INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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SOUTH AFRICAN LOCAL CONTENT REASONS DOCUMENT

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CONTENTS PAGE

Contents **Page**

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 South African Local Content: Television and Radio Regulations.

The following stakeholders submitted written representations to the Draft Regulations:

1. Anthony Luka
2. Association of Christian Media
3. Deukom (Pty) Ltd
4. e.tv
5. Impact Radio
6. Kagiso Media (Pty) Ltd
7. Link FM
8. Lu Chase
9. Magic 828
10. Marc Klein: RockOn Entertainment
11. Media Monitoring Africa (MMA)
12. Mentalwave
13. M-Net and Multichoice
14. National Association of Broadcasters (NAB)
15. Primedia
16. South African Broadcasting Corporation (SABC)
17. South African Screen Federation (SASFED)
18. Support Public Broadcasting Coalition (SOS)
19. Trinity Broadcasting Network (TBN)

1. INTRODUCTION

The Reasons Document sets out the decisions of the Authority on the Review of South African Local Content: Television and Radio. On the 4th July 2014, the Authority published a Discussion Paper in Government Gazette 37803, Government Notice 529, soliciting input on how the current South African Local Content: Television and Radio regulations should be revised. This was followed by Position Paper and draft regulations published in Government Gazette 38890, Government Notices 530, 531 and 532 on 18 June 2015. A number of different interest groups made written submissions to the Authority. The Authority also held nationwide workshops soliciting oral submissions from various stakeholders. Public hearings were held at ICASA Head Offices in Johannesburg from 01-02 October 2015.

Bulk of submissions argued that the South African Local Content: Television and Radio regulations needed to be revised in order to bring them in line with current sector developments. However, there were differing opinions as to what the exact nature of the revisions should be. There were submissions that argued for flexible regulations and allow the market to shape the sector. Other interested parties would like the Authority to regulate areas where there is less broadcast material available and deregulate areas that showed greater demand from the public.

In developing this Reasons Document, the Authority has taken into account a range of written submissions which were put before it as well as oral submissions made in the nationwide workshops and the public hearings. However, when making decisions, it is not possible for the Authority to incorporate all divergent views. The Authority is charged with the obligation to formulate regulatory policy independently, in terms of what it judges to be in the broader public interest. The principles underpinning this public interest are laid out in Section 2 (a) (b) of the ICASA Act 13 of 2000 as amended.

The positions (in bold) form the basis for finalising the regulations on South African Local Content: Television and Radio. The provincial reports will be published on the Authority's website.

2. LOCAL CONTENT REVIEW PROCESS

The NAB cautioned the Authority against continued intervention as it runs the risk of stifling free choice, commercial freedom and contributing to the closure of

broadcasters. Some of these broadcasters cannot meet the minimum threshold of the proposed South African content quotas based on unavailability of supply of local content for the type of service set out in their licence. Their rationale is that the Authority has not adequately considered the feedback from the research and consultation regarding the supply-side of South African music and television content. The Authority has not undertaken a regulatory impact assessment in support of the Draft Regulations.

The Association further submitted that the Authority should have adopted a forward-looking approach to regulation, instead of regulating only for the dual illumination period. They reason that the persistence with this approach, would necessitate a review once again before the analogue switch-off.

Magic 828 advised ICASA to split Commercial from Community broadcasting with separate bodies and Counsellors. They believe that the two entities have different needs and much time is lost at meetings attended by both parties.

The regulations will still be applicable in the digital environment as they are forward-looking. This is seen in the newly introduced requirement such as quotas per bouquet. Any review or amendment to the regulation will not be based on vast changes, but rather on variables that would not have been envisaged.

A cost-benefit assessment which resulted in these regulations was conducted. The processes followed were exhaustive, and thus allowed the broad spectrum of views.

3. DEFINITIONS

The NFVF disagreed that the definition of local content be widened to include African content. The Film and Video Foundation supports the definition of local content as put forward by Media Monitoring Africa, however with the inclusion of locally produced and developed sports programming in the definition. The Film and Video Foundation further submitted that music videos be included in the definition of local programming.

In addition, the Film and Video Foundation supports the submission that independent in house producers be included in the definition of local independent producers, bearing in mind the current infrastructure deficits which persist.

SASFED noticed an error in the definition of Repeat which has been carried over from the previous regulations: 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. SASFED suggested the wording should be read as follows;

> "Repeat means television programming that is not first broadcast by South African television licensee or has been broadcast by another South African television licensee."

SASFED was concerned about the removal of Co - Production from the definitions and elsewhere in the regulations, Section 5 of the original ICASA SA Content Position paper and Regulations of 12 February 2002 made particular reference to Co - Productions and concluded that; it was suggested that the Act be amended to recognize that co - productions are often opportunities for South African producers to gain access to funding for other countries.

Further, the federation was concerned that there is no definition for incentive channel, nor is it clearly explained what is meant by a 10% increase on an annual basis for these channels. They suggested a redraft on the definition of the incentive channels to be awarded to the broadcasters that cannot be misinterpreted.

