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GENERAL NOTICE

NOTICE 154 OF 2006



ICASA SOUTH AFRICAN TELEVISION CONTENT REGULATIONS

The Independent Communications Authority of South Africa has under sections 53 (2), 53 (4) and 53 (5) read with section 78 (1) of the Independent Broadcasting Authority Act, 1993 (Act 153 of 1993), made the regulations in the Schedule.

SCHEDULE

1. Preamble

The objective of these regulations is to develop, protect and promote a national and provincial identity, culture and character. In achieving this, these regulations will seek to promote programming which:

- 1.1 is produced under South African creative control;
- 1.2 is identifiably South African, is developed for South African audiences and which recognises the diversity of all cultural backgrounds in South African society;
- 1.3 will develop a television industry which is owned and controlled by South Africans;
- 1.4 will establish a vibrant, dynamic, creative and economically productive South African film and television industry.

2. Definitions

In these regulations any word to which a meaning has been assigned in the Independent Broadcasting Authority Act (Act 153 of 1993), as amended, and the Broadcasting Act (No.4 of 1999) shall have that meaning unless the context indicates otherwise.

- 2.1 **"Animation"** means any form of television programming in which the images of character and action are made by photographing drawings, puppets or similar images in order to create the illusion of movement and includes such images created by computers;
- 2.2 **"Animated Drama"** means a scripted fiction or non fiction story conveyed primarily through animated pictures and visuals;
- 2.3 **"Arts Programming"** means programming on culture and the arts, including, but not limited to the performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture and music but excluding programmes that exclusively feature music videos;
- 2.4 **"Bouquet"** means a collection of video and / or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre;
- 2.5 **"Cable Broadcasting Service"** means a system of providing television, sound and other services to consumers through fixed co-axial and fibre cables, rather than by the older and more widespread radio broadcasting method;
- 2.6 **"Community Television Broadcasting Service"** has the same meaning as the definition of community broadcasting service in section 1 of the Broadcasting Act;
- 2.7 **"Channel"** means a single defined television programming service of a licensee other than a video on demand programming service;

- 2.8 **"Children's Drama"** means a fully scripted screenplay or teleplay, produced for children, in which the dramatic elements of the character, theme and plot are introduced and developed so as to form a narrative structure. It includes sketch comedy programmes, animated drama and dramatised documentary, but does not include sketches within variety programmes, or characterisations within documentary programmes, or any other form of programme or segment within a programme which involves only the incidental use of actors;
- 2.9 **"Children's Informal Knowledge Building Programming"** means programming which provides information, for children, on a wide range of social, political and economic issues, including but not limited to, children's rights, health, early childhood development, culture, and justice;
- 2.10 **"Children's Programming"** means programming which is specifically produced for persons between the ages of 0 to 6 years and 7 to 12 years, which is educational, made from their point of view, and which is broadcast at times of the day when persons in this age group are available in substantial numbers to watch;
- 2.11 **"Co-production"** means a programme produced under circumstances in which the persons referred to in section 53 (1) (ii) or (iii) of the IBA Act have at least equal decision-making responsibility with the co-venture partners in respect of all the creative elements of the production;
- 2.12 **"Current Affairs Programming"** means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;
- 2.13 **"Documentary Drama"** means a fully scripted screenplay in which the central theme is an event or events, which actually occurred and in which actors are used to play the part of real characters who were involved in the events portrayed;

- 2.14 **"Documentary Programming"** means a factual treatment or analysis of people, events or social issues, whether past or present, with a normal minimum duration of about half an hour with a single theme;
- 2.15 **"Drama"** means an audio-visual interpretation whether involving live actors or animation of a fully scripted screenplay or teleplay, literary work, dramatic work, folklore or improvised storytelling or performance, in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure. It includes genres of drama such as situation comedy, soap operas and other genres in any of the following formats: one-off dramas including feature films, tele-plays and tele-movies, animated dramas, episodic drama series, serial dramas, mini-series and documentary drama;
- 2.16 **"Educational Programming"** means programming specifically and primarily designed to support structured educational activity whether such structured activity relates to institutional-based education or to non-institutional-based learning;
- 2.17 **"Episodic Drama Series"** means a drama series containing story-lines and developments that flow from episode to episode;
- 2.18 **"Feature Film"** means a film produced primarily for theatrical release in cinemas;
- 2.19 **"First Release Programme"** means a programme that is first broadcast by a television licensee in South Africa and has not already been broadcast by another South African broadcasting licensee;
- 2.20 **"Historically Disadvantaged Persons"** means black persons, women, and people with disabilities;

