in regulation for everyone. Having one standard operating procedure would make easier to regulate⁴⁰.

3.5.6 In addition, the public broadcaster advised that the Authority should relax and / or reduce local content regulations and allow incubation during the dual illumination period necessary for DTT migration. Incentive channels should not have the same level of regulation during this period. During this period, it was submitted, the Authority should identify incentive mechanisms that will create a level playing field between broadcasters that are obliged to provide dual illumination, and those who do not have such an obligation⁴¹.

3.5.7 The SACF proposed that the Authority take the following approach in regulating local content in a multichannel environment⁴²;

- Multichannel environment will require a much more flexible regulatory approach;
- The Authority should adopt a cross-bouquet approach rather than per channel regulation; and
- There is a need for creative approaches to the acquisition of content and regulations should not stipulate that programmes sourced from independent producers be commissioned in order to enable greater flexibility and innovation in co-production, acquisition of rights, and on-selling of IP.

3.5.8 Vodacom submitted that even during a multi - channel environment, the Authority should maintain local content quotas, this in order to increase availability and programming targeted at meeting the needs of different segments of the society⁴³.

3.5.9 e.tv proposed that the regulatory approach devised for digital only channels during dual illumination should continue after analogue switch - off. The commercial FTA broadcaster adds that the local content regulation of the main analogue channels should be reviewed after analogue switch - off⁴⁴.

⁴⁰ Ibid. (Page 45)

⁴¹ Ibid. (Page 6-7)

⁴² SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

⁴³ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 7 and 11)

⁴⁴ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Pages 16-17)

3.5.10 Kagiso Media submitted that there are continuous transformations in the technological, broadcasting, policy and regulations, thus the specifications around local content should not be rigid. However, Kagiso Media is of the view that the current local content regulations will no longer be applicable in the digital era. While Kagiso Media is aware that the current ICT Policy Development Process is highly complex, it nonetheless encourages the Authority to establish its own positions regarding the regulation of local content in the convergence era⁴⁵.

3.5.11 Kagiso Media further added that the ICT sector must seek to address the national and sectorial policy objectives such as diversity, competition and consumer choice with regard to both services and content, inter - operability and consumer protection, economic empowerment and increased investment, local content development, technological innovation, platform and technology neutrality and regulatory parity and to ensure against regulatory environment becoming unduly onerous and consequently anti - competitive.

3.5.12 M-net and Multichoice submitted that no further requirements are required in respect of dual-illuminated channels. They further stated that, existing broadcasting licensees will automatically comply with the local content requirements in respect of their dual-illuminated channels during the dual illuminated period. Therefore, flexible local content regulations which are appropriate for the multi-channel environment will be required for new multi-channel broadcasting services from their inception, and, following analogue switch off for migrating broadcasting services.

3.5.13 The subscription broadcasters also recommended that, in a multichannel environment the Authority should review and reduce the obligations on broadcasters and introduce greater flexibility for broadcasters to achieve local content objectives. They argued that current per-channel obligations and quotas were designed for a single channel, analogue environment, and cannot simply be transposed onto a multi-channel digital environment as this restricts broadcasters' ability to optimise their multi-channel offering and the cost of compliance is multiplied by the number of channels affected.

3.5.14 Furthermore, M-net and Multichoice proposed that the Authority should not set specific requirements in relation to the prominence of South African content on

⁴⁵ Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 2)

Electronic Programme Guides (EPG). In the DTT multichannel environment no regulation of the EPG is required as free-to-air channels will be first up in the EPG in terms of agreements in place around DTT Rules of Operation and Memorandum of Understanding between SABC and e.tv on the operation of the free-to-air DTT platform. They also stated that EPG is not a broadcasting service nor is it programming and, accordingly, it does not fall within the ambit of the powers given to the Authority in terms of s61 of the EC Act to preserve South African programming⁴⁶.

3.5.15 SOS submission differed from M-net and Multichoice, the latter is of the view that the Authority should ensure the prominence of local television content, public service and community content through highlighting and giving prominence to this content on EPGs and in on-demand catalogues⁴⁷.

3.5.16 The SABC submitted that the licensing framework requires an ever - increasing simplicity and flexibility in the application of regulations. The public broadcaster added that it should be granted genre quotas across the television bouquet and not on individual television channels as is currently the case. This would allow flexibility in scheduling and also positioning of channels for particular audiences⁴⁸.

3.5.17 The public broadcaster is also concerned that the existence of local content quotas, moreover that the steep increases in the quotas for both radio and television services proposed by the Authority, will hinder the growth of the public broadcaster and its ability to exist in a digital space. They argue that over - burdening of a channel or platform by introducing strict or too prescriptive quotas could potentially result in consumers tuning in search of preferred content (which will be available to them on a myriad of new channels and digital platforms).

3.5.18 e.tv recommended that the Local Content Regulations be amended to allow for a bouquet - wide quota for new digital only channels. The commercial FTA broadcaster argues that while the FTA channels must ensure a minimum percentage of local programming is broadcasted on each channel, and within each genre on that channel, the pay TV however, can meet a bouquet - wide quota which is not even necessarily

⁴⁶ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 55)

⁴⁷ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4)

⁴⁸ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 12)

directly related to the airing of local content, and this gives pay television a far greater flexibility⁴⁹.

3.5.19 The SACF is of the view that current local content regulations are adequate and will benefit from multichannel platforms. Lighter touch regulation, such as bouquet wide quotas, rather than specific channel quotas, is recommended initially for FTA multichannel satellite platforms⁵⁰.

3.5.20 It is not expected that a digitally converged environment will immediately affect the viability of television licensees. The current review will cover the regulations for the dual illumination period and new requirements for new broadcasting services that might be licensed during dual illumination. For post analogue switch-off the Authority might if necessary, develop a Position Paper and Regulations to apply to post analogue switch off, including any digital to digital migration. The existing regulations will apply until the Authority have reviewed the regulations in existence.

3.6 BROADCAST TIER DIFFERENTIATION

3.6.1 The Authority posed a question in the Discussion Document on whether the differentiation between subscription and free to air services, with a lighter touch approach to regulating Pay television licensees is still relevant.

3.6.2 The SABC proposed that the three - tiers of broadcasting should be retained in line with the legislation and furthermore all broadcasters should contribute towards the promotion of local content. The public broadcaster insisted that the local content quotas between FTAs and commercial cannot be addressed in isolation. There are a number of legislative frameworks that inform a competitive landscape. Moving into a digital multi - channel broadcasting space the definition of Public Service needs to form the backbone of local content quotas.

3.6.3 The NAB contended that the need to differentiate in the local content quotas for FTA and subscription broadcasters is increasingly weak, given the fundamental changes

⁴⁹ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Pages 11-12)

⁵⁰ SACF submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 8)

which have occurred in the SA television market structure. They reasoned that FTA broadcasters are no longer confined to a handful of channels but are beginning to offer multi - channel bouquets to audiences and therefore the need for two distinct regulatory approaches appears to be outdated.

3.6.4 In terms of audio-visual / TV content, SOS believes that public broadcasters should be at the top of the pyramid with the most obligations, then FTA commercial broadcasters followed by subscription broadcasters. SOS particularly supports the growing of the new community TV broadcasting sector. In this regard SOS believes that it is important to ensure greater flexibility. In terms of radio / audio content, SOS believes that there should also be a hierarchy of obligations with public and community broadcasters at the top of the hierarchy, followed by commercial broadcasters. However, this does not negate the fact that commercial broadcasters should play an important role in the production, commissioning and broadcasting of local content⁵¹.

3.6.5 The SACF submitted that the Authority should not differentiate local content quotas for FTA and subscription broadcasters. The SACF submits it is no longer relevant and that lighter touch regulations should be the same for subscription and FTA. However, they cautioned that the Authority must be cognizant of the fact that the public broadcaster mandate does not allow it to compete with commercial operators and therefore should be regulated differently⁵².

3.6.6 e.tv is of the view that the Authority must ensure that broadcasters are regulated fairly and appropriately, regardless of their transmission platform as the growth of the independent production sector will in part depend of the health and viability of the FTA sector⁵³.

3.6.7 M-net and Multichoice submitted that the current regulatory approach recognises the differences in the way FTA and subscription services are made available to the public and there is no basis for reviewing this differentiation in the current process. The tiered broadcasting structure which differentiates between public, commercial FTA, community and subscription broadcasting services and requires broadcasting services,

⁵¹ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

⁵² SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

⁵³ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page13 and 17)

viewed collectively, to contribute to the achievement of broadcasting objectives, underscores the current broadcasting legislative and regulatory framework⁵⁴.

3.6.8 Ms. ML Clark raised a concern that the introduction of Set - Top - Boxes (STBs) would render the differentiation between subscription broadcasting and FTA broadcasting irrelevant, therefore, there is no longer a need to allocate different local content quotas to these two competing broadcast tiers⁵⁵.

3.6.9 Kagiso Media submitted that the shift towards a convergent era renders the current local content regulations that distinguish between subscription and FTA broadcasting television services null and void⁵⁶.

3.6.10 The Authority is of the view that the three tier of broadcasting as found in the legislation is compulsory for now and with the different tiers, licensees are playing different yet complementary roles. The Authority's view is that the three tiers have differing mandate and therefore the quotas are different. With regards to incentive channels, the quotas will be set in line with channels under the same broadcasting tier.

3.7 TELEVISION

3.7.1 Local content quotas

3.7.1.1 The Authority's and broadcasters' reports on compliance show that radio stations and television services generally meet or exceed the minimum quotas set in regulations. The Authority sought input in terms of whether the current local content for television broadcasting service licensees should be increased and to what percentage, for community, public and commercial broadcasting service licensees. The Authority also enquired from stakeholders what the barrier would be if the quotas were increased.

⁵⁴ M-net and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

⁵⁵ Megan Lee Clark's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

⁵⁶ Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 2-4)

3.7.1.2 Kagiso Media submitted that local content must be audited across the entire bouquet of the television service provider rather than requiring each channel to measure compliance with television local content requirements.

3.7.1.3 Freedom of Expression Institute (FXI) cautioned the Authority that excessively high local content requirements can undermine the viability of broadcasters and pluralism, particularly at the community level as this will lead to a higher number of repeats, ultimately result in negative consequences such as the decline in listenership⁵⁷. The institute suggested that in considering quotas, demand side should be considered, which focuses on audiences' reflections of the choices and preferences. Consumer's choice and preferences are seldom captured to emphasize the promotion of local content and plurality of views⁵⁸.