The federation was concerned about the ambiguity around the concept of Independent Television Production as this sector heavily relies on the commissioning by broadcasting companies and thus rendering it not necessarily independent as it should be. They recommended that large material of local content be acquired from independent production sector. This will decentralize social, economic and cultural goals throughout the country. SASFED urged ICASA to motivate the creation of co - productions in the television sector, which would allow for more rights ownership by producers and the sharing of IP and broadcasts rights, thus resulting in higher quality

productions. Easy access of local content can be achieved through the strengthening and growing of independent television, film production and music industries. The development of robust diverse production and music industries that reflect the demographics and diversity off our country in terms of race, class, gender sexual orientation language and religion.

Although SOS noted ICASA's stipulation that all public, commercial and subscription broadcasters to spend 50% of their annual production budget on previously marginalized African languages and or programming outside Cape Town, Durban and Johannesburg, it nonetheless seeks clarity on the definition of marginalized languages. The coalition believes the clarity on definition of marginalized languages is important as this will have a bearing on ICASA's recommendations.

SOS also complained that some important issues such as definitions on local content and independent production have been dismissed. They posited that although ICASA's position paper cannot be dealt with until legislative amendment, this does not preclude ICASA from taking a position on this critical issues. Thus the coalition believes ICASA should not ignore discussions on definitions but rather collate them in order to create its own position. The definitions should include local content, local sport, whereas other definitions such as television content should change to audio visual content services and independent television production must emphasize on the issue of control.

The South African Broadcasting Corporation (SABC) requested the Authority to initiate legislation amendment process which will make way for the expansion of the definition of 'South African content', to cover sport programming which will ensure that a deserved acknowledgement and incentives are ascribed to programming of such a nature. Their rationale that the definition of local content was coined at a time when sport programming on television was not so commercialized, however, with time it has evolved into being premium commercialized content.

The public broadcaster also argued that they find themselves in a unique position, as the law requires them to provide minority and developmental sport programming to all citizens. Their reason was that the production of this programming is done locally and

is expensive not yielding any profit for the SABC. They further contended that they allocate more airtime to local sport programming.

M-net and Multichoice submitted that “first release programme" definition ought to be deleted. They were of the view that the term is defined in the draft regulation, but is in fact never used in the draft regulations.

The two subscription broadcasters submitted that the definition of "channel" in the draft regulation ought to be deleted. They argued that the term is already defined in the Electronic Communications Act, 2005 ("the ECA"). Another problem with the proposed definition is that it is different from the definition in the ECA.

Furthermore, the subscription broadcasters submitted that wherever the term "South African television content" is used in the draft regulations, it ought to be replaced with the term "local television content". "Local television content" is defined in detail in s61 (2) of the ECA. This is therefore the term that should be used throughout the draft regulations.

TBN requested the Authority to provide a clearer definition of South African television Content in order to promote certainty and uniformity of interpretation. Local television content" is defined in the EC Act and it is assumed that this is what is meant in the Draft Regulations by the use of the phrase "South African television content”. “South African television content", being the phrase used in the Draft Regulations, is not defined either in the Draft Regulations and nor is it defined specifically in the EC Act. Some interpretive uncertainty inherently must unfortunately exist and, in order to obtain a full understanding of this phrase, some measure of logical assumption must be employed. This is unfortunate and can lead to inaccuracies.

TBN sought clarity on why the Authority deems it necessary to effectively define a child differently and deem 12 years of age to be the cut-off. They would like to draw the Authority’s attention to the fact that the Department of Health ("DoH") regards a child as anyone below the age of 18 and this is in line with World Health Organisation ("WHO") conventions. This view is equally supported by the National Association of

Broadcasters ("NAB"). In addition, in South African law, the age of "majority" is reached as soon as an age 18 is exceeded.

Mental-Wave submitted that the Authority must delete definitions for “Interview” and “New Musician” or “Documentary”. They argued that neither of the definitions constitute music content and the language is inconsistent with Copyright Act. None of the above are licensed and have no cost to the broadcaster as such do not constitute music (as is licensed and paid for).
In addition, Mental-Wave argued that introducing a definition for “new musician” for the sake of using the term once in Sec 6 (2) is deficient. Their argument was that;

- The idea that a new musician “means a musician whose debut album has been on the market for six months or less” is incorrect. An album is simply the making of a recording, an old format at that, which today is released less and less, it being inadequate for the most part in a world of single releases. The release of an album does not bespeak a “new musician”.
- Creating a new barrier to entry – musicians, even professionals in certain genres do not release albums as a rite of passage to being a musician. Now an album would be required to be a “new musician” which deemed to block progress and be archaic.

Mental-Wave further argued for the inclusion of “content” and “sound broadcasting licence” in the definition section. This is because “content” is used 9 times in the “Bill” (draft regulations), while “sound broadcasting licence” is used 7 times in the “Bill” – not defined in the ECA. In the supplementary submission, Mental-Wave added that it would improper and a recipe for unnecessary future conflict were there to be no alignment between the language used in the ICASA Draft South African Music Content Regulations and the Act which gives rise to the meaning and value of a ‘broadcast’ namely the Copyright Act 98 of 1978 read with the Copyright Amendment Bill.

Mental-Wave proposed an amendment of the definition ‘South African Music” by the insertion of a proviso saying “Provided that the ownership of any musical work and/or literary work, sound recording or performance thereon must be domiciled in South Africa”. They are of the view that the domicilium of the works is central to the intended

impact of the ICASA draft South African Music Content Regulations (which is to increase the equitability of South African music available on radio in the country) will occur. Thus, it should be noted that a musical work is defined in law as music only (no lyrics) and so the reliance on the 3 uses of the phrase technically excludes words.

