

**ORAL SUBMISSION TO ICASA ON LOCAL CONTENT QUOTAS
BY THE NATIONAL ASSOCIATION OF BROADCASTERS**

11 MAY 2001

1. INTRODUCTION

We thank ICASA for the opportunity to make an oral submission on our earlier written representations.

The NAB is the leading representative of South Africa's broadcasting industry, representing:

- all television broadcasters;
- 19 SABC radio stations, 14 commercial radio broadcasters and over 30 community radio broadcasters.

In the audience today are many of the station managers, programme managers, channel heads and CEOs of NAB member organisations.

Making our presentation today are Randall Abrahams, Chairperson of the NAB and Lara Kantor the Executive Director.

We are also pleased to introduce to you John Martin who has joined us from Australia and will be addressing the Authority on the Australian model of regulation as it relates to local music. John has had a distinguished career in Australian radio and played a leading role in the development of the regulatory system for Australian music.

Also on our team today are Victor dos Reis of Edward Nathan and Friedland who will be available to answer questions of a legal nature and Karl Gostner of KPMG who led the research project submitted to yourselves in our written representation.

Due to the limited time available, we will not simply repeat our written submission but will instead focus on five key issues. These are:

1. Broadcasters' commitment to local content
2. Looking beyond a quota – what else needs to be done?
3. Whether there are sufficient reasons for raising the quotas
4. Key points for the regulation of local content on television
5. Key points for the regulation of SA music on radio

2. BROADCASTERS COMMITMENT TO LOCAL CONTENT

Although in our view, it should not be, the issue of whether broadcasters support local content is still a contentious one. Many written submissions made to yourselves infer or state outright that broadcasters are in some way anti-local.

This is a false and it is also dangerous because it implies that any recommendations from broadcasters on the way local content should be regulated are designed to ensure minimal local product on air.

Let us then again state unequivocally - we support the goals of local content regulation. For us, the debate is not on these aims but on the most appropriate mechanism to fulfil these aims.

Broadcasters are committed to both the letter and spirit of local content regulation. In our written submission we showed that this commitment has been demonstrated in a variety of ways:

Firstly, broadcasters by and large comply with the local content rules. This simple fact shouldn't be under-estimated. Compliance takes both time and money. The average radio station spends 10 hours a week ensuring compliance with the quotas while TV channels spend on average 1.5 days a week.

Secondly, broadcasters make a number of additional contributions to support South African music and production. It should be noted that broadcasters are not required to make these contributions and do not receive any regulatory credit for them.

For instance, the 33 radio broadcasters surveyed by KPMG over the last year held an average of:

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

This translates into nearly 5500 additional events over a year which contributed to the promotion of South African music.

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

- Indirect contributions (such as free air time) to the value of R9 427 000
- Direct contributions (for example sponsoring of concerts) to the value of R11078 000

The investment by South African television broadcasters in building domestic television production is demonstrated by the percentage of budget allocated to the independent sector. As a percentage of the total commissioning budget, television stations broadcasting in excess of 40% local content spend in excess of 70% of their commissioning budget on purchasing local content.

In addition to strengthening the production of South African television through broadcasting high levels of local content and commissioning work from the independent production sector, broadcasters have supported the production of South African television content through a variety of other initiatives, including:

- Support for the Sithengi film market
- Various projects to build young talent in the industry
- Support for various arts festivals.

In summary, this is not an industry which is anti-local.

But it is an industry which is directly affected by the application of quotas.

It is for that reason that we have argued that the Authority should take a more flexible approach in its local content rules and that if the aims of local content are to be achieved, the Authority and government generally must take an approach which looks beyond quotas.

We will argue the specifics of the flexibility later when we look at the television and radio regulations separately. For now, we will consider whether local content regulation can succeed while resting on a quota alone.

3. LOOKING BEYOND A QUOTA – WHAT ELSE MUST BE DONE?

In examining international jurisdictions it is striking that where success has been achieved, it has not been achieved through a quota alone.

Among the many other strategies used in other jurisdictions are the following:

- Financial assistance through direct funding and /or subsidy schemes
- Tax incentives
- Co-production treaties
- Education and training
- Intervention in distribution mechanisms
- Assistance in marketing and exhibiting local product

While the South African government has stated its support for the cultural industries, their direct assistance has thus far not been adequate.

The National Film and Video Foundation has estimated, for instance, that R250m additional government funding is needed to effectively grow the local production industry.