3.7.1.4 FXI further suggested that, if quotas will be increased, these regulations should be implemented progressively so as to give broadcasters time to bring themselves into compliance with the rules. They also added that the Authority should enforce periodic reviews where there is flexibility to make amendments. If local content requirements are immediate and fixed, particularly if the quotas are high, they may undermine viability of the broadcasting sector and pluralism⁵⁹.

3.7.1.5 e.tv recommended that no immediate change should be made to the local content regulations. The Authority should rather focus on the key issues facing the sector which include the advertising model and flexibility regarding the digital multi-channel FTA broadcasters⁶⁰.

3.7.1.6 SABC supported the increase of quotas on radio services, however it requested the Authority to note that consumer research would form a vital component to gauge consumer preferences and demand. It submitted that should the Authority provide for the removal of prime time and performance period and provide percentage quotas per broadcaster, then the quotas can be increased as this would allow each broadcaster the ability to balance their portfolios and cost recover. It stated that demand might further vary drastically between platforms hence the need to measure at brand level

⁵⁷ FXI's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 3)

⁵⁸ Ibid. Page 4.

⁵⁹ Ibid. (Page 4 and 5)

⁶⁰ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 20)

before considering changes for the respective portfolios. Lastly, the SABC proposed that if quota adjustments are required, a phased approach should be applied to ensure optimal consumer adjustment⁶¹.

3.7.1.7 The SABC submitted that a gradual increase of quotas be introduced for the SABC commercial radio services; specifically a 5% increase over a period of three years. For public radio, the SABC proposed that the quota should be increased to 60%. The public broadcaster is of the view that this will allow audiences to warm-up to the quota increase idea and enable the SABC to remain viable. This will be a sustainable figure that it believes will create a fine balance for the public broadcaster⁶².

3.7.1.8 The NAB posited that there is no need to increase the quotas. The association believes that the current regulations work very well, and have helped stimulate the local production sector. Thus even if there are no quotas in place, local content will still thrive as all the top TV programmes are all local SA productions. In addition, the proposed increase in quotas is submitted to be extraordinary high, unachievable and financially not viable for community television broadcasters. It explained that 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 content⁶³.

3.7.1.9 Vodacom submitted that the quotas level set for local content rules should take into account the strength of the local production industry in the country and its potential for development⁶⁴. Vodacom cautioned that unrealistic and unachievable local content requirements can undermine the objective behind local content and the viability of the local content industry in general.

3.7.1.10 Vodacom added that the Authority should not increase the current local content quotas but should instead allow the market to dictate the amount of local content to be broadcast over and above the prescribed threshold⁶⁵. It believes that by increasing quotas broadcasters will be forced to compromise on the quality of programming in

⁶¹ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 27)

⁶² Ibid (Page 14)

⁶³ The NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 12-13)

⁶⁴ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 7)

⁶⁵ Ibid (Page 4)

order to meet quantitative quotas, and this may prevent them from exercising some degree of flexibility with regards to content over and above the prescribed threshold⁶⁶.

3.7.1.11 Vodacom further submitted that the Authority should maintain local content quotas across all linear platforms. They also added that, broadcasters should be given the flexibility of choosing how to meet local content obligations, i.e. whether to dedicate few channels towards meeting local quotas or spread it across all their channels.

3.7.1.12 M-net and MultiChoice are of the view that there should be no increase to the current quotas, rather the Authority should critically assess whether the quota system continues to be relevant as local content has become a commercial imperative. They submitted that the market has surpassed the need for quotas and these are not appropriate for commercial broadcasters⁶⁷.

3.7.1.13 SACF reasoned that the minimum quotas do not need to be increased, rather they should be retained as they are presently⁶⁸.

3.7.1.14 Deukom indicated that they would like to be exempted from complying with the local content regulations, or alternatively the regulations must make provision to cater for niche broadcasters. The German language broadcaster argued that its content is uniquely for German-speaking individuals and the subscribers do not have interest on the South African local content. Also, due to the size of such broadcasters the costs per subscriber are already very high and in the circumstances the imposition of a pay obligation may impose a heavy burden in respect of which the licensee will not receive any benefit⁶⁹.

3.7.1.15 The MMA argued that, the changing nature of Community Television which is now increasingly being hosted by Subscription broadcasters, requires that the current local content quotas on community television be revised⁷⁰. However, MMA is of the view that, in so doing, ICASA must undertake a thorough research study that would

⁶⁶ Ibid (Page 11)

⁶⁷ M-net and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 37).

⁶⁸ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 17).

⁶⁹ Deukom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014. (Page 4 and 7)

⁷⁰ MMA's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 9)

determine if community broadcasting will be able to meet the newly set local content quotas⁷¹.

3.7.1.16 The MMA proposed that community television broadcasters should be required to broadcast 60% of local content on a weekly average which will be measured over a year during the performance period. They submit that the Authority must again provide incentive regulations meant to encourage community broadcasters to respect and adhere to their local content mandate⁷².

3.7.1.17 The MMA also noted that subscription broadcasting has been under regulated for a very long time and thus leading to imbalanced and unfair competition. In view of the fact that, both subscription and FTA broadcasters are fighting for advertising, the MMA submitted that the local content quotas of pay broadcasting be increased to a minimum of 20% during weekly average measured over a year during the performance period⁷³.

3.7.1.18 In addition, MMA and SOS share similar views in that there is a disparity in the FTA commercial broadcasting sector with e-tv having a 45% local content requirement for its main terrestrial channel. They submit that in contrast other FTA commercial broadcasters currently have only a 35% local content requirement. It is stated that FTA satellite delivery is not being monitored. MMA also supported SOS's recommendation that all FTA commercial broadcasters should be treated equally⁷⁴.

3.7.1.19 SOS also added that all FTA commercial broadcasters targeting a South African audience, irrespective of the method of content delivery (i.e. terrestrial, satellite and IP) should be required to have 45% of their broadcast time measured across their entire channel bouquet as local television content. They submitted that time should be spent on a balance of different genres measured across a bouquet of channels. Additionally, it was proposed that thirty five percent of local content on all FTA Commercial Broadcasters should be African language programming⁷⁵.

⁷¹ Ibid (Page 9)

⁷² Ibid. (Page 10)

⁷³ Ibid. (Page 10)

⁷⁴ SOS's and MMA's submissions to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 8) and (Page 10) respectively

⁷⁵ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 8)

3.7.1.20 SOS proposed that public broadcasters should have their current 55% local content per channel increased to 60% measured across their channel bouquets as a percentage of time and irrespective of the media of transmission (i.e. Satellite, Terrestrial or IP). They believe fifty percent of their local content time should be African language programming⁷⁶.

3.7.1.21 In the case of Community Broadcasters SOS called for their present obligations to remain unchanged i.e. 55% local content per channel measured against the performance period, or should the community broadcaster offer more than one channel measured across their channel bouquets as a percentage of time and irrespective of the media of transmission (i.e.: Satellite, Terrestrial or IP). They submitted thirty percent of their local content time should be African language programming⁷⁷.

3.7.1.22 Furthermore, SOS proposed that satellite subscription broadcasters' local content percentage should be increased to at least 20% of acquisitions budgets, and this should apply to all subscription broadcasters irrespective of transmission (i.e. terrestrial, satellite). They state that local acquisitions budget should be spent on a balance of different genres. Thirty percent of the local acquisitions budget should be spent on African language programming and 60% of all local content spent on independently produced local content⁷⁸.

3.7.1.23 The following decisions by the Authority applies to television broadcasting:

(a) The new requirements will apply 18 months after the publication of the regulations for incumbent broadcasters. This will afford broadcasters enough time and opportunity to source the local content. New broadcast service licensees will broadcast the minimum requirements after launch of their services as per table 1 below.

(b) In relation to any new broadcast service licensees and new incentive channels, a per bouquet rather than per channel approach will be put in place to allow licensees flexibility to meet South African content requirements across all authorised services and thus, for example, allow them to vary South African

⁷⁶ Ibid. (Page 9)

⁷⁷ Ibid. (Page 9)

⁷⁸ Ibid (Page 8)

content requirements across individual channels. Whereby a licensee has only one channel, the percentage set for the bouquet will apply.

- (c) The Authority has decided to apply the principle of technological neutrality, thus local content obligations will now be similar across the same services offered and not be differentiated by platform. The new proposed quotas will be as follows;

Table 1: South African Local Content Quotas

Broadcaster	Current quota	New quota for incumbents	Quota for new licensees
Public wing of public broadcaster	55	65	30% and increase by 10% on an annual basis until reaching the quota for the broadcast tier.
Commercial FTA and public commercial	35	45	20% and increase by 10% on an annual basis until reaching the quota for the broadcast tier
Subscription broadcaster	10	15	
Community broadcasters	55	65 with at least 50% of the quota produced from the coverage area	50% and increase by 10% on an annual basis until reaching the quota for the broadcast tier
New incentive channels per bouquet	0	30% less compared to similar broadcast tier and increase by 10% on an	Not applicable

		annual basis until reaching the quota for the broadcast tier.	
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- (d) **Subscription broadcasters that commission programmes must annually spend a minimum of 15% of the licensees' channel acquisition budget on South African content programming. A subscription broadcast service licensee that acquire channels must ensure that annually, 15% of channel acquisition budget is spent on South African content channels that are compiled and up linked from South Africa.**

3.7.2 Local content genres

3.7.2.1 It was highlighted in the discussion document that stakeholders agreed that genres should be individually reviewed and where possible simplified considering whether or not there was evident need to regulate individual genres. The Authority sought views of stakeholders on the television genres that should be lightly regulated and those that should strongly be regulated.

3.7.2.2 The SABC submitted that education and children need to be regulated strongly because early childhood development is critical for building the future, and the population under 18 years make up roughly 50% of the South African population.⁷⁹

3.7.2.3 With regard to drama, the SABC argued that the regulation of drama (for PBS SABC) requires 24 hours of drama, of which 8 hours should be in prime time and of those 8 hours, 4 hours must be local drama. They argued that it is a huge burden on a channel and comes at a huge cost. A review of this mandate is requested in light of the number of channels on Digital Terrestrial Television⁸⁰.

3.7.2.4 M-net and Multichoice are of the view that the only genres which require regulation are those for where there is no commercial demand and that this should be applicable

⁷⁹ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 28)

⁸⁰ Ibid. (Page 28)

only to the public broadcaster and should be flexible and measured across the service as a whole⁸¹.