SOS noted the paucity of voices representing women, children, the old, the poor, the unemployed and rural inhabitants. Based on the contrasting views within its ranks, SOS calls on ICASA to pursue a thorough investigation on sport as part of local content dispensation for community broadcasters. The coalition added that the investigation should explore issues of minority sport and women's sport. In particular, ICASA should look at number of hours broadcasters utilise per sporting code, which codes are they using and which broadcasters are transmitting minority sporting codes.

Media Monitoring Africa (MMA) submitted that they are aware that the definition of local content given in the Discussion Document is legislated and this definition can only be amended in terms of the Electronic Communications Act (ECA). However, MMA proposes the following;

"Local Content means a television programme and/or audio-visual content excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements, which is produced :

- By a broadcasting service licensee;
- By a person who is a citizen of, and permanently resident in, the Republic;
- By a juristic person, sixty percent of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;
- In a co-production in which persons referred to in subparagraphs (a), (b), or (c) have at least a fifty five percent financial interest.
- By persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently resident in, the Republic; or
- By persons referred to in subparagraphs (a), (b), (c) or (d) in circumstances where the sixty percent of the production costs are incurred in the Republic."

With regards to sport, MMA emphasised that sport should not be considered as local content. They were of the view that a provision can be made whereby local or community sporting events, such as school level and provincial events where it is not professionalized and is amateur, could contribute to a possible percentage of a broadcaster's local content quota. This issue of local and/or community sporting events and its relationship to local content must be further investigated.

SASFED indicated that the definition of local television content as defined in section 61 (2) (a) of the ECA differs from the term used within the South Africa Television content regulations. They strongly urged ICASA to adjust the wording to be consistent with the ECA.

Consequently, the federation submitted that ICASA should clearly stress that the definitions and accompanying interpretations should be read in conjunction with Section 1 of the Broadcasting Act 4 of 1999 particularly because the definition for Community Broadcasting Service has been omitted from the definitions of the these draft regulations. Children's Drama and Children's Information Knowledge Building Programming which were previously defined have now been omitted yet they are referred to in Section 10 (3) where format factors are awarded against those very terms which are not clearly defined. While it might be assumed that the defined term for Children's Programming could be read in conjunction with those for drama and knowledge building programmes, the words are inserted in the middle and may be read incorrectly.

TBN alerted the Authority that it is not readily clear whether and/or how content broadcast by a "community of "interest" licensee fits into some of the definitions, for example, "Current Affairs Programming", "Drama", "Educational Programming" and Knowledge Building Program". This, they alluded, is specific to religious content broadcast by a religious "community of interest" licensee.

TBN and Link FM submitted that "performance period" does not adequately measure the variety of content broadcast. They requested that the performance period hours be extended to assist attempts at compliance with the Draft Regulations as they affect

content. In the case of a "community of interest" broadcast licensee, the viewers and listeners are highly likely to engage its content outside of these hours. This is very prevalent in the case of "community of interest" radio listeners and applies to the television viewing community as well.

The Authority cannot vary definitions as they are contained in the legislation. Amending definitions will require a legislative amendment, which has to be preceded by robust public consultation.

Interviews with South African musicians and the promotion of new musicians still serve the purpose of development and promotion of South African music through activities other than playing tracks/songs. It provides for greater flexibility and innovation in complying with regulations.

Some of the submissions advocate for the inclusion of local sport as local content however, the definition of local content in the legislation excludes sport.

The definition of children's programming in the regulations does not take away the universal definition of Children but is necessary for the purpose of regulating Children's programming. The Authority deems it necessary to categorise the necessary age groups to apply the intention of these regulation.

These genres are important for viewers of any television licensee. Religious stations can have a religious drama, educational programming whereby these kinds of programming seeks to educate viewers of the religion concerned.

4. PERIOD WITHIN WHICH TO COMPLY WITH REGULATIONS

M-net and Multichoice supported the intention of the Authority to allow existing broadcasting service licensees a period within which to comply with the amended quotas, and new licensees a period within which to comply with the Regulations. This dispensation ought to apply to all four categories of licensees. They stated that in the draft Regulations, this dispensation applies only to public, community and commercial

licensees, but not to subscription licensees. The subscription broadcasters assume that this was an oversight, which will obviously need to be corrected.

Further, the subscription broadcasters were of the view that the period within which existing licensees and new licensees ought to apply with the regulations ought to be the same period, and that it be extended to twenty four months.

In the event that the Authority decides to increase the local content quotas, the NAB urged the Authority to consider extending the implementation date from 18 months to 36 months. This will allow the Authority to engage broadcasters on exemption requirements and most importantly, to set local content quotas that represent the floor, not the ceiling as this can be an immediate barrier to entry. To that end, they remind the Authority that licensees offer a “promise of performance” to exceed the minimum local content threshold and in so doing, broadcasters provide greater choice and diversity in a manner that is feasible and sustainable.

These timeframes overlook factors the NAB addressed regarding enough supply of content to meet these increments. Furthermore, broadcasting licensees require adequate time to procure and commission the requisite content. As purported by the Association, proposed timelines are a cause for unintentional non-compliance by licensees. They argued for the broadcasters who will require additional time in which to comply due to the paucity of available local content in their specific formats, as well as the prohibitive costs of local television production.