On the music side, the supply measures which currently exist are very minimal. They include:

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

The need for additional strategies for our local cultural industries is articulated clearly in the Profile 2000 report which highlights six key strategies for the National Film and Video Foundation to grow the local industry. Strikingly, an increase in the local content quota is not mooted as one of these.

Music industry representatives also caution against focusing only on a quota. In the BMG submission to ICASA, they state that:

“Simply implementing a quota without taking care of the fundamental economics of the music industry is woefully insufficient to properly sustain the industry in the long term”.

The message both locally and internationally is clear – the obligation to grow the local industries cannot rest on broadcasters alone. We must look beyond a quota.

4. ARE THERE SUFFICIENT REASONS FOR RAISING THE QUOTA?

Although there is much more to local content regulation than the simple application of a quota, much of the debate in this inquiry has focused on raising quotas for both radio and television.

The Authority has received suggestions that the quotas should be set at anything up to 100 percent.

Much of the justification for raising the quotas comes from the Authority's reference to a recommendation in the White Paper on Broadcasting Policy. In this regard, we would like to draw the Authority's attention to a number of points on this recommendation made by various submissions:

- The Authority is merely bound to consider recommendations from government and is not bound to implement them.
- If the policy is read to refer to a majority of local content on air on each broadcaster, regardless of category of licence, this undermines the Authority's own regulatory precedent which has sought to apply differential regulations according to the category of licence, while achieving over-arching goals for the broadcast system as a whole.
- The term 'predominant local content' does not necessarily translate into 50% local air-time.

We therefore ask that the Authority reconsider whether it is bound to increase the local content quotas.

Lacking in those submissions which call for higher local content levels is any evidence on what additional benefit will accrue from raising the quotas. There is little analysis of what the impact of the existing quotas has been. There is no evidence to support the view that the aims for local content regulation will be met by raising the quotas.

In fact, virtually the only evidence which has been tabled, has been put forward by broadcasters through research conducted by the NAB which has been submitted to yourselves. This supports a number of compelling facts:

1. There is no evidence to suggest quotas alone have an impact on achieving sustainable growth in the recording and production industries.
2. Other strategies are available which could contribute to the aims of local content regulation.
3. International trends point towards using broader strategies and more flexibility to achieve the aims of local content regulation.
4. The viability of the broadcasting industry will be threatened by raising the quotas uniformly.

We will consider each of these sets of evidence as we look in detail at the local content regulations for television and radio.

5. KEY POINTS FOR THE REGULATION OF LOCAL CONTENT ON TELEVISION

5.1 Greater flexibility rather than increasing the quota

It is clear that the South African television industry has supported the local content regulations, the independent production regulations and the local production industry.

As audience figures demonstrate, this support translates into benefits for broadcasters as local material is very popular with viewers. This does not, however, always translate into profitable programmes due to the high production costs of local product.

Internationally, the popularity of local television content is well documented. The Australian Film Commission has stated that local content has led to an increase in demand for local product and served to strengthen the production industry. Likewise Canadian local content regulations have had success in increasing the viewing of Canadian programming.

But, as we have seen above, local television content regulation in these territories has taken place in the context of broader government support for the film and production industries in the form of government grants, tax incentives and subsidy schemes.

And while local television content is popular with audiences there is no conclusive evidence to suggest that local content quotas alone have a directly positive impact on the sustainable growth of local production industries.

In this context we again submit that in attempting to realise its aim of growing the local production industry, the Authority should not simply focus on a quota alone.

When deliberating on a possible increase in the quotas, the Authority must consider these important facts:

1. All free-to-air television broadcasters already have a majority of local content or will have close to a majority of content within this year.
2. Television operators do not believe they can sustain higher levels of local content.
3. The quota alone cannot achieve the stated aims for local content regulation.

We believe, therefore, that instead of focusing on increasing the quota, the Authority should consider maximising the impact of the quota by allowing for greater flexibility.

5.2 What does flexibility mean?

Lets consider what form this flexibility should take.

An analysis of the benchmark territories (Australia, Canada, Ireland and Nigeria) shows that the South African television quotas are on a par with those that exist internationally and that the South African system of a variable quota according to the category of licence also exists internationally.

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

As well as expanding the definitions of what counts as local content, flexibility is largely concerned with promoting specific forms of programming.

Both the Australian and Canadian regulations incentivise the production of particular forms of programming by providing extra points or time credits towards the local content quota.

The authorities have adopted these systems in recognition of the higher production costs incurred in commissioning local content in programming such as drama. The extra points or time credits therefore compensate the broadcaster for their investment in these forms of programming.