3.7.2.5 The SACF submitted that delivery of television genres such as children and/or educational programmes (including other programmes that are a priority for the country) must be promoted through proactive regulatory quotas in all media under the control of South Africans, and through direct promotion to relevant audiences and their communities in the case of such desirable content that is available on converged and multi-channel environments. Thus the SACF proposed that most television genres should be lightly regulated going forward; the exception is with regard to children and educational programmes⁸².

3.7.2.6 NAB submitted that quotas for specific categories, like children's programming and educational/knowledge building programming, must be prioritised. The Association reasoned that these categories do not attract advertising revenue and must therefore be protected and adequately funded. However, it stated that there is likelihood that local South African drama and entertainment programmes will thrive regardless of quotas.

3.7.2.7 Copying from Australia's model, MMA recommended the following programming schedule, for public television- of the 390 hours, 25 hours of the children television must be original. It stated that the public television can only schedule repeats on children's programming for about 3 times in five years. Commercial television must broadcast 96 hours of original first run children's drama in any three year period with the minimum of 25 hours per year. MMA further proposed the following recommendations in relation to children's programming, for public television- 540 hours per year of children's programming; of the 540 hours, 40 hours of the children's programming must be first original and there should be no limitations in the repeat of programming of South African origin and it is then that all other children's programming be repeated about 4 times in a period of 3 years. For commercial television it was proposed - 290 hours per year of children's programming; of the 290 hours, 20 hours of the children's programming must be South African original⁸³.

⁸¹ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 37)

⁸² SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 7)

⁸³ MMA's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 12)

3.7.2.8 MMA pointed out that the Australian model that does not only prescribe 55% children programming for both public television and commercial television, but it also urges both tiers of broadcasting to dedicate 390 hours per year of children's and preschool television⁸⁴.

3.7.2.9 After analyzing the submissions and consideration of the research conducted the Authority is not convinced that there is a need to vary the genre quotas. The Authority is of the view that the current genre quotas will still achieve the intended objective of diversity.

3.7.3 Language quotas

3.7.3.1 The Authority asked if the regulations resulted in more diverse South African languages being used in various programming and probed for suggestions on how to improve on programming in marginalised languages. Furthermore the Authority wanted to know whether growth of multi-lingual dramas and other genres have encouraged or undermined the use of "minority" languages in programming and whether the Authority should introduce language quotas for various genres like drama.

3.7.3.2 The SABC submitted that the Authority should not introduce language quotas for various genres like drama as the ability to regulate specific quotas in a multi-channel, multi-platform digital environment is improbable. It indicated that regulating the percentage use of each language in each programme is also not feasible. Much like SABC's Religious policy and the regulation on political party coverage, they stated that representation should be fair and equitable and can represent the realities of current and future South Africa⁸⁵.

3.7.3.3 However, the public broadcaster alerted the Authority to the challenge it might face in trying to achieve the promotion of marginalized languages by increasing the quotas, because creatives specializing in those languages are not freely available. The challenge for them, they said has always been the availability of organic script-writers

⁸⁴ Ibid (Page 12)

⁸⁵ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 34)

in all official languages mainly the marginalized languages and there are still gaps in the production value chain⁸⁶.

3.7.3.4 The SACF submitted that the Authority should not introduce additional language quotas. Given the low comparative population levels of these language speakers, and their spatial locations, the SACF recommended a light-handed regulatory approach with maximum encouragement and support for community broadcasters that serve these communities. It states that broadcasters are already commercially incentivized to include diverse languages, it is also the viewpoint of the SACF that the broadcast sector does reflect South African cultural diversity in terms of languages. However, it believes there is still some marginalization in respect of a few languages/cultures such as! Kung and Xitsonga⁸⁷.

3.7.3.5 Furthermore, the SACF suggested that the Authority can improve programming in respect of marginalized languages and production areas by providing higher incentive point scores (in a less cumbersome incentive regime) for such content, including multi-lingual programming. In addition, it stated that the role of community broadcasters in this regard should be recognized, promoted, and supported through regulatory interventions that encourage the growth and sustainability of such community broadcasters⁸⁸.

3.7.3.6 MMA submitted that it is aware that language plays a crucial role in promoting and achieving the goals of building democracy as it used to develop one's cultural and social identity. It therefore believes it is imperative that local content regulations become stronger on issues around African languages in both scheduling and budgetary provisions. MMA recognised the broadcasters' efforts being made in terms of news, current affairs, children programming and drama to transmit in African languages. It however, stressed that the same effort should be shown in relation to documentaries and other genres⁸⁹.

3.7.3.7 Vodacom submitted that in order to promote programming in marginalized languages and productions areas, the Authority should allocate additional points towards the

⁸⁶ Ibid. (Page 29)

⁸⁷ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 10).

⁸⁸ Ibid. (Page 8)

⁸⁹ MMA's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 13)

production of programming dedicated towards marginalized languages and areas. These, it believes will incentivise broadcasters to allocate enough budgets towards the promotion of marginalized languages in their programmes. Without proper incentive in place it submitted that marginalized languages will take a back seat in favour of popular and prominent languages⁹⁰.

3.7.3.8 M-net and Multichoice are of the view that to the extent that the Authority is concerned about incentives in the context of programming in marginalised languages and production areas, it is an issue for the public broadcaster⁹¹. They believe that such language objectives fall on broadcasting services "viewed collectively" and on the public broadcasting service in particular, as well as community broadcasting services. These requirements, they submit, apply only to the public broadcaster and are specific to its public mandate. They state it is not appropriate or permissible to extend such provisions to other broadcasting services. It was submitted that such requirements are especially inappropriate for subscription broadcasting services, whose primary mandate is to meet the preferences of their subscribers⁹².

3.7.3.9 The NAB submitted that as far as they are aware, it is only the public service broadcaster that has an obligation to broadcast in all 11 official languages. The NAB is therefore of the view that the current regulations adequately cater for marginalised languages. 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. Language issues can also adequately be addressed in the multi-channel environment.

3.7.3.10 While SOS recognised the language diversity already in effect, marginalised languages should be encouraged more. SOS believed that these languages should include the Khoisan languages not included among South Africa's official languages. They submitted that the Authority should consider working together with established NGOs and civil society groups to promote and monitor programming for marginalised

⁹⁰ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 12).

⁹¹ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 38)

⁹² Ibid. (Page 45 and 46)

communities, like the Pan South African Language Board and University African Language departments⁹³.

3.7.3.11 SOS further recommended that the Authority implement a formal way for stations to notify the Authority if their capacity to fulfil language requirements has changed. This, it was said is due to a high turnover of staff within a licence period, often making stations unable to fulfil promised ratios of languages⁹⁴.

3.7.3.12 The Pan South African Language Board (PanSALB) submitted that regulations resulted in more diverse South African languages being used in various programming. Multilingual content is said to encourage the use of "minority" languages in programming, however more should be done to accommodate Deaf people in all programmes through sub-titling or South African Sign Language. It was submitted that sub-titling should be done professionally in local dramas and be of good quality. They state that most sub-titles in local content seem to be done by people who are not proficient in languages, yet the standard of sub-titling in popular soapies/programmes is commendable⁹⁵.

3.7.3.13 In addition, the PanSALB's submission supported the idea that the Authority must introduce language quotas for various genres like drama. They are of the view that the introduction of the current quotas has resulted in more languages getting exposure but that there are still other languages that are not accommodated. They reason that the Authority's analysis has shown the popularity of local content which accommodates languages therefore the increase in language quotas can only serve to reflect this reality⁹⁶.

3.7.3.14 The language board also submitted that slang should be discouraged unless it is used in certain programs targeting certain audiences e.g. youth, as it is the greatest culprit in degenerating African Languages into Fanakalo. It believes that the public broadcaster should be the protector of language correctness in conjunction with structures such as PanSALB⁹⁷.

⁹³ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 14)

⁹⁴ Ibid (Page 14)

⁹⁵ PanSALB's and SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 2) and (Page 3 and 4) respectively

⁹⁶ Ibid (Page 4)

⁹⁷ Ibid (Page 5)

3.7.3.15 The Authority is of the view that incentivizing the use of marginalized languages in different programmes will go a long way as reflected in the Authority's decision under the section on "Incentives" below.

3.7.3.16 The Authority aims to promote the use of official languages listed in Section 6 of the Constitution of the Republic of South Africa, 1996 through the regulation of broadcasting services. Until such a time that the Constitution revise official languages, the Authority has no intention to deviate from constitutional requirements. Recognising that South Africa is a democratic country, the Authority encourages use of any language people speak in South Africa, but cannot oblige broadcasters to broadcast in non-official languages.

3.7.4 Local content repeats

3.7.4.1 The Discussion document invited input into the repeats that counts towards compliance with local content quotas. During the research process stakeholders highlighted that in a multi-channel environment, there may be a need for more repeats across different time slots or days or channels to allow audiences a chance to watch the programme given that there will be so much competing content, and that broadcasters needed to recoup their investments in local programming. On the contrary, the independent production sector would like the number of repeats to be monitored to ensure that programmes are not overly repeated.

3.7.4.2 The public broadcaster submitted that repeats of educational, children and high-investment programming should count 100% towards local content delivery. They submitted that pre-school and junior primary school learners learn best through repetition. It was submitted that some programmes have a long shelf life; it is as a result of thorough research and careful educational planning and design which makes them a huge investment that can be used over many years. For children, the same programmes reaches a new target audience all the time as children outgrow programmes and as they grow they move on to new programmes. Programmes are repeated because they have a high educational value and due to audience request or popular demand. Repetition, it was said allows the SABC to provide programmes in

more than one South African language, e.g. School TV, the same episode broadcast in 7 different South African languages during the early years of learning⁹⁸.

3.7.4.3 In addition, the SABC argued that children learn best in the languages they are most fluent in, which is their home language. Programmes are repeated in order to increase access i.e. create more opportunities for audiences to view our best programmes when they can and for adults and the general public. The SABC also explained it repeats programmes that are meant to develop skills⁹⁹.

3.7.4.4 The SACF is of view that the current regulations are working well, hence they see no need to revise the regulatory system with a possible exception with regard to educational programming. The SACF also concurred with the Discussion Document that children's programming was more effective with repetition. For children of a young age repeating education content serves to enhance their understanding of the concepts being presented, and particularly in this genre, they submit that more repeats should be allowed¹⁰⁰.

3.7.4.5 SOS proposed (in line with Canadian regulatory systems) that all local content programmes, whether independently produced or produced by a broadcaster in-house, should be submitted to an on-line ICASA run system where it should be issued a unique number / barcode which stays with that programme for life. It stated that every broadcaster should then be obliged to report local content programmes in a simple online report to ICASA on a daily / weekly basis. SOS also provided, in their submission, an all-encompassing table detailing number of repeats recommended per broadcast.¹⁰¹

3.7.4.6 The NAB recognised the importance of repeat programming, and proposed that the current restrictions on repeats be relaxed. It stated that it is the very nature of multi-channel broadcasting that there is a high level of repeats, and these repeats also allow licensees an opportunity to recoup a return on investment in programming¹⁰².