In addition the NAB community sector members are concerned that achieving compliance in 18 months is simply unrealistic. It is important for ICASA to give meaningful consideration to this fact in view of the penalty provisions for non-compliance (R 50 000), as iterated by the Draft Regulations. They reason that there are practical limitations to the ability of community television broadcasters to reach South African local content quotas of 65% envisaged in the Draft Regulations.

In support of their argument, the NAB referred the Authority to the Draft Community Broadcasting Support Scheme of the Department of Communications (DoC)

(published on 1 July 2015), where there is acknowledgement that community television is "constantly shunned over doubts on its financial ability to procure content".

The NAB added that in the event that ICASA reaches an agreement with incumbent licensees on revised quotas, that any increase in the quota must be based on a phased-in approach that exceeds the proposed 18 month period. ICASA should allow for at least 3 years, considering the economic climate, pressures in industry on the supply side and most importantly, the costs associated to digital terrestrial television migration. They reason that broadcasters have to respond to audience tastes and preferences and even if there are no quotas in place, local content will still thrive – this is evidenced in the SAARF TAMS figures where the top TV programmes are all local SA productions.

SASFED argued that regulation 12 suggest that these regulations repeal entire existing 2006 ICASA South African Content regulations. SASFED indicates the new regulations can only take effect with any broadcaster some 18 months after promulgation, which means that effectively no regulations would be enforceable during that period. SASFED proposes that existing regulations not to be repealed until the content requirements have been met in 18 months' time allocation. Alternatively, SASFED suggested that this regulation be re-drafted to set the starting point as per the current regulations, adding that the broadcasters are not permitted to go below the existing quotas during the 18 months needed for the new regulations to take effect.

e.tv was concerned about the uncertainty regarding the date upon which the regulations will be brought into force. Draft regulation 13 provides that the proposed regulations are to "commence upon publication in the [G]overnment [G]azette." Given the reference to a period of 18 months in draft regulation 5(1), as well as the reference to "after launch of their services" in draft regulation 5(2), e.tv has no concerns regarding its obligations under draft regulation 5 – both in relation to its current channel, and any future incentive channels. But draft regulation 7, read together with draft regulation 9 (dealing with contraventions and penalties), provides real cause for concern. This is because there is no time period within which a licensee is afforded the opportunity to comply.

Link FM and TBN complained that the period to achieve compliance in 18 months is unrealistic and ignores practical limitations experienced by community broadcasters. In the event of non-compliance, which must be reasonably expected to occur on a broad scale given the unreasonably short period of 18 months, this would lead to the financial failure and closure of the majority of community broadcasters due to the quantum of the financial penalties which the Authority would seek to apply.

The period within which licensees must comply with the new quotas is twenty four (24) months for television broadcasting licensees and this is sufficient since it takes into consideration commissioning cycle. Applicants that were granted licences before publication of these regulations will have to be given the same timeframe within which to comply. Applicants granted their licences after the publication of these regulations do not need to be given a period within which to comply, since they are expected to have prepared prior as part of glancing over at existing regulations.

The cost benefit analysis report supports the Authority's proposals, as the majority of broadcasters have been exceeding their content requirement. It is based on these figures and additional study that the Authority has reached a conclusion to increase the quotas.

After publication, the existing television broadcasting licensees are given 24 months to comply with the new quotas. New services/incentive channels must start at 20% upon launch.

For Sound broadcasting licensees the period within which to comply with the 2016 regulations is 18 months after gazetting of the regulations.

Both television and sound broadcasters are expected to comply with the 2006 regulations on Local Content before compliance with 2016 regulations kick in.

5. TELEVISION QUOTAS

Magic 828 believed that forcing channels to show content that is not acceptable to the public is a recipe for disaster. This is one of the prime reasons the SABC struggles. Acceptable television Local Production is far from cheap and purchasing overseas Production is far more cost effective, thus e.tv, SABC, M-Net and Top TV try to show as much cost effective television as is possible. Should ICASA force these issues it is my contention that it will merely drive consumers into the hands of streaming stations thus reducing the Advertising income of those forced to comply. Licensing authorities have not been able to apply Law and Regulations to streaming and it is getting bigger and more popular. Radio and television is Talent Driven, watched and listened to by a public that will accept what they want, and not what is forced upon them.

TBN submitted that licensees situated in so-called "low television content production areas" are inordinately prejudiced by the blanket Draft Regulations which have nation-wide application. Particularly in the case of a "community of interest" licensee, content is a limited resource because of its specific nature or "subject interest. Sourcing South African television content from the coverage area is completely influenced by the availability thereof. There are essentially two financial models which can be employed by a community broadcast licensee with regard to obtaining South African content for broadcast being;

- Purchase the content from the content producer; or
- Sell airtime to the content producer. This is the preferred model since it eliminates the unaffordable cost of acquisition of local content and actually rather encourages focus on the "revenue" side of the business.

Christian "community of interest" television licensee sells airtime to local ministries in order to elevate the level of its South African television content to meet quotas or indeed simply to attempt to meet them.

The NFVF supported the submission by the SOS that the public and community broadcasters should have the most obligations at 60%, followed by Free to Air (FTA) commercial and subscription broadcasters at 50%, with no distinction between FTA commercial broadcasters and subscription broadcasters. However the overall tiered distinction should be kept to a minimum. The NFVF was of the opinion that the

regulations do not suggest viable ways of ensuring market entry for new players. The issue then is not about establishment of new funding and development support but rather finding ways of enhancing the already existing mechanisms.