- 2.21 **"Informal Knowledge-Building Programming"** means programming which provides information on subjects such as, for example, science, technology, health, law and citizens' rights, religion, business, finance and the natural or built environment;
- 2.22 **"Independent Television Production"** means a production of South African television content by a person not directly or indirectly employed by any broadcasting licensee, or by a person who is not controlled by or is not in control of any broadcasting licensee;
- 2.23 **"Key Personnel", as contemplated in section 53 (1) (a) (v)"** means the director/s, writer/s, at least 50% of the leading actors appearing in the programme, at least 75% of the major supporting cast, and the production designer, the director of photography, the editor and the composer of original musical score;
- 2.24 **"Magazine Programming"** means a programme containing a variety of informative elements usually grouped by subject matter—entertainment, fashion, actuality, etc;
- 2.25 **"Mini-Series"** means a series with a pre-determined number of episodes usually drama and usually 26 episodes or less;
- 2.26 **"Multilingual Drama"** means a drama containing more than one language as spoken by the characters;
- 2.27 **"Post-production"** means the processes following completion of production including the editing of images and sound, creation of special visual effects, subtitling, processing and duplication of programmes as well as any other process necessary for the completion of the production;
- 2.28 **"Prime Time"** means the period between 18H00 and 22H00 every day;

- 2.29 **Produced**" means a process of acquiring and/or developing a story or programme theme, selecting and engaging key creative personnel and exercising control over decisions relating to the development, costing, pre-production, production and post-production of the programme;
- 2.30 **"Producer"** means the person who has the overall creative responsibility for a programme from beginning to end;
- 2.31 **"Production"** means the recording of images and sound to form the substantial and integral part of the programme;
- 2.32 **"Production Costs"** in circumstances referred to in section 53 (1) (a) (vi) with reference to persons referred to in subparagraphs (i), (ii), or (iii) of the IBA Act means that a minimum of 20% of the pre-production and production costs is incurred in the Republic;
- 2.33 **"Repeat"** means television programming that is not a first broadcast by a South African television licensee and has been broadcast by another South African television licensee;
- 2.34 **"Satellite Subscription Television Broadcasting Service"** means a subscription television broadcasting service which is broadcast by transmitters situated on a satellite;
- 2.35 **"Serial Drama"** means a drama series containing story-lines and developments that flow from episode to episode;
- 2.36 **"Situation Comedy"** means a television comedy set within a defined situation location, environment and characters and their relationships;
- 2.37 **"Soap Opera"** means a drama, usually daily, with an indefinite number of episodes and usually long-running;

2.38 **"South African Drama"** means drama programming which consists of South African television content and in which South Africans have exercised direction over the creative and administrative aspects of pre-production, production and post-production. South Africans will be taken to have exercised such direction if:

2.34.1 in the case of programmes which have been produced in terms of section 53 (1)(a) (i), (ii), (iii) or (iv):

- (a) the director or directors of the programme and/or the writer or writers of the programme are South African;
- (b) not less than 50% of the leading actors appearing in the programme are South African;
- (c) not less than 75% of the major supporting cast, are South African; and
- (d) not less than 50% of the crew are South African;

2.34.2 in the case of programmes produced in terms of section 53 (1)(a) (v) and (vi):

- (a) not less than 50% of the production crew are South African; and
- (b) South Africans are involved in post-production.

2.39 **"South African Television Performance Period"** means the total number of hours between 5H00 and 23H00 every day;

2.40 **"South African Television Content"** has the same meaning as local television content which is defined in section 53 of the IBA Act;

2.41 **"Subscription Service Provider"** means either a person engaged in the compilation of programme material or the holder of a television broadcasting licence for the provision of a subscription television broadcasting service in South Africa whether such service is of a terrestrial or non-terrestrial nature;

2.42 **"Talk Shows"** means a programme hosted by a particular personality dealing with a variety of issues;

- 2.43 **"Tele-play"** means a drama usually located in a narrowly defined geographical area, and usually less than 90 minutes in length and often adapted from a play written for stage drama;
- 2.44 **"Tele-movie"** means a film produced for television;
- 2.45 **"Terrestrial subscription television broadcasting service"** means a subscription television broadcasting service that is broadcast from a transmitter situated upon the earth's surface;
- 2.46 **"the Broadcasting Act"** means the Broadcasting Act, 1999 (Act No.4 of 1999);
- 2.47 **"the IBA Act"** means the Independent Broadcasting Authority Act, 1993 (Act No.153 of 1993).