⁹⁸ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 15)

⁹⁹ Ibid. (Page 15)

¹⁰⁰ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

¹⁰¹ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 10)

¹⁰² NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 14)

3.7.4.7 M-net and Multichoice submitted that the Authority should remove the current limitations on the number of repeats, so that repeats are recognised as counting for full points. They argue that the question of repeats is programming specific and is formulated with a single channel broadcasting environment in mind. They state that if the Authority were to implement an enabling and flexible regulatory approach for the converged multi-channel environment, the question of repeats would fall away, as compliance would be measured across the service as a whole¹⁰³.

3.7.4.8 With regard to repeats, the Authority is of the view that children learn through repeats and a requirement to limit repeats incentives for children programming may result in a contradiction to the objective of such programming.

3.7.4.9 It should be noted that the Authority does not interfere in the number of repeats a broadcaster can have, but rather set a limit on the repeats that contributes towards compliance with the local content quotas.

3.7.4.10 The Authority believes that the current regulation on repeat should remain as they achieve the required objectives of ensuring that new programming is not curtailed by repeats.

3.7.5 Independent production

3.7.5.1 The research done by the Authority showed that the requirement regarding the percentage of content to be sourced from independent producers (currently 40%) was generally supported, although e.tv is required to outsource 100% of its programming to independent companies in terms of its licence conditions. The Discussion document probed again on whether the percentage of content sourced from independent producers should be amended.

3.7.5.2 M-net and Multichoice submitted that the key drivers behind the costs increase in acquiring the local content include the exchange rate, talent and labour costs, inflation and rising input costs. They advised that the Authority should not assume that growth requires regulation - training, skills development and improved access to funding would make a more meaningful contribution. They added that the assumption that

¹⁰³ M-net and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 37)

growth requires regulation is flawed. Vibrant local production industries, Nigeria being a prime example, have emerged across Africa without any regulatory intervention.¹⁰⁴

3.7.5.3 M-net and Multichoice are of the view that the introduction of multi-channel television requires the percentage of content sourced from independent producers to be reduced.¹⁰⁵ However, they submitted that subscription broadcasters do not believe that any change is required to the definition of "independent television production".¹⁰⁶

3.7.5.4 The subscription broadcasters also added that new ways of distribution will have a far greater impact than new ways of production. They stated that content producers no longer require broadcasters to distribute their content. Increasingly, content producers will use the internet to offer their services directly to consumers.

3.7.5.5 To ensure easy acquisition of local content, SOS strongly supported the strengthening and growing of the independent TV film production and music industries in its submission. SOS supported the development of robust, diverse, independent production and music industries that reflect the demographics and diversity of our country in terms of race, class, gender, sexual-orientation, language and religion. Further, SOS supported initiatives that will strengthen and develop local content industries in areas outside Johannesburg, Durban and Cape Town. SOS calls for government to initiate a research process including an economic survey and strategy exercise resulting in clear recommendations to support local creative industries to operate as independent entrepreneurial businesses.¹⁰⁷

3.7.5.6 SOS submitted that satellite subscription broadcasters have from 2006 been required to contribute only 10% of their total programme acquisition budget to local content across all their bouquets and channels. SOS proposed that ICASA increase this percentage to at least 20% of acquisitions budgets. SOS suggests that this should apply to all subscription broadcasters irrespective of transmission (i.e. terrestrial, satellite). It also submitted that the local acquisitions budget should be spent on a balance of different genres (defined below). It believes, thirty percent of the local acquisitions budget should be spent on African language programming and 60% of all local content spent on independently produced local content. SOS also proposed that

¹⁰⁴ Ibid (Pages 48-49)

¹⁰⁵ Ibid (Page 37)

¹⁰⁶ Ibid (Page 25)

¹⁰⁷ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Paragraph 2.7)

60% of all public broadcasting and free-to-air commercial local content based on time across all channels should be independently produced local content, while for community broadcasters, 40% should be outsourced to independent producers.¹⁰⁸

3.7.5.7. SABC submitted that broadcasters should be able to recruit individuals to produce certain regional content in-house. However, to limit abuse, such legislation should be clearly defined in consultation with all critical stakeholders to agree on what is understood as independent television. This, they stated should take into account: period, type of production, cost of production, formalized training through SETA's with evaluations and releasing of recruited individuals with commissioning contracts to ensure local content is not stunted by the lack of infrastructure and training.

3.7.5.8 SACF submitted that the definition of an independent producer, being a person not employed or controlled by a broadcasting service licensee is not adequate. The communication forum submitted that any person who can produce content on their own means and such content is broadcast should be considered as an independent producer.¹⁰⁹ SACF further proposed that a separate Authority-driven analytical process be mounted to address concerns regarding development of independent producers so as to avoid subjectivity in the final conclusions.¹¹⁰

3.7.5.9 Vodacom submitted that the Authority should consider adopting an approach which allows independent producers to retain their intellectual property after the expiry of a certain period. This, they reason, will provide them with the opportunity to negotiate a higher rate with broadcasters who are willing to retain all the intellectual property rights in the work produced or negotiate a deal which confers on them the intellectual property on all their works after the expiry of the prescribed period. They added that it means that after the expiry of the initial period independent producers can provide their content to other operators at a negotiated rate.¹¹¹

3.7.5.10 Kagiso Media submitted that the current 40% independent television production is insufficient as it fails to take into account the differences between the three tiers of traditional broadcasting, let alone the challenges posed by non - broadcasting

¹⁰⁸ Ibid

¹⁰⁹ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4)

¹¹⁰ Ibid (Page 13)

¹¹¹ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3 and 10)

technologies which provide broadcasting like content online. They added that there should be an obligation on PSB to transmit a much higher percentage of independently produced television content than would be appropriate for commercial broadcasters or community broadcasters given the nature of their respective roles, funding models and operational climates. Kagiso reasons that local content broadcast must be increased to at least 60% for public television service with regard to independently produced content.¹¹²

3.7.5.11 Current requirements on the percentage of programming that should be sourced from the independent production sector (40%) will remain for all broadcasters.

3.7.6 Local content regulation for FTA satellite

3.7.6.1 The launching of free-to-air satellite broadcasting services have been one of the major changes in the broadcasting environment since the South African television and radio content regulations were first revised in 2002. The Authority is required to ensure regulatory certainty in terms of these developments within the broadcasting sector. The Authority sought opinions on whether there should be a continuance on differentiating local content quotas for FTA and subscription broadcasters and the extent to which it should be differentiation.

3.7.6.2 M-net and Multichoice submitted that the local content regulations currently apply to the free-to-air multi-channel satellite broadcasting services as regulation 4 of the Local Content Regulations applies to all "Commercial Television Broadcasting Licensees". They stated that the Regulation does not differentiate between commercial television broadcasting licensees based on their transmission platform (i.e. terrestrial, satellite, cable).¹¹³

3.7.6.3 The Authority has decided to apply the principle of technological neutrality, thus local content obligations will now be similar across the same services offered and not be differentiated per platform.

¹¹² Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

¹¹³ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 53)

3.8 RADIO

3.8.1 South African music

3.8.1.1 The Authority sought input in terms of whether the current local content for sound broadcasting service licensees should be increased and to what percentage, for community, public and commercial broadcasting service licensees.

3.8.1.2 M-net and Multichoice cautioned the Authority against relying on the recommendations of the Copyright Review Commission in respect of additional South African music content requirements for broadcasters. They argued that the Commission was set up by the Minister of Trade and Industry in November 2010 to address a very specific issue, namely the workings of collecting societies for music copyright¹¹⁴. Its recommendations were made without any analysis of music usage by broadcasters¹¹⁵.

3.8.1.3 Moshito argued for an increase of local music quotas, and says public services and community licensees be increased to a minimum of 80% for both television and radio. For public commercial and private licensees they recommend that the minimum should be increased to 70% for both television and radio whilst subscription sound licensees should increase to 50% minimum. Moshito believes "we have enough music content for all broadcasters to play South African content and it will grow with the proposed increase".¹¹⁶

3.8.1.4 Furthermore, Moshito suggested that the Authority should prioritise local content over foreign content, and the public broadcaster should be at the forefront of these new quotas. They reason that the increase in South African content has huge benefits for our country and will save the struggling South African music industry.¹¹⁷

3.8.1.5 SOS advocated for commercial stations to be required to increase their local content to at least 40%. This proposal was made considering that they have fewer obligations in terms of other prescribed programming. SOS supported an increase to 50% or more

¹¹⁴ Ibid (Page 41)

¹¹⁵ Ibid.

¹¹⁶ Music Industry's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹¹⁷ Ibid

for public and community stations to encourage the airing of even more local content. Since some stations feel strongly that quotas should not be increased, SOS recommended that a thorough investigation of the expected impact be done, and if an increase is implemented it should be done in increments to allow the industry to adjust.¹¹⁸

3.8.1.6 Play SA Music submitted that local content be increased to 80% or more across all commercial and community radio stations, because South African music has grown since 2004 and also, most royalties are paid to international artists. They argue that quota increase will result in GDP increase and job creation, and musicians will maintain a sense of identity.¹¹⁹

3.8.1.7 SAMRO submitted that in the 2006 position paper on community sound broadcasting licensees, the Authority advised community sound broadcasting licensees 'to comply with the copyright legislation by paying the SAMRO fees'. Thus SAMRO believes that the Authority should go beyond advising licensees to comply with the copyright legislation, rather the Authority should take serious measures against a licensee that refuses to comply with the copyright legislation.¹²⁰

3.8.1.7 Furthermore, SAMRO submitted that the quotas for commercial sound broadcasting services should be increased to at least 50%. They added that the increase should be implemented over a five year period, with a 5% increase imposed each year from the coming into effect of the new regulations. They argued that since it is common knowledge that almost all public and community sound broadcasting licensees already use more than 65% of South African music during the performance period every week, it is therefore not unreasonable to propose that the minimum quotas for these services should be increased to 65%.¹²¹

¹¹⁸ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹¹⁹ Music Industry's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 1)

¹²⁰ SAMRO's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹²¹ Ibid

3.8.1.8 SAMRO added that all broadcasting licensees should be encouraged and be incentivized to use South African music in their programme signature tunes, because rights holders earn royalties when their music is used as signature tunes.¹²²