Deukom requested the Authority to insert a clause in regulation 6 directing a licensee to annually spend a specified sum of money subject to a reasonable yearly escalation or alternatively a specified percentage of the licensee's gross channel acquisition budget on programming which has South African television content. The requirement for small niche broadcasters like Deukom to commission South African programming will put an end to its service and undesirable consequences similar to the judgment between Deukom and ICASA.

e.tv was of the view that the language of draft regulation 5(2) is potentially ambiguous. They believe that it could be interpreted to mean that either the local content requirements apply per incentive channel, or they apply per bouquet of incentive channels. Given the lack of a definition in the draft regulations, it is also unclear what is meant by an "incentive channel".

e.tv submitted that draft regulation 5(2) must be read with the following general provision in draft regulation 8(1); draft regulation 5(2), referring to "[a] new broadcast service licensee and any incentive channels", and draft regulation 8(2) referring to "any new digital broadcast service licensees and incentive channels". The latter construction could be interpreted to mean that the reference is to incentive channels of new digital broadcast service licensees (and not existing terrestrial television broadcast service licensees (such as e.tv)). However, it is clear from the position paper that ICASA intended to propose a per bouquet approach.

Following the above, e.tv supplemented its proposals as follows:

- Regulation 5(2): "Subject to regulation 8(1), a [A] new broadcast service licensee and any additional digital channels broadcast by an existing terrestrial television broadcast service licensee, including incentive channels, must ensure that a minimum weekly average starting at 20% after launch of their services, increasing by 10% on an annual basis until reaching the minimum weekly average of 45% measured over the period of a year, during the South

African television performance period consists of South African television content."

- Regulation 8(1): "South African Local Content requirements will apply per bouquet and not per channel approach for any new digital broadcast service licensees and any incentive channels broadcast by an existing terrestrial television broadcast service licensee."

These proposals by e.tv were meant to clarify the confusion with regards to incentive channels being referred to. The purpose is to avoid misinterpretation as this clause may mean that the reference is to incentive channels of new digital broadcast service licensees (and not existing terrestrial television broadcast service licensees (such as e.tv)).

The SABC believed that the proposed quotas are impractical and will inhibit the SABC from competing fairly with its counterparts. The proposed quotas take away from the SABC the flexibility to programme scheduling which is responsive to audience needs.

M-net and Multichoice submitted that it is completely inappropriate to introduce individual channel quotas for incentive channels and the reference to "incentive channel" in sub-regulation (2) of draft regulations 3, 4 and 5 ought to be deleted. They argued that in a digital environment, most television broadcasting service licensees will not be broadcasting a single channel, but rather a multiplicity of channels, which may be packaged into one or more bouquets.

M-net and Multichoice submitted that it is highly unlikely that any multi-channel subscription television broadcasting service would only commission programmes and they, accordingly do not believe it is necessary to cater for this category. They accordingly propose that draft regulation 6(1) be deleted. While Multichoice is an example of a subscription broadcaster which only acquires channels, it is more common for subscription broadcasters to commission programmes and acquire channels. ODM, for example, currently does both, and in the future, M-Net is likely to do both. They therefore proposed that this be addressed in a further sub-regulation, the proposed wording of which they provide.

M-net and Multichoice posited that the amount of proposed increase in quota for subscription television broadcasting licensees is unjustified, excessive and arbitrary. They argued the amount of the minimum percentage increase for public and community television broadcasting licensees is 18% and for commercial free-to-air television broadcasting licensees is 28.5%, whereas the increase for subscription television broadcasting licensees is an extraordinary increase of 50%.

Furthermore, the Subscription broadcasters submitted that the Position Paper does not provide any indication that there is a market failure justifying the retention of quotas for subscription television broadcasting licensee. Nor does the Authority give reasons for the proposed increase or assess the impact of such increase.

MMA was of the view that in the interests of more effective regulation, openness and transparency, it is critical that the full research on which the claim is made that broadcasters are exceeding their local content quotas is made public so that it can be further analysed. MMA argue that there is no evidence given to substantiate the claim made in section 2.4 (regulation 2(4)) of the draft regulations. They were in support of the view of the public broadcaster in section 3.5.6 (clause 3.5.6) that the Authority should in fact reduce the local content regulations and allow incubation during the dual illumination period which is necessary for digital migration, in lieu of the possibility that broadcasters are currently not meeting their local content quotas. Whilst MMA acknowledged the report published in 2002, they believe that it is still unclear whether broadcasters are fully complying with the content quotas already in place, let alone exceeding the requirements.

MMA welcomed the Authority's decision in clause 3.7.1.23 of the Position Paper to have a 45% local content quota set for FTA broadcasters. However, they were of the opinion that there needs to be higher local content quotas set for subscription television. They proposed increase progressively to a minimum of 20% weekly average measured over a year during the performance period for Subscription Satellite TV as these license holders have been under-regulated for years on end leading to unfair competition advantage over FTA licence holders. Consequently, both Subscription Satellite TV and FTA compete for advertisers, and very often similar ones.

SASFED recognised the financial problems that community broadcasters encounter in their attempts to survive, while similarly struggling to attract advertising and lacking modern equipment to cope with high carriage costs. Community broadcasters cannot even afford to fund the creation nor the licensing of local content, thus they are not able to address the very basic concerns of remaining local to their respective communities.