3. Public and Community Television Broadcasting Licensees

- 3.1 A public and community television broadcasting licensee must ensure that after eighteen months of the gazetting of these regulations in the case of an existing licence holder or within eighteen months of the issue of a licence or such longer period as the Authority may determine, an minimum weekly average of 55% of its programming, measured over the period of a year, during the South African television performance period consists of South African television content and that such South African television content is spread reasonably evenly throughout the said performance period and prime time.
- 3.2 Where a public and community television broadcasting licensee provides a broadcasting service which has more than one channel, that licensee must ensure that after eighteen months of the gazetting of these regulations a minimum of 55% of its programming on each channel during the South African television performance period consists of South African television content and that such South African television content is spread reasonably evenly throughout the said performance period and prime time.

3.3 In complying with its obligations in terms of Sections 3.1 and 3.2 above a public television broadcasting licensee must ensure that a minimum of:

- (i) 35% of its drama programming consists of South African drama;
- (ii) 80% of its current affairs programming consists of South African current affairs;
- (iii) 50% of its documentary programming consists of South African documentary programming;
- (iv) 50% of its informal knowledge building programming consists of South African informal knowledge building programming;
- (v) 60% of its educational programming consists of South African educational programming; and
- (vi) 55% of its children's programming consists of South African children's programming.

3.4 The commercial services provided by the holder of a public television broadcasting licence shall be subject to the same regulatory requirements as outlined in these regulations for commercial television broadcasting services and subscription television broadcasting services.

4. Commercial Television Broadcasting Licensees

4.1 A commercial television broadcasting licensee must ensure that after eighteen months of the gazetting of these regulations or such longer period as the Authority may determine, a minimum weekly average of 35% of its programming, measured over the period of a year, during the South African television performance period consists of South African television content.

4.2 A commercial television licensee must ensure that at the commencement of its broadcasting service a minimum weekly average of 35% of its programming, measured over the period of a year, during the South African television performance period consists of South African television content.

4.3 In complying with its obligations in terms of Section 4.1 above, a commercial television licensee must ensure that a minimum of:

- (i) 20% of its drama programming consists of South African drama;
- (ii) 50% of its current affairs programming consists of South African current affairs;
- (iii) 30% of its documentary programming consists of South African documentary programming;
- (iv) 30% of its informal knowledge-building programming consists of South African informal knowledge building programming; and
- (v) 25% of its children's programming consists of South African children's programming.

5. Subscription Television Broadcasting Licensees

5.1 A terrestrial or cable subscription television broadcasting licensee must ensure that a minimum weekly average of 10% during the South African television performance period, measured over the period of a year, consists of South African television content. In fulfilling this obligation, a terrestrial or cable subscription television broadcasting licensee may broadcast the South African television content on dedicated channel(s) or across its bouquet.”

5.2 In complying with its obligation in terms of Regulation 5.1 above, a terrestrial or cable subscription television broadcasting licensee must, to the extent that it is applicable to the type of broadcasting service, ensure that a minimum of 2% of its South African television content programming consists of South African drama programming.

5.3 The Authority may, in lieu of the obligations on the terrestrial or cable subscription television broadcasting licensee in terms of regulation 5.1 direct that the licensee must annually spend a specified sum of money, subject to a reasonable yearly escalation or alternatively, a specified minimum percentage of the licensees' gross revenue on programming which has South African television content.

- 5.4 A satellite subscription television broadcasting licensee must ensure that a minimum of 10% of their channel acquisition budget is spent on channels with South African television content that are compiled and uplinked from South Africa.
- 5.5 The broadcasting by a satellite subscription television broadcasting licensee of licensed terrestrial free-to-air public television broadcasting services or licensed terrestrial free-to-air commercial television broadcasting services will not count towards compliance with regulation 5.4.

6. Independent Television Production

- 6.1 Public, commercial, community, and subscription television broadcasting licensees must ensure that a minimum of 40% of their South African television content programming consists of programmes which are independent television productions and the independent television productions are spread reasonably evenly between, where applicable, South African arts programming, South African drama, South African documentary, South African informal knowledge-building, South African children's and South African educational programming.

7. Commissioning Procedures

Public, commercial and subscription television broadcasting licensees/services shall ensure that their terms of trade and commissioning procedures are, inter alia, fair, transparent, and non-discriminatory.