3.8.1.9 SAMRO also submitted that the Authority should consider introducing minimum quotas for music on television, particularly music video programmes. Television broadcasting licensees should also be credited for using and promoting South African music in programmes such as South African drama, current affairs, documentaries, educational and children's programming. They propose that the credit could be in the form of points that television broadcasting licensees could accumulate towards complying with the minimum quotas. SAMRO has noted that the Authority's quotas on South African music relate only to music broadcast on radio, and that there are no stipulated music quotas for television. They motivated that the usage of South African music by South African television broadcasting licensees would assist in ensuring that most of the money distributed by SAMRO goes to South African rights holders¹²³

3.8.1.10 The NAB was of the view that the current SA local content quotas for music are adequate. They state that many licensees find it challenging to meet their unique quota's (these exceed the minimum threshold), and therefore cautioned the Authority from applying a one size fits all approach.¹²⁴

3.8.1.11 The NAB also argued that, 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. They reason that the music industry's growth is organic and unpredictable and the Authority must consider this in weighing up the reasonableness of any increased quotas.¹²⁵

3.8.1.12 Kagiso Media posited that the Authority has to consider having different local content regulations for different music format stations to accommodate wide - ranging South African music content and would like the Authority must compel all sound broadcasting services to transmit any music in order to comply with local content quotas. They reasoned that this would assist in the burden of local content being

¹²² Ibid

¹²³ Ibid

¹²⁴ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 15)

¹²⁵ Ibid (Page 16)

spread across the broadcasting landscape and thus increased benefits to the South African cultural industries.¹²⁶

3.8.1.13 Mr Shaw concurred¹²⁷ with the CRC findings that local music content must be created, written and produced by South African citizens in order to bolster local composition. He believes that contrary to what broadcasters have been saying, the public and music industry would welcome an increase in the quotas percentage of our local music. He also submitted that the short term negative repercussions are minimal when compared with the long term positive outcomes that will benefit all stakeholders.

3.8.1.14 During the provincial workshop in Kwa Zulu Natal, the stakeholders proposed that any envisaged community radio stations increase in local content quotas should be gradual over a period of years. It was also mentioned that the Authority should not be prescriptive in its Regulations because each broadcaster has its own strengths and weaknesses.

3.8.1.15 In KZN, Hindvani Radio, an Indian Community radio, expressed concerns with regards to South African Music quotas and how this presents a challenge for them as their target audience is predominantly Indian. Some argued, however, that those broadcasters should still promote South African music in general and not necessarily South African Indian music.

3.8.1.16 After thorough analysis and considerations of the submissions and research conducted the Authority have decided on the following;

- i) **The minimum South African music quota for community radio be increased to 80%;**
- ii) **The minimum South African music quota for public radio be increased to 70%;**
- iii) **The minimum South African music quota for commercial radio be increased to 35%; and**
- iv) **The minimum South African music quota for subscription radio should be increased to 30%**

¹²⁶ Kagiso Media submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 5)

¹²⁷ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

Broadcaster	Current quota	New quota
Public wing of public broadcaster	40	70
Commercial FTA and public commercial	25	35
Subscription broadcaster	10	30
Community broadcasters	40	80 with at least 20% of the quota sourced from the coverage area

3.8.1.17 Sound broadcasters who cannot meet these requirements should get approval from the Authority for exclusion provided they furnish proof that there is limited music supply in their defined format and they should include proposals on how they will work together with the music industry to address this. Such proposals will be included in amended licence conditions for these services if their application is approved. The Authority encourage subscription broadcasters to broadcast audio sound channels devoted to playing South African local music.

3.8.2 Talk radio music quotas

3.8.2.1 The previous regulations excluded radio stations that devotes less than 15% of its broadcasting time during the performance period to the broadcasting of music, being mainly talk radio stations. Stakeholders requested the Authority to impose local content quotas on talk radio stations as they do play music. The Authority probed this further in the Discussion document asking if music quotas be introduced to talk radio broadcasters.

3.8.2.2 SAMRO argued that it is important that quotas be introduced for music programmes on talk radio broadcasters. They reasoned that in 1997 and 2002 when the regulations were introduced and reviewed respectively, talk radio broadcasters generally did not have music programmes, they have since introduced music programmes, particularly

over the weekends and holidays. They also gave an example of 702 Talk Radio Station which has a programme titled 'Solid Gold Weekend'.¹²⁸

3.8.2.3 SABC was of the view that Local music quota for talk radios should be 40%.¹²⁹ 702 Talk Radio's weekend oldie music shows deviate from talk format and attract music lovers who support the specific genre of music. Talk stations who choose to include music programme blocks should receive targets to make them accountable towards local music delivery.

3.8.2.4 The SACF submitted that quotas must be introduced in this regard and must be set at 25% likely set for other radio broadcasters. They suggested that some flexibility should be exercised in the event of the lack of local artists active in some selected genres. Radio Talk 702 have times during which they play music (for instance over the weekends). In such cases local content requirements that are consistent with the musical genre selected, should apply where possible.¹³⁰

3.8.2.5 SOS also supported a local music quota being implemented on the music played on talk radio broadcasters if the current practice is at a very small amount and that it should be at 40% or the current quota agreed for the similar licensed group of that station.¹³¹

3.8.2.6 Vodacom submitted that the Authority should impose the prescribed music quotas on talk radio broadcasters who decide to play music on their radio stations. They reasoned that the purpose of a talk show is to provide a platform for the active debate and engagement on matters of importance to a particular target market.¹³²

3.8.2.7 The NAB argued that 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. They reasoned that in order for a station to qualify as

¹²⁸ SAMRO's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹²⁹ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹³⁰ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 9)

¹³¹ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹³² Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3 and 10)

a "music station" the station must devote more than 15% of its broadcasting time to music. They added that, in their view, the distinguishing factor between music and talk station is the percentage of music played.¹³³

3.8.2.8 From the NAB's point of view, there is no correlation between advertising and local music played by a station. It stated 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.¹³⁴

3.8.2.9 Talk radio stations are no longer be excluded from the requirements. For example, if a commercial radio station devotes less than 15% of its time to music, 35% should be South African.

3.8.2.10 A request for exclusion from compliance should require that licensees provide proof that there is limited music supply in their defined format and that they should include proposals on how they will work together with the music industry to address this. Such proposals, it should be noted, will be included in amended licence conditions for these services should their application be approved.

3.8.3 Music formats

3.8.3.1 The research conducted by the Authority discovered that formats may not be adequately defined and may have to be done away with and that formats may be limiting radio stations from growing their audiences. It was also indicated that some stations with very specific genres, sometimes find it difficult to meet quotas as music has to be approved by programming committees prior to it being broadcast.

3.8.3.2 SABC argued that the Authority should institute an inquiry on the definition of music formats This is even more necessary if the music quotas are to be increased because there may be a lot of format duplications due to lack of other music genres. It stated that the absence of format definitions will always result in numerous interpretations by various parties.

¹³³ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 16)

¹³⁴ Ibid (Page 16)

3.8.3.2 SOS recommended that the Authority does not intervene in music formats beyond what is stipulated in license conditions, since this is an unnecessary complication and restricts stations.¹³⁵

3.8.3.3 SACF was of the view that the Authority must work more on sharply defining the regulated music formats and that classification should not dampen innovation in the creation of new ideas and even genres of music. They advised that the Authority should guard against excessive fragmentation that has little relationship to listener preferences as for instance, Smooth Jazz and Adult Contemporary are virtually the same genre to most broadcasters and listeners, however the Authority currently treats them differently. Complaints in respect of encroaching on one another's format are difficult to resolve as a result of such ambiguity. They added that there are currently too many ambiguous classifications and this has an impact on enforcement and ability to monitor compliance.¹³⁶

3.8.3.4 The NAB proposed that a consultative committee, comprising of all key stakeholders, ranging from radio broadcasters, music producers, musicians, as well as government departments including the Department of Trade and Industry (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.¹³⁷

3.8.3.5 Mr. Shaw stated that it is often difficult to know radio formats because radio stations do not provide a meaningful definition, however, knowing which music each radio station requires would assist in the demand and supply of relevant music content. He added that there is a need for certain technical standards that have to be attained for the satisfactory delivery of music recordings for the local music industry.¹³⁸

3.8.3.6 A decision was taken in 2002 that "[t]he Authority, therefore, proposes that the radio industry, through its various associations, should start a process of

¹³⁵ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹³⁶ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 19)

¹³⁷ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 16)

¹³⁸ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

developing common definitions of radio formats that reflect the realities of the South African market”¹³⁹.

3.8.3.7 The Authority is not yet persuaded to prescribe formats – it encourages the affected stakeholders, led by music associations and the NAB to discuss and make recommendations on the definition of formats and report back to the Authority.

3.9 INCENTIVES

3.9.1 The Authority requested suggestions on ways to improve the incentives system introduced in the 2002 regulations. This comes after research indicated that the incentives offered for television programmes were not worth the burden of calculating them, and that the format factor categories and incentives should be reviewed to, for example, encourage investment by a broadcaster in developing new licensable/exportable content formats. The Authority asked for proposals regarding innovative ways to promote the use of historically marginalised languages and production areas.

3.9.2 The SABC submitted that on television the incentives system should apply to genres which are expensive to produce and genres which are produced in marginalized languages. It stated that ideally the incentive system should be informed by the outcome they envisage achieving. Regarding radio, the public broadcaster recommended that the incentive system be applied for the promotion of local artists be increased to encourage further promotion of South African artists. They gave an example in that, a 5 minute interview of a local artist or coverage of live music of a local artist should be allocated 5 points instead of 2 points as this will assist broadcasters to reach the 1% mark quicker.¹⁴⁰

3.9.3 SOS supported a series of (non-regulatory) incentives to promote the production of local content. They proposed that these incentives should include the creation of a local content fund that could be used by any broadcaster or audio or audio-visual content provider planning to produce public service and community-orientated local

¹³⁹ SA Content Position Paper And Regulations, 2002

¹⁴⁰ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

content. SOS believes that particular priority should be given to piloting and development of new programming and programming formats. Also, it was submitted, the fund should prioritise programming that focuses on marginalised languages; productions outside the main metropolitan areas (i.e. Durban, Cape Town and Johannesburg) and programming focused on women, children, the youth, old people, workers, the poor and LGTBIAQ communities. This fund would not replace current funding available from DTI, NFVF, IDC etc, it would require additional funding. Funds could potentially be accessed from licensees who are allocated spectrum vacated through the digital migration process.¹⁴¹

3.9.4 To incentivise more pre-licences, SOS proposed that at least 35% of the public broadcasters' local content should be on pre-licences, and co-productions where the broadcaster does not own a majority equity stake.¹⁴² This, they reasoned, would also further allow for content to be re-used on other broadcasters' platforms and encourage sharing of content in a multi-channel environment.¹⁴³

3.9.5 The SACF argued that the incentive system is rather complicated and discourages broadcasters which could potentially apply for incentives from doing so, thus negating the effectiveness of the incentive. Therefore, they recommended that the Authority should look at simplifying the incentive system. They further state that complex regulations do not live up to their expectation as neither the regulator nor the licensee follow/track them accordingly, until a dispute arises. They suggest that a simplification thereof will go a long way in encouraging compliance.¹⁴⁴

3.9.6 M-net and Multichoice recommended that government should consider further incentives, possibly with reference to Australia as a model. They further stated that the format factors are not working and should be abandoned in favour of more flexible, enabling local content regulation. Therefore, they stated, government can help include amongst others, greater financial assistance to the film and broadcasting industry and licence fee incentives or rebates.