We believe that the introduction of a points or weighting system could be of benefit in the South African scenario and would assist the Authority in meeting its aims of improving the quality and diversity of broadcasting content.

A more flexible regulatory system could also allow for an expanded definition of what can contribute towards the quota.

We believe that the regulations should be expanded to take into account other activities which clearly support the aims of local content regulation. Broadcasters should therefore be given credit for all on-air activities which support local production. As sports programming both promotes local production and is important from a national identity perspective we believe it should also be included.

5.3 Pay or play

As far as pay or play is concerned, we submit that the Authority's regulations should provide for broadcasters to get credit towards the quota for their payments into funds and other financial contributions.

These contributions could include 'in-kind' contributions in support of the local production industry.

We believe this can work to maximise benefit for the local industry. For instance, great benefit could be accrued by securing a financial contribution to market South African productions overseas. Likewise if a portion of programming budget is specified, this will still result in local programming being aired.

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

However, we do not support the suggestions in some submissions that broadcasters should have to specify a percentage of expenditure on local productions as well as comply with an air-time quota.

5.4 Repeats

As far as repeats are concerned, the NAB notes that in both Australia and Canada repeats are recognised in contributing towards the overall quota.

The NAB submits that the issue of limits on repeats should not be dealt with only in regard to local content but should be considered in relation to all content. A limit on local repeats only would not serve the Authority's aims.

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

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

5.5 Independent production

The Authority has asked whether the independent production quotas are being met and whether they are resulting in a sufficiently diverse range of companies being commissioned. This area has received much attention in the submissions made to the Authority.

On the basis of its research the NAB estimates that up to 170 independent production companies received commissions from individual broadcasters in the last year. The NAB submits that this indicates that work is distributed widely through the sector.

The spread of commissioning has also improved over the last few years as broadcasters' commissioning procedures have been revised and will continue to improve.

We note that although concerns are raised about compliance, the Authority has not queried with broadcasters the validity of their reports on compliance with the independent production quota. We believe that should the Authority do so, these reports can be easily verified.

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

Finally, we do not support calls for a limit on the number of commissions each production house can receive or calls for broadcasters to pay a levy for the benefit of the production sector, in addition to their compliance with the independent production quota. Both these suggestions would be overly burdensome on broadcasters.

We will now examine the radio regulations.

6 KEY POINTS FOR THE REGULATION OF SOUTH AFRICAN MUSIC ON RADIO

6.1 No proof of a direct correlation between quotas and growth of music industries.

Although there has been much attention on the radio quota, it is unclear whether there is a direct correlation between the quota and the growth of the music industry.

It is also difficult to draw this correlation internationally. In the KPMG survey of four benchmark territories (Australia, Canada, Ireland and Nigeria) it is apparent that there is little evidence to support a direct correlation between growth of a recording industry and local content quotas alone.

Of the countries surveyed, only Australia has experienced substantial growth in consumption of domestic music content, and even here, it is difficult to determine whether this is the result of local content quotas or other industry development initiatives.

In South Africa, sales in domestic repertoire have declined from constituting 41% of the South African market's value in 1991 to 21% at the end of 1999.

Domestic music's share by value in South Africa has declined over the course of the decade. Nevertheless, there has been a steady increase in the sales of domestic music by value since 1995, although this has been insufficient to offset the dramatic decline in market share by value that occurred in 1993/4.

In attributing reasons for the recovery since 1995, it is likely that, rather than any one factor being responsible, a combination of the following factors played a role:

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

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

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

6.2 Need for a variable quota

While a direct correlation cannot be shown between a quota and growth of a local industry, many territories continue to apply a quota.

Interestingly, the present quota in South Africa of 20% is generally in line with the percentage which other territories enforce. The exception to this is in Nigeria where there is a quota of 60%. Anecdotal evidence suggests, however, that compliance with this quota is low.

What is striking in examining other territories is the trend towards variable quotas which acknowledge the peculiar conditions faced by individual or categories of broadcasters.

Australia, for instance, allows a quota ranging from 5-25% across 5 broad categories of music, with mainstream rock at 25% and smooth jazz at 5%.

This variable local content quota attempts to peg the quota to the availability of local product.

Implementing such a system here requires figures on the availability of South African music per genre which are difficult to obtain. To attempt to estimate the levels of domestic music production in various genres, broadcasters were asked in the KPMG survey, to estimate the number of local and international samples received, as a proxy for the supply of local content in various genres.

While this is not an accurate reflection of the overall supply of local content it is a useful indicator of how much new local material radio stations receive.