8. Formulas (Format Factors)

Format Factors only apply to the following listed categories:

8.1 The Drama Score for a South African drama is calculated using the following formula:

Drama Score = Format Factor (unit) x Duration (hours weekly);

- (a) for a South African drama program that is a one-off (including feature films, telemovies, and mini-series) = 4
- (b) for a South African drama that is a series/serial produced at the rate of one hour or less per week = 3
- (c) for a South African series/serial produced at the rate of more than one hour per week = 2

The formula for scoring drama points is:

Drama Score = Format Factor x Duration.

For example, a feature film is calculated as Format Factor (4 points) x 2 hours = 8 points.

Ten points are worth 1% towards the South African television content quota on a weekly basis.

8.2 The African Language Drama Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for drama in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 4

The formula for scoring African language drama points is:

African Language Drama Score = Format Factor x Duration.

For example, a Tshivenda drama is calculated as Format Factor (4 points) x 1 hour = 4 points.

Ten points are worth 1% towards the South African television content quota on a weekly basis.

- 8.3 The Children's Programming Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for South African children's drama = 3
- (b) for South African children's informal knowledge-building programme = 2

The formula for scoring children's programming points is:

Children's Programming Score = Format Factor x Duration.

For example, South African children's drama is calculated as Format Factor (3 points) x 2 hours = 6 points.

Ten points are worth 1% towards the South African television content quota on a weekly basis.

- 8.4 The Arts Programming Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly):

- (a) for South African performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture, and music (excluding programmes that exclusively feature music videos) = 2

The formula for scoring arts programming points is:

Arts Programming Score = Format Factor x Duration

For example, a programme on South African literature is calculated as Format Factor (2 points) x 1 hour = 2 points.

Ten points are worth 1% towards the South African television content quota on a weekly basis.

8.5 The Score for Diversity in Commissioning is calculated using the following Formula: Format Factor (unit) x Duration (hours weekly);

- (a) for programming produced by an independent production company based in Mpumalanga, the Northern Province, the North West, the Northern Cape, the Free State, and the Eastern Cape = 3
- (b) for programming produced by an independent production company based in Kwazulu-Natal = 2
- (c) for programming produced by independent production company controlled by historically disadvantaged persons = 3

The formula is:

Independent Production Company Score = Points x Duration

For example, the formula for commissioning a Mpumalanga-based company is calculated as Format Factor (3 points), plus controlled by historically disadvantaged person(s) (3 points) x 1 hour = 6 points.

Ten points are worth 1% towards the South African television content quota on a weekly basis.

8.6 The Score for the production of the following genres in African Languages, specifically for public regional and community television broadcasting services, is calculated using the following formula: Format Factor (unit) x Duration (hours weekly):

- (a) for any documentary produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3;
- (b) for any children's programming produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3; and
- (c) for any Arts programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3.

8.7 The Repeats Score is:

- (a) for first repeat of a South African programme = 50%;
- (b) for a South African programme originally screened on another South African television channel = 50%;
- (c) for a rebroadcast of the week's episodes = 50%; and
- (d) any further repeats of the programme shall not count towards compliance with the South African content quota.

9. Records

9.1 Public, commercial television licensees and subscription television service providers must keep and maintain logs, statistical forms and programme records in a format prescribed by the Authority:-

- (a) full particulars of all South African content programming broadcast in each week, indicating each category of South African television content, as defined in 3.3, 4.3, and 5.3;
- (b) full particulars of name(s) of the author(s) of the drama script indicating their nationalities, or that of the adaptor if it is drawn from a literary source;
- (c) full particulars of the name(s) of the drama director(s) indicating their nationalities;
- (d) a list of the creative and technical personnel involved in drama production indicating their nationalities and, in the case of performers, the roles they play; and
- (e) such other particulars as may be required by the Authority

9.2 The logs, statistical forms and records contemplated in sub-regulation (1) must be preserved for a period of not less than 36 months after the last date of entry.

10. Review of Regulations

- 10.1 The Authority may, three years after these regulations have come into effect, hold an inquiry to review these regulations.
- 10.2 In reviewing the regulations the Authority shall determine the procedure to be followed during the inquiry.
- 10.3 The Authority shall consider submissions made by the licensee and any interested person on its capacity to fulfill the South African content quotas and may make such determination as it considers equitable in the circumstances.

11. Effective Date

These Regulations replace the ICASA South African Television Content Regulations of 2002 which came into effect on 22 August 2003. The effective date of these amended Regulations shall, therefore, be the date of publication in the Gazette.

12. Short Title

These Regulations will be called the ICASA South African Television Content Regulations.