SASFED believed that the struggles of community broadcasting reflect as to how monopolistic and bundling tendencies by dominant broadcasting companies leads to the demise of local content but most importantly their inability to be independent. SASFED urged that Community broadcasters be encouraged to work closely with professional independent producers through which both parties can have a mutual financial benefit from each other.

SASFED was disappointed that there is no substantive increase in local content quotas against e.tv. SASFED believes that the overall increase in local broadcasting quotas on public broadcasting from current 55% to 65% is now in line with international best practice and suggest the increase goes up to 70% particularly for public broadcasters.

SOS submitted that all broadcasters and content providers have the responsibility of the quality of content they produce, distribute in conjunction with the regulations. The responsibilities and accountabilities in terms of hierarchy is commendable but a specific regime has to be established for community broadcasters.

SOS supported ICASA's decision to raise the public commercial and commercial free to air broadcasters quotas from 35% - 45%. Thus SABC commercial tier will be forced to raise its quotas to the same 45% as that of e.tv. SOS rejects ICASA's proposal that community broadcasters quotas should be increased from 55% - 65% and also disagrees with ICASA's decision that community broadcasters should create 50% of their local content from their immediate local areas. They argued that these regulations will be too onerous for the community broadcasters as an emerging market that also has financial struggles.

Similar to Link FM, TBN argued that 65% South African content, of which 50% must be sourced from within the coverage area, in the case of a community television broadcaster, especially a "community of interest" broadcaster, is simply not really attainable. They cite that the responsibility for stimulating the content production industry must surely lie at the door of National Government, as it is an industry initiative which is in the national interest. The costs of television broadcasting, both administratively and operationally, particularly when considering signal transmission costs, is prohibitively expensive.

Regulation 8(1) and Paragraph 3.7.1.23 (b) of the Position Paper provides clarity on the issue of the local content requirements that apply per bouquet of digital incentive channels. There are no individual channel quotas. Digital incentive channels will be treated as a bouquet when they are introduced.

In general, broadcasters meet and some even exceed their local content obligations.

The Authority may direct that a licensee, such as Deukom, 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.

6. CHANNELS VS BOUQUET REQUIREMENT

The SABC submitted 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 audiences.

The NAB proposed that Clause 8 of the draft SA Television Regulations be amended to read as follows:

> "South African Local Content requirements will apply to all tiers of TV broadcasting licensees, and shall apply per bouquet and not per channel [approach for any digital broadcast service licensees and incentive channels."]

In the additional submission the NAB proposed that all reference to channels be deleted from the regulations. The NAB was concerned that this drafting is ambiguous, especially in light of the Position Paper which states that "a bouquet rather than per channel approach will be put in place".
Kagiso Media suggested that as all television services will be multichannel services, the mechanisms for supporting local content ought to be the same across all platforms whether free-to-air or subscription.

e.tv submitted that a free-to-air broadcaster's local content obligations should apply with equal force to its digital incentive channels and any other additional digital channels. The Position paper expressly notes that ICASA "has decided to apply the principle of technological neutrality", meaning that "local content obligations will now be similar across the same services offered and not be differentiated per platform." In respect of all its additional digital channels, including but not limited to its incentive channels, e.tv will only be able to discharge its local content obligations if a per bouquet approach is permitted. This is because some of its channels will be deemed to have no local content, whereas other incentive channels will likely be comprised of 100% local content.

SASFED noted Section 8 (1) of general provisions which suggests that the local content requirements will now apply on a per bouquet and not per channel approach because ICASA has often failed to independently and effectively monitor broadcaster compliance with far less complex current regulations, the independent monitoring over a bouquet of channels can only be seen as impractical and challenging.

To ensure that local content is introduced early to the viewers, the Authority has put a requirement in place for new channels.

7. QUOTAS: PRIME TIME REQUIREMENT

The SABC recommended global quotas for its public service network. They argue for the removal of prime time and performance period. They reason that limited air time that SABC has on its three licensed channels in prime time and the regulation quotas have put pressure on platform schedules which have to deliver on multiple criteria including revenue, audiences and mandate. The current funding model of the SABC is making it difficult to balance this mandate against the conflicting funding delivery of optimizing advertising revenue and audiences and yet still remain highly competitive in an entertainment space.
In addition, they were of the view that in a digital space audiences will choose the time at which they want to consume content. Thus, the prime time and performance period approach will become irrelevant. The removal of prime time and performance period will also afford the SABC the flexibility in scheduling of content and the opportunity to compete fairly with its competitors (linear and non-linear services).

They reasoned that the SABC draws revenue predominantly from advertising revenue obtained via the perceived marketability of certain programming. If however, advertisers perceive that certain content will not generate brand value for their products, or the matter of fact that specific content will not generate revenue and justify the investment of placing an advertisement at the time of certain programming, there will be a shortfall of revenue received by way of advertising and the inclusion of the stated content on the programme schedules on radio and television.

SASFED proposed that local content be specifically broadcast during prime time on new DTT channel and emphasises the need for development of new programming and programming formats.

TBN believed that the Authority has not given adequate consideration as to what constitutes "prime time" for all broadcasters. It has been the experience of TBN EC, as a Christian community of interest broadcaster that 9h00 to 13h00 is also a very peak viewing time and similar to the viewing volumes typically experienced between 18h00 to 22h00.