In terms of the KPMG survey, there appears to be limited local content in the formats in which many broadcasters are licensed and to which audiences want to listen.

KPMG shows that radio stations received fewer samples of domestic music in genres such as adult contemporary, Pop and Rock - genres which form the backbone of many local commercial radio stations' formats.

Commercial radio stations estimate a 123% increase in production of local content would be needed in order to meet a 50% quota.

In contrast, in genres which are specifically South African such as Masakandi and Kwaito there is an overwhelming supply of local content samples to radio stations. Stations which broadcast in these genres are able to exceed the 20% quota.

What does this mean? Lets step back a few steps.

Radio broadcasters attract audiences on the basis of their formats. A considerable part of broadcasters' formats are the genres in which they broadcast. If there is insufficient domestic production in the genres that constitute a broadcaster's product offering, the broadcaster's efforts to build and maintain audience may be compromised. It is at this level that local content legislation affects the viability of stations.

Audience research conducted by individual radio stations confirms the demand by audiences for high quality music – whether foreign or local. In some genres though, the local recording industry does not appear to be making investments in producing high volumes of local music which listeners want.

The limited supply of local content in some genres, forces stations licensed to broadcast in those genres to put local content on high rotation or play local

content music less suited to listener tastes than that of international product in the same genre in order to meet the quota.

This undermines the product offering of these stations, thereby negatively affecting their ability to attract audiences and advertising revenue.

For the reasons laid out above, the NAB does not believe that a uniform quota is the best method for achieving the objectives of local content regulation. On the contrary we believe there is a compelling argument for the introduction of a variable quota.

This notion is not only supported by broadcasters but also by BMG, in its submission to ICASA, which argues in favour of a variable quota.

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

6.3 Need for the recording industry's commitment

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

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

This forum should be broadly representative and should include ICASA, the NAB, RISA, MUSA, and composer and publishing representatives.

6.4 Presentation by John Martin on the Australian model

6.5 Need for a more flexible quota

Let us briefly consider three final issues relating to radio, before we close. Firstly, the need for a more flexible quota.

There are a variety of ways, beyond complying with an air-time quota, that the aims for local content regulation can be met. These other initiatives such as sponsorships and training need to be encouraged.

Radio stations currently embark on a number of these initiatives but don't receive any credit for them.

As broadcasters face increasing financial pressure, there is therefore a risk they will cease such support.

We therefore believe that the quota should be expanded to take into account all on-air activities which clearly support the aims of local content regulation. This should include interviews with local artists and the promotion of local music events.

Within these on-air activities, the NAB proposes that broadcasters be allowed to count African music towards their compliance with the quota.

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

6.5 A weighting system

A weighting or points system, as is used in television content regulation internationally, could assist the Authority in implementing the above.

The Authority could stipulate in regulations the points which different contributions would garner. The Authority could give greater weighting for certain on-air activities e.g. playing of South African music as opposed to other on-air activities such as interviews with local artists. In this way, the Authority could promote the kinds of contributions it believes are most important. Empowerment considerations could also be worked into the weighting system.

In addition, broadcasters could get points towards their quota by undertaking off-air activities in support of local content.

6.6. Payola, Piracy and Needletime

Finally, let us address the issues of piracy, payola and needletime.

The Authority asked questions on these issues in the Discussion Paper. Some submissions have used this as an opportunity to lobby vigorously for the introduction of needletime. We do not believe, however, that needletime is or should be the focus of this inquiry.

The NAB has in other forums made detailed submissions to the Department of Trade and Industry on the negative impact the introduction of a needletime levy would have on broadcasters.

In short, the NAB is committed to working with other stakeholders to jointly address the problems in the local music industry relating to payments of performers and piracy. We do not, however, believe needletime is the appropriate mechanism to do this.

7. CONCLUSION

We would like to leave you with these closing thoughts.

Discussion on local content is frequently emotional - and so it should be, as our music and our stories go to the heart of who we are as a nation.

But local content is also a business issue, as the Authority itself has recognised in highlighting the economic goals of growing the local music and production industries, and in considering the impact it has on the business of broadcasting.

It is in reconciling this dual nature of local content - in the form of effective local content regulation - that the Authority's challenge lies.

We believe that effective local content regulation does not just have to be about raising the quotas. We also believe that additional benefits can be gained if a more flexible approach is followed.

We hope that in showing this we have assisted you in your deliberations on this important matter.

Thank you.

For any further information, please contact Lara Kantor on 083 260 2478