¹⁴¹ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹⁴² SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

¹⁴³ Ibid

¹⁴⁴ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 8)

3.9.7 Moshito submitted that the Authority should continue to explore new and innovative ways to incentivise those who comply and disincentives those who do not comply.¹⁴⁵

3.9.8 In terms of incentives, several submissions noted that the process of applying for incentives for television was unduly burdensome and costly and therefore in some cases simply abandoned. The process of calculating the format factors for incentives discouraged the use thereby and rendered them ineffective. The aim of the incentives is to ensure that broadcaster's air programmes commissioned from marginalised provinces and languages. In order to promote these objectives, the Authority will compel broadcasters to ensure that fifty percent (50%) of annual independently produced programmes budget is spent on marginalised languages and programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities.

3.9.9 Incentives promoting South African music were found to be valuable and hence will not be varied.

3.10 REGULATING LOCAL CONTENT IN NEW SERVICES

3.10.1 The Authority assessed the technological landscape, including the convergence of technology platforms and diverse market segments, giving rise to new broadcasting distribution methods, based on digital technology, and digital production of music and television content. The discussion document considered the necessity or otherwise of setting content obligations on licensed operators in the context of an ever-expanding collection of unlicensed content creators, aggregators and content service providers who have no licence obligations and yet compete in the same markets as licensed broadcasters.

3.10.2 Vodacom proposed that there should be no local content regulation for non-linear broadcasting, for content is delivered to the end-user on request.¹⁴⁶ Vodacom also proposed variable quotas for different types of broadcasting and programming, for example terrestrial, satellite or mobile - free to air and subscription - drama, films, news or talk shows. They proposed a progressive implementation of quotas for new

¹⁴⁵ Music Industry's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Paragraph 4e)

¹⁴⁶ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

linear broadcasters in order to give them an opportunity to increase their local content production over time so as to comply with the local content rules. Vodacom also stated that the Authority should maintain local content quotas across all linear platforms and that broadcasters should be given the flexibility of choosing how to meet Local content obligations, i.e. whether to dedicate few channels towards meeting local quotas or spread it across all their channels

3.10.3 The NAB cautioned the Authority that if there is continued intervention, then the Regulator runs the risk of losing focus, and stifling free choice and commercial freedom. Regulations have thus far worked well because they addressed market failure in local content supply and acquisition in South Africa¹⁴⁷.

3.10.4 M-net and Multichoice were of the view that traditional broadcasting services are put at a significant competitive disadvantage as a result of the regulatory constraints of local content regulation and its associated costs. They stated that local broadcasters will increasingly have to compete against unregulated multi-national, multi-media corporations like Netflix, Amazon and Apple. This difference in regulation, they argued, should not persist, since it gives new media services significant advantages over traditional broadcasting services¹⁴⁸.

3.10.5 SOS noted that regulation needs to be appropriate to a multi-channel environment. It stated that it needs to take into consideration rapid technological advances including the fact that broadcasting and "broadcasting-like" audio and audio-visual content can now be accessed from a variety of providers including non-broadcasters such as telecoms operators and internet service providers. These new media providers are generally unregulated and unlicensed¹⁴⁹.

3.10.6 Thus SOS believes that new global realities require regulators to adopt a more flexible approach in certain instances. However, this approach should not undermine the overall goal of ensuring a rich, diverse, public-service and community-orientated audio-visual and audio content environment¹⁵⁰.

¹⁴⁷ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3)

¹⁴⁸ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 10)

¹⁴⁹ SOS's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4)

¹⁵⁰ Ibid (Page 4)

3.10.7 Kagiso Media cautioned that the current local content regulations are extremely complex and it therefore suggest a softer approach to facilitate for the utilization in other platforms such as online, mobile sound and television¹⁵¹.

3.10.8 Jonathan G Shaw recommended that, as part of global content, internet based content is increasingly invading the space that was traditionally occupied by the conventional broadcasters. He stated that the challenges involved in trying to regulate internet content will propel the industry into business models that will change and increase the global audience into a more beneficial direction¹⁵².

3.10.9 The Authority consider other platforms that competes with traditional broadcasters in regulating South African Local content, however it does not have a framework to regulate those platforms such as over the top services offered at this point. Due to market developments, the Authority may regulate this space in future.

3.11 HORIZONTAL INTEGRATION

3.11.1 Stakeholders raised a concern on horizontal integration between recording companies and licensees and as a result the Authority asked for an opinion on horizontal integration between recording companies and licensees through the Discussion document.

3.11.2 The SABC submitted that regulation to prevent horizontal integration is important to ensure that competition practices remain a viable manner used to stimulate the industry as a whole as opposed to inhibiting growth and to stimulate wider multiplier effects which positive competition is likely to have. Thus, they added, local content regulatory framework should enable broadcasters to compete with non-linear services in the digital environment. They cautioned that ultimately, horizontal integration with record companies will lead to the radio or television stations playing only the music produced by the sister company.¹⁵³

¹⁵¹ Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 3)

¹⁵² Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 2)

¹⁵³ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Paragraph 6.40)

3.11.3 The SACF suggested that integration between recording companies and radio licensees as a competition issue, should be looked into carefully by the Authority. The communications forum urges the Authority to exercise its powers within the terms of Chapter 10 of the ECA in dealing with this issue. It stated that horizontal integration changes the underlying market structure in favour of the integrated companies and excess capacity is taken out of the market and competition may decrease as a consequence.¹⁵⁴

3.11.4 Vodacom argued that the horizontal integration of recording companies and licensees does not in itself give the Authority the right to intervene in those transactions, as companies might be responding to convergence of technologies and are creating ways to become more efficient in reaching viewers. They substantiated their submission by stating that, the fact that media houses are merging and getting larger does not in itself mean that ownership is becoming more concentrated. Growth in the industry might just be a sign that the industry as a whole is responding to technological changes necessitated by the convergence of technologies.¹⁵⁵

3.11.5 The NAB was of the view that, 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. They further alerted the Authority to the provisions of section 2(y) of the ECA, which prohibit ICASA from interfering in commercial activities of licensees.¹⁵⁶

3.11.6 Mr. Shaw, using Australian example, said a music radio project can be sourced and then delivered on radio with significant report back. He added that, South African local music industry may struggle to unite for the sake of overall benefits for all stakeholders. He further stated that, if record company or media house wishes to acquire another's business, it should be allowed to do so, reasoning that the music

¹⁵⁴ SACF's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 9 and 17)

¹⁵⁵ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4 and 9)

¹⁵⁶ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 17)

industry must start redirecting its focus from selling packaged content to the public and instead on licensing arrangements.¹⁵⁷

3.11.7 The issues above are horizontal and vertical concerns raised during the research process. The Authority will not be addressing those issues as they do not fall within the regulatory mandate of South African Local Content.

3.12 COPYRIGHT ISSUES

3.12.1 The Authority was requested to ensure compliance by broadcasting service licensees with copyright issues. Therefore the Authority investigated the matter further in the Discussion document.

3.12.2 Jonathan G Shaw argued that evidence suggests that local music performance royalties are in correlation to the percentage of local music broadcast. As according to SAMRO, about 38% of royalties are paid to local composers, whereas the broadcasters play at least 30% - 40% of local music. SAMRO and the Authority must work closely together towards achieving better results in relation to monitoring and remuneration in the local music industry. He stated that the Authority should not be involved in issues involving the violation of copyrights, instead this can be solved by including the revocation of a broadcasting licensee's rights to transmit its programming in the future. In conjunction with the Authority, the DTI might be in a better position to initiate and lead on this matter.

3.12.3 Copyright issues are within the ambit of the DTI and therefore the Authority will not be dealing with matters that fall within the Copyright Act.

3.13 MONITORING AND COMPLIANCE

3.13.1 Stakeholders have raised concerns about the monitoring of compliance with the South African local content regulations. They alluded that the reporting requirements in regulations such as those dealing with South African content are particularly onerous on licensees. The Authority wanted input on whether the current monitoring provide

¹⁵⁷ Jonathan G Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014

accurate results and asked for suggestions on how the current monitoring methods can be adapted to become more user-friendly to both broadcasters and the Authority.

3.13.2 Kagiso Media was of the view that much simpler, less complex mechanisms to support local content must be prescribed, particularly, if these mechanisms are to be adaptable to other platforms such as online, mobile sound and television content etc¹⁵⁸.

3.13.3 e.tv submitted that an electronic system of reporting which is common among broadcasters and the Authority (and based on broadcasters programming management systems) would provide a more cost effective and less time consuming approach to monitoring¹⁵⁹.

3.13.4 M-net and Multichoice argued that if the Authority is to fundamentally change the system of local content regulation to make it far enabling and flexible, that will require a reconsideration of the monitoring and compliance system. The Authority, they said should reduce reporting obligations and reduce the costs of compliance. Most countries rely on self-reporting and spot checks¹⁶⁰.

3.13.5 The SABC proposed that a less complex methodology for calculating mandate performance be adopted. Furthermore it is proposed that the methodology guidelines should be attached to the final regulations for ease of implementation¹⁶¹.