Primetime is the right time to require broadcasters to broadcast local content when the majority of South African are expected to be watching television.

The Authority notes the suggestion that 9h00 to 13h00 is also a very peak viewing time and is of the view that most people are at work between 09h00 and 13h00. The hours of 18h00 to 22h00 are in line with international standards.

8. LOCAL CONTENT GENRES

The SABC implored that the Authority increase the points awarded to Educational and Children's programming; Marginalised language programming; and Minority and developmental sport programming. In addition, they submit that non-profitable programming should be awarded increased format factor points. The SABC further submitted that repeats of educational and children's programming should count 100% towards local content delivery as they are repeated for purposes of extended learning opportunities, reaching new audiences and responsiveness to audience needs. The same should apply to high-investment programming such as drama.

Further, they proposed that 5 points should be allocated for each South African language of the above genres as follows:

b) Format factor points for commissioning independent production companies based in provinces other than Gauteng and Western Cape:
   - Mpumalanga, the Northern Province (Limpopo), the North West, the Northern Cape, the Free State, and the Eastern Cape (3 points)
   - KwaZulu-Natal (2 points)

The SABC proposed that 6 points should be allocated for content sourced from the abovementioned provinces as this will encourage licensees to source content from these areas as follows;

c) Format factor points for independent production companies controlled by historically disadvantaged persons (3 points).

The SABC proposed that 5 points should be allocated for independent production companies controlled by Historically Disadvantaged Persons (HDPs). They argued that it will assist the SABC to meet the local content quotas which will increase to 60% as soon as the consultative process has been concluded by the Authority.

The language and genre spread requirements may work together in ways that undermine the choices and self-identified needs of the viewing public. e.tv was concerned about the requirement for programmes to be commissioned from areas with less economic development and consequently many fewer production houses. It is e.tv's belief that in respect of geographic spread, the draft regulations seem oblivious to the commercial reality that not only is the independent television producing sector as a whole in need of nurturing, but its growth, in particular amongst previously disadvantaged black South Africans is more likely to be sustainable in the urban centres of Johannesburg, Cape Town and Durban.

TBN argued that the requirement that community television broadcast licensee 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 evenly is a challenge. According to TBN this means that approximately 16, 67% of the 40%, being South African television content, must be constituted by each of these production genre elements respectively. Not all of the six content genres are even available currently. More to the point, even if they are, they are not necessarily available within the geographical coverage area serviced by the broadcast licensee signal distribution footprint. The limitations imposed relating to "so-called" connected persons with regard to production of local content is punitive and further places the requirements of local content beyond the reach of community broadcasters, whether holding a "geographic" licence or an "interest" licence.

SASFED noted that on page 92 under regulation 8 (2) the wording "Broadcasters must obtain genre points only for one category of genre" has been added. The Federation agreed with the intents of this section, but it is similarly concerned that this may not be clear as genre points are not defined. SASFED proposed that this clause be reworded as follows;

> "Broadcasters may count a Production only towards compliance within a single genre in terms of these regulations of their license conditions. But this is contradicted by Section 10 (3) referenced above, where effectively rewards are being given for a combination of genres listed, unless those are separately defined."

Furthermore, regarding regulation 8(2), TBN sought clarity as to what is meant by the Provisions in the Draft Regulations stipulating that broadcast licensees must obtain genre points only for one category of genre. They cited that this appears to be in conflict with the requirement that the broadcast licensee must spread South African content evenly over the 6 content genres described in sub-paragraph (1) under Independent Television Production.

SASFED requested ICASA to conduct accurate and independent monitoring in the following areas; South African Documentary, Drama and Children's Programming will continue to be balanced with other protected genres. This they argued, is attributed to the fact that certain broadcasters no longer seem to air a reasonable balance of these regulation protected genres. In fact, SASFED's own research showed that some genres like independent documentaries have been dropped almost completely.

SASFED noted that sub-regulation 3 that deals with percentages realizes that broadcasters hardly commission genres such as Documentaries over a significant amount of time. ICASA's failure to monitor documentary genre through the even spread of genres in Independent Television Production clause. They requested that this clause be reworded to refer to a percentage to all programming, which also makes it easier for ICASA to monitor compliance. SASFED would like to work with ICASA to find a logical range of percentages for each genre from full universe of time.

Furthermore the Federation noted the dropping of Documentary Drama, Episode Drama Series and Magazine Programming, Multilingual Drama and Talk Shows, these in addition to narrowing of Educational Programming to support structured educational activity and Knowledge Building Programming to support personal experience programming.

SASFED did not object to this adjustment and the removal of clauses which have no further reference in the regulations in principle, provided that the South African Documentary, Drama and Children's Programming will continue to be balanced with other protected genres in terms of regulation 7 (1) which calls for an even spread in terms of independently produced content.

The current genre quotas will still achieve the intended objective of diversity.

Obtaining one genre point for only one category of genre is applicable where genres overlap. For example, informal knowledge building can also be classified as educational programming and therefore one programme should not attract counting twice towards compliance. A broadcaster should choose whether it should count towards education programming OR informal knowledge building but not both.

9. COMMISSIONING PROTOCOLS

The NFVF was of the view that for the industry to move from a commissioning driven industry, the broadcasters' commissioning protocols need to be reviewed and regulated effectively and this requires the intervention of the regulator. The strategy does not provide viable mechanisms that will ensure that the industry shifts from a commissioning-driven industry.