3.13.6 The public broadcaster further proposed that monitoring of the public broadcaster should be informed by its Corporate Plan and its commitment towards local content delivery based on its 3 year plan. The SABC posited that mechanical quotas are not effective and at times are inconsistent with the corporate objectives of the SABC. SABC therefore recommended that it should be based on the revised licensing framework, the Corporate Plan and its commitments to local content.¹⁶²

¹⁵⁸ Kagiso Media's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

¹⁵⁹ e.tv's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 22)

¹⁶⁰ Mnet and Multichoice's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 22)

¹⁶¹ SABC's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 16)

¹⁶² Ibid (Page 17)

- 3.13.7 Jonathan G. Shaw believes that monitoring methodology is not clear. Publishing a yearly collated report regarding content regulation compliance would be helpful¹⁶³.
- 3.13.8 The NAB was of the view that current reporting is administratively onerous on both broadcasters and the Authority as 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. It stated that the 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.
- 3.13.9 A recommendation by the NAB is that a standardised and simplified approach to compliance can alleviate non-compliance and be less burdensome on the Authority in monitoring the sector. The NAB further proposed that the Authority considers independent audit mechanisms to assist the Authority in its monitoring of compliance. The independent audit firm could provide a final report prior to the Authority publishing compliance reports of Licensee's¹⁶⁴.
- 3.13.10 Vodacom proposed that the Authority should construct a monitoring system that allows it to maximise its resources by concentrating on specific genres that include, amongst other, children, drama, documentaries, education and programs dedicated towards minority languages. By understanding programme schedules relating to these genres the Authority can develop a programme of monitoring which will concentrate on those areas which receive less airplay and which are currently ignored by broadcasters¹⁶⁵.
- 3.13.11 SOS and FXI suggested that the Authority implement some of the following simpler and more effective methods of monitoring, given the lack in monitoring many stations have experienced. They proposed the methods of allowing stations to compile and send reports electronically and the Authority to do random audit of broadcaster's reports¹⁶⁶.
- 3.13.12 MMA was of the view that there needs to be a revised methodology to monitor the compliance of all licensed broadcasters with an emphasis on the public broadcaster. It

¹⁶³ Jonathan G. Shaw's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 6)

¹⁶⁴ NAB's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 9 and 10)

¹⁶⁵ Vodacom's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 13)

¹⁶⁶ SOS and FXI's Submission to ICASA on Discussion Document on the Review of Regulations on South African Local Content: Radio and Television, 2014 Page 13

also noted that it is critical that the methodology embraces the future of Digital Terrestrial Television (DTT) in South Africa¹⁶⁷.

3.13.13 The Authority notes the different proposals regarding monitoring system and notes that not all broadcasters have the resources to submit information electronically as proposed. There seems to be various proposals for the Authority to continue doing spot checks or random monitoring on broadcasters. The broadcasters are required currently to submit reports on their compliance with licence terms and conditions as well as Regulations.

3.13.14 The Authority's decision is that the compliance time frames remain as is. Television broadcasters indicated that it would not be possible to meet the South African content requirements over shorter periods due to the seasonal nature of television scheduling. The international benchmarking further confirmed that requiring compliance over a year rather than a shorter period is in line with best practice.

3.13.15 With television, the Authority will adopt an audit approach to monitoring compliance. The licensees will be required to submit audited monitoring reports whereby the Authority will do the verification of information submitted. Submission of false, misleading or inaccurate information should bear significant penalties.

3.13.16 There are no complaints or suggestions with regards to monitoring sound broadcasting licensees therefore the compliance monitoring mechanism currently used will remain as is.

3.14 CONCLUSIONS AND WAY FORWARD

3.14.1 The submissions present various suggestions on how the Authority should regulate South African Local Content on Television and Radio. The recommendations include a call for the Authority to align the television regulation to a digital multichannel environment focusing on a bouquet rather than individual channel quota requirements. The Authority notes the need to improve on the current monitoring of compliance with Local Content regulations and will make a decision on the most efficient method.

¹⁶⁷ MMA's submission to ICASA's Discussion Document on the Review of regulation on South African Local Content: Radio and Television, 2014 (Page 4, 5 and 6)

3.14.2 This Position Paper presents the preliminary decisions by the Authority regarding the regulation of South African Local content. The Authority will consult on the preliminary decisions through draft regulations, affording stakeholders a chance to make input before a final regulation is passed to govern South African Local content.

ANNEXURE A: PROVINCIAL WORKSHOPS REPORT

1. INTRODUCTION

The Independent Communications Authority of South Africa ("the Authority") published a Discussion Document on South African Local Content Regulations on the 4th of July 2014, under General Notice 529, Government Gazette No. 37803. The Authority conducted workshops countrywide, in respect of the Discussion Document, which is based on the findings of the cost benefit analyses¹⁶⁸ of the South African Local Content Regulations. The workshops were conducted to solicit comments from stakeholders on the Discussion Document.

The purpose of this Report is to highlight key issues raised by stakeholders during the consultation process on South African local content Discussion Document.

The method followed in every province was the same, where representatives from the Authority would make a presentation on the contents of the Discussion Document, which would then be followed by comments and questions from the stakeholders. Subsequent to

¹⁶⁸ Final Study Report: Conducting a thorough assessment of the cultural, economic and social benefits brought about by the preservation of South African programming regulations and to perform a sound cost-benefit analysis www.icasa.org.za

the presentation the stakeholders made enquiries regarding the Document, which in the main, could be responded to by making reference to provisions of the Discussion Document, current regulations and the legislation. This document is divided into sections representative of the different provinces and highlights the key issues raised by the stakeholders in the specific provinces.

2. MPUMALANGA

The stakeholders proposed that African content, specifically music, should be included under the definition of local content, reasoning that there is a lot of collaborations between the different African countries which should be acknowledged in the regulations. Members of the Authority explained that the definition is in the legislation Electronic Communications Act 13 of 2005("ECA") and that the inclusion of African content as local content would require a legislative change. They also explained that the purpose of the regulations is to promote national and provincial identity, but not necessarily African content.

The audience also proposed that broadcasters should work towards more channel integration, giving an example of Rhema television. They noted that e.tv provides the Rhema channel every Sunday, even though Rhema channel exists independently. This simultaneous broadcast of the Rhema channel on e.tv was noted to be a good model for a targeted audience. The audience proposed that a similar channel be created with the different African languages.

Community broadcasters pleaded for a review of advertising, reasoning that community broadcasters need advertising to generate income. The delegates explained that with regard to advertising, it is only the subscription broadcasters who had a set limitation with regard to advertising, being that their advertising revenue may not exceed their subscription fees revenue. There is no law that prohibits advertising on community television.

Furthermore, some community broadcasters complained that the Authority has authorised the broadcast of community television on a commercial platform. They argued that this may distort the three tier broadcasting system and may also disadvantage community broadcasters who do not wish to enter into such a contract with commercial broadcasters. They also inquired whether the community television channels carried on a commercial platform counts toward compliance with local content regulation for the latter. Authority representatives explained that these channels are only carried on the commercial platform and that they are not the commercial broadcaster's own acquisition and therefore should not

count toward local content compliance. They further explained that the Authority does not enter into commercial agreements among broadcasters and that it would be each community broadcaster's choice whether to contract or not.

Community broadcasters were also of the view that the lower percentage of local content requirements for subscription broadcasters encourages audiences to migrate to the subscription platform as they prefer less local content. The delegates explained that, in fact, all broadcasters, including subscription broadcasters, want to broadcast local content as it is a demand from the audience. It was also mentioned that, as per the research finding, subscription broadcasters have increased local content.

Prospective community broadcasters, who made presentations to the Authority, lobbied that they have the content to meet the 55% requirement as set in the regulations, but that it is the Authority's delay in granting their license that is delaying them. The delegates explained that the 2010 moratorium to consider and grant community television broadcasting frequencies and licences until the finalisation of the dual illumination period is still in place.

An audience member argued that there is a great quantity of local content available, specifically local music, however radio stations were not playing the music. This started a debate about the quality of some content made available to broadcasters. Community broadcasters stated that not all music brought to their radio stations is of good quality. A few audience members differed with the latter statement and questioned who determines quality of content. The Authority's representatives explained the discussion document findings, emphasising that broadcasters generally meet their quotas and the report highlights that broadcast of local content has become more of an economical imperative and no longer just an obligation to comply with regulations.

The attendees noted that there were content requirements in terms of the different genres in television and inquired why there are no local music requirements on television. The Authority's representatives commented that it could have been due to the fact that there were a few music channels in the past and moving forward that this is something that might be considered.

An attendee sought clarity regarding the contents of the regulations, asking what happens when broadcasters meet their requirement for the whole year within a shorter period, and whether broadcasters would then stop broadcasting local content. The Authority

representatives explained that the compliance is measured through a weekly period based on the performance period.

3. WESTERN CAPE

Stakeholders raised concerns about lack of business settings to encourage production and acquisition of good quality local content from the Western Cape. Thus they added that local content quota requirements should be reviewed with other external economic factors in mind. Cape Town community broadcaster representative sought clarity regarding vertical integration and the Authority delegates provided clarity.

4. EASTERN CAPE

The stakeholders proposed that Community radio stations should play more music from the Province. They also alluded to the fact that Renewal of licences should be strict and consider whether Community Broadcasters are broadcasting more South African Content.

Those in attendance also argued that there is a lot of local content especially in music and that radio stations should be broadcasting that music. There was a general consensus that the definition of local content should be broadened, especially for community broadcasters, to encourage them to promote music from their own community/region. Though concerns were raised about local musicians wanting to dictate to community broadcasters on how they should conduct business, especially in relation to broadcast of certain music by certain musicians.

There were a few community broadcaster representatives that enquired about how they can assist other broadcasters with regards to local content and thus expand their role in local content. A further concern was raised that government's communication plan does not involve community broadcasters but rather pro SABC.

There were concerns regarding languages and percentages allocated to those languages. The Authority representatives reminded those in attendance that the Authority does not dictate nor does it impose language percentage split to broadcasters and that broadcasters propose those languages and percentage split to the Authority as well as research by the broadcasters when applying for the broadcasting service licence. Community broadcasters agreed that the Authority does not impose broadcast languages and that the broadcasters

do not thoroughly do their research and therefore find themselves with onerous language percentage splits they promised when applying for a licence.

Stakeholders raised their displeasure about the SABC coverage, they said it is almost non-existent in certain areas of the Eastern Cape and wanted to know what the Authority can do to assist. It was pointed out that numerous complaints have already been sent to the Authority. Related to the public broadcaster, stakeholders also questioned the Authority's role with regards to the "Generations saga" as it is a popular television programme in the country. Authority representatives' advised stakeholders to escalate coverage to the Authority's office of the Chairperson and the Chief Executive Officer (CEO), and also explained that the regulator does not interfere in internal broadcasters matters especially programming matters.

The issue of television licences was also raised, as stakeholders argued that they do not see a need to pay for them because they are paying for subscription television and this gives them better coverage. Thus they consider paying for both television licence and subscription fee somewhat unfair. Authority representatives clarified the importance of continued support for the public broadcaster and the need to pay for television licences.

There was a request from stakeholders that the deadline of 10 October 2014 was short and enquired whether it was possible for the Authority to extend the deadline for submissions. Authority representatives explained that the submission date of 10 October 2014 was an extension and it was unlikely that another one would be given as this would impact negatively on the project timelines.

Concerns were raised with regards to Community Broadcasting in general due to the lack of clear policy directive, the sector seems to be failing in its duties to promote community identity. There was unanimity in that the Authority needs to review and prioritise 'Community Broadcasting Policy' (regulations) and that this will assist with the current challenges faced by the sector especially where there is a lack of clear definitions of certain concepts.

5. KWAZULU NATAL

The stakeholders proposed that any envisaged community radio stations increase in local content quotas should be gradual over a period of years. It was also mentioned that the Authority should not be prescriptive in its regulations because each broadcaster has its own strengths and weaknesses. There was also caution not to try and exclude too much of the

international Community because we live in a global society and South Africans and its communities still have a lot to learn from the international world.

There were concerns that the Authority's call for regulatory projects submissions only happens in English newspapers and never in African languages. It was proposed that publications for submissions to such important matters should happen in all types of newspapers so to afford broader society an opportunity to be part of regulatory decision making process.

The language percentage split concerns were also highlighted and the Authority representatives explained the need for Community Broadcasters to do research thoroughly with respect to its target audience and avoid giving themselves onerous language percentage splits which result in them not complying with their licence terms and conditions.

It was suggested that Community Broadcasters Provincial hubs should organise workshops with South African Music Rights Organisation for training and or education of young musicians, who do not understand the industry as yet. This could duly assist community broadcasters in understanding Intellectual Property (IP) rights and avoid piracy. Training would include registration of their concepts and products.

Community broadcasters alerted the Authority that statics/ numbers/ information provided by SAARF/RAMS need to be scrutinised by the Authority, as these are not accurate and often mislead advertisers and duly prejudice them as they are not a true reflection of listenership. It was proposed that alternative measures should be used instead of the unreliable SAARF/RAMS figures.

Hindvani Radio, an Indian Community radio, expressed concerns with regards to South African Music quotas and how this presents a challenge for them as their target audience is predominantly Indian. It was argued that, thus far, South Africa does not produce enough Indian music to allow them and radio stations with similar target audience to comply with music quotas. They proposed that exemptions for broadcasters like them should be considered. There was a lengthy debate amongst those in attendance regarding this issue and how the Authority does not currently have such exemptions. Some argued that those broadcasters should still promote South African music in general and not necessarily South African Indian music.

6. NORTH WEST

The stakeholders proposed that the Authority must, in the process of improving monitoring, acquire latest model software to monitor local music and television content. They argued that it was too onerous to depend on human monitoring since there were many licensees to monitor at once.

There was also a suggestion that the Authority must introduce, when increasing music quotas, an accrual system starting from 50%. This stemmed from the belief that any increment that moves from current quotas to a significantly higher percentage will unsettle music programming of many sound licensees and also lead to undesirably high rotation of same songs.

Stakeholders raised a challenge they faced when trying to give local musicians an opportunity to be interviewed and thus contributing to local content awareness and development. They alleged that some artists want to be paid an appearance fee for an interview, and this has hindered many promotional activities and also forced community broadcasters to solely focus on playing music to meet local content demands.

Informed by the challenges they face with local artists, community broadcasters suggested that the Authority must introduce various innovative ways of promoting local content and also work with local artists to educate them about the importance of having interviews and also how broadcasters work. In the same breadth they also suggested that community broadcasters also need intense workshops on how to master programming, since many have the resources but cannot maximize them to promote local content. North West FM representative, Mr. Cash, concurred with the motion and said all North West based sound licensees should create ways of empowering one another and he would be available to help where needed with his extensive radio broadcasting experience.

Stakeholders were in unison when they argued that local content incentives are not helpful and the Authority needs to find innovative ways to make them interesting. One suggestion made was that the Authority must look at ways of introducing incentives that include reprieve through license fees.

A question was raised about the necessity of having children's programming since research has shown that it does not attract sufficient revenue and thus not sustainable. Authority representatives answered that children's programming is important for various reasons stated in the current White Paper policy on broadcasting and to also fulfil the educational

mandate of broadcasting, more specially on public and community broadcasting. An example of the United Kingdom (UK) was used to show that children's programming faced difficulties in many countries, but there was a need to priorities it. The UK commissioned research on Children's Programming and this supported its continuation.

7. LIMPOPO

The stakeholders alerted the Authority to the fact that, there are Sepedi language Short films that can be utilized as part of Local Content. They asked if the Authority has powers to encourage the public broadcaster to not only focus on Gauteng but also look at other provinces.

Stakeholders sought to know several inter - related issues around Local Content, and amongst these were; how does the Authority balance language issues, the role of Department of Arts and Culture in promoting local content. They also wanted to know about the future of excluded/isolated languages such as that of the Ba-Lobedu People. The Authority stated that various stakeholders and government departments are involved in the promotion of South African Languages and will continue consulting them as the project develops.

They also inquired as to what impact the process of workshops on local content was going to have in the provinces. What would be the ultimate goal that community radio sector was going to gain from this process?

Stakeholders asked if there are other mediums other than television as per the legislative requirements that allows independent producers to distribute their material. They asked if the Authority has conducted research to ascertain if the current legislation promotes or hampers film production and distribution.

There was also an interesting contradiction noted that, while the Khoi - San people's regional radio station is referred to as a Community Radio station, it is nonetheless managed by the SABC, and thus there were questions on its mandate with regards to local content.

Stakeholders were concerned as to who is responsible for implementation of content hubs. They further inquired as to who will sustain and maintain these local content hubs. The Authority representatives directed them to Department of Communication documents and noted that more answers can be sought from the Department.

Stakeholders were concerned that there seems to be no sufficient new projects that can be transmitted, thus there is excessive repeat of the old ones such as ***Bophelo Ke Semphekgo***. They insisted that, if not reduced and strictly regulated, numerous repeats of old drama will continue to negatively impact on licensees' willingness to create new content.

8. KIMBERLEY

The attendees wanted clarity from the Authority with regard to informal languages, whether ICASA's regulations cater for sign language in the language quotas. They also raised their concern about the Khoi and Nama languages which seem to be abandoned. They also asked how ICASA measure or monitor the use of languages in both television and radio, whether the Authority is following the Sign Language Board methodology. Their reasoning was the fact that there are other languages that are being favoured as compared to the others.

It was explained that the Authority is implementing the Constitution of the country; hence everyone is being consulted to address the issue of equality as contained in section 9 of the Constitution. It was further expounded that the Authority, in finalising this process, will also consider section 6(5) of the Constitution that provides for the establishment of a Pan South African Language Board to promote and create conditions for, the development and use of all official languages, including the Khoi, Nama and San languages. Therefore the Authority committed to working together with the Pan South African Language Board in accommodating all relevant languages within the Country.

The attendees were also concerned about the Programming that did not reflect our own South African identity as currently our television programming reflects a lot of international programmes. It was mentioned that according to the Authority's research – a lot of programming was actually multilingual South African dramas. Furthermore, the Authority explained the fact that local content has become a commercial imperative for broadcasters as it attracts audiences and as a result generates revenue from advertising and sponsorships.

The attendees questioned the Authority's methodology on the International benchmarking that was done, as contained in the Discussion document. They raised their concern with regard to the specific countries that were chosen as they believe that those countries were only speaking one language and cannot be compared to South Africa. It was explained that

the Authority did not only consider the issue of language in the International benchmarking, but a lot of issues had to be considered – such as the legislative obligations for licensees in a multichannel environment, taking into consideration the quotas for television and radio.

The attendees committed to making submissions to the Authority after engaging with the Discussion document from their respective organisations.

9. BLOEMFONTEIN

The attendees raised their concern regarding the idea of increasing music quotas (radio) as they were of the view that this might reduce their audience.

There was a concern about other languages that are not catered for, on television and proposed that the Authority should force the broadcasters to treat all languages equally.

The community broadcasters who were attending the workshop proposed that the Authority should separate the percentage quotas for Public and Community with the intention of increasing the public broadcasting quotas to 60%, while the quotas for community broadcasting should remain at 40%. However, they also mentioned the fact that an increase of quotas might result in repeats.

The attendees made an observation that ICASA is not enforcing its regulations. ICASA is lenient to broadcasters who do not comply with the regulations. The attendees questioned the Authority on the measures in place to make sure that broadcasters comply with its regulations.

10. GAUTENG

The attendees proposed that the Authority provides a definition for local languages. It was suggested the Authority form partnerships with institutions that deal with language matters to assist in defining multilingualism and it was reported that PANSALB will be dissolved.

In terms of promoting national identity they raised a concern that national identity is not defined anywhere. They went further to ask whether provincial identity would mean the licensing of provincial broadcasters such as regional television. It was explained that there is no universal definition for national identity and broadcasters should seek advice in defining that, and that the Authority does not intent to be too prescriptive by defining social and cultural objectives of local content.

MMA was concerned that the report indicates that broadcasters are meeting the local content quotas but there is no independent variable data to support that. Authority representatives acknowledged that the current monitoring system needs to be improved on. However the research conducted for this review reflect that broadcasters exceed the quota and the Authority will welcome any contradicting scientific research on the matter.

Stakeholders further questioned the manner in which the Authority monitor compliance with the regulations proposing that the Authority should go beyond the current method. It was suggested that the Authority consider financial linkages with special reference to royalties regarding the amount of money leaving the country and this is due to the definition of ownership of music. Attendees recommended that the Authority should incentivise the ownership of intellectual property in production of local content. Authority representatives explained that the issue of royalties and intellectual property is outside the mandate of the Authority.

Other issues that were raised that were not within the mandate of the Authority were a suggestion that the PBS should be allocated funding for local content and whether ICASA will deal with the issue of piracy.

Attendees wanted to know why sport is excluded from local content and asked what was found in benchmarking from other countries. The Authority explained that there are countries such as Canada that include sport as part of local content but in South Africa the definition in the legislation exclude sport.

11. CONCLUSION

The Authority's positions and draft regulations are informed by this provincial workshops report along with the written submissions and the research done on the review of South African Local Content regulations. The Authority would like to thank the attendees for the productive debates. The Authority aims to inform stakeholders of the developments.