In addition the Film and Video Foundation submitted that the current strategy discussed does not create dialogue to address the above issues, instead it focuses on the administration of copyright which is currently not a pertinent issue facing the industry. Copyright was not regulated effectively as the current commissioning procedure allows the broadcasters to retain all rights of the commissioned works, and repeats remain unregulated. This practice does not allow producers to exploit copyright of their work, and neither do broadcasters exploit any other rights except the television broadcast of such programmes.

In sum the NFVF substantiated that the relationship between independent producers and broadcasters should be regulated to ensure that the commissioning model does

not limit the ownership potential of independent producers of exploitable rights. The current commissioning model restricts independent producers from exploiting or partitioning rights and seeking alternative sources of funding. This has resulted in several projects being fully funded by broadcasters, in which the broadcaster takes full ownership of the intellectual property rights of the content even if the broadcaster has limited or no interest in exploiting the intellectual property beyond local broadcasting.

The NFVF submitted that further regulation is required in the interaction between independent producers and broadcasters (both private and public) regarding commissioning and licensing. Local content sourced from independent local producers should bear more weight in its contribution to compliance with local content regulations and licenses. The independent local producer does not enjoy the benefits of an empowering environment. The struggling independent section of the audio-visual sector is largely reliant on local content quotas to grow and expand the industry. However, with the limited manner in which this provision for local content quotas has been included.

SASFED noted that the Public Broadcaster in particular is not consistent or reliable in its commission practices, with only one Request for Programming issued in the past five years in October 2014. They would like broadcasters to build a creative internal television or audio visual production capacity departments within the various broadcasting tiers. The aim of these departments should be to develop work that includes new formats and the conducting of pilots.

10. INDEPENDENT PRODUCTION AND LANGUAGE QUOTAS

The NFVF was of the view that the 40% quota to this regards is considered adequate for the stimulation of the independent producer sector.

MMA recognised that language plays a crucial part in promoting and achieving the goals of building our democracy. This is because the use and development of language is closely linked to the development of culture and identity. It is important that the regulation of local content includes a stronger regulation and incentives in relation to African languages in both scheduling and budgetary provisions. It is also

important to highlight that in terms of news, current affairs, children programming and drama there is an effort by the broadcasters to cover different African languages, however there is less effort made in relation to documentaries and other genres. Further efforts can and should be made to incentivise production in other African languages.

M-net and Multichoice proposed an amendment of draft regulation 7(1). They were of the view that it would be fairer, more reasonable and more appropriate if the language were amended so that it read "… are spread reasonably evenly between, where applicable, South African arts programming …"

M-net and Multichoice further proposed that draft regulation 7(2) should only apply to the SABC, alternatively that it should not apply to subscription television broadcasting licensees. They reiterate that objectives such as ensuring that broadcasting services cater for all language and cultural groups and provide entertainment, education and information falls on broadcasting services "viewed collectively" and on the public broadcasting service in particular. It is neither permissible nor appropriate to extend such provisions to other broadcasting services. Such requirements are particularly inappropriate for subscription television broadcasting services, whose primary mandate is to meet the preferences of their subscribers.

In the alternative, and if draft regulation 7(2) continues to apply to subscription television broadcasting licensees (which M-net and Multichoice do not support), therefore proposed that the required percentage must reflect the differences between categories of licensees. The required percentage would therefore be reduced substantially for subscription television broadcasting licensees to a maximum of 10%, in line with the four tier system of broadcasting regulation.

The subscription broadcasters submitted that if the Authority wants to incentivise commercial and subscription television broadcasting licensees to commission independently produced programmes in previously marginalised local African languages and/or programmes from regions outside of the metropolitan areas, then it would be more appropriate to consider alternative approaches, such as licence fee

incentives or rebates, or allowing the commissioning of such programmes to receive far greater scores.

Furthermore, they proposed that the opening to draft regulation 7(2) be amended to read as follows: "Each public and each community television broadcasting service licensee must ensure that fifty percent (50%} ...". They argued that the Legislature and ICASA have consistently recognised that their objectives need to be met by broadcasting services "viewed collectively". There has also consistently been a recognition that the public service mandate should primarily be borne by public broadcasting services. Furthermore, as regards the objective sought to be achieved by ICASA in this new draft regulation 7(2), community television broadcasting services ought to be able to play a significant role.
In the event that the Authority rejects the first proposal on draft regulation 7(2), then in the alternative, they proposed that draft regulation 7(2) be amended to read as follows:

> The percentage of annual independently produced programmes budget spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities must be no less than -
> 1. fifty percent (50%) in the case of each public television broadcasting service licensee and each community television broadcasting service licensee;
> 2. twenty five percent (25%) in the case of each commercial free-to-air television broadcasting service licensees; and
> 3. ten percent (10%) in the case of each subscription television broadcasting service licensee.

In addition M-Net and Multichoice argued for the Authority to recognise that the primary mandate of those licensees is to meet the preferences of their subscribers. The Authority knows subscription revenue is the predominant source of revenue of such licensees, thus it is only if those preferences are met that persons will subscribe or maintain their subscription to such services. .

SOS suggested that 50% of local content production be sourced from independent producers. The reasoned for the increase is that this will boost the growth and

sustainability of the independent production industry. In addition, the Coalition supports a series of non - regulatory incentives to promote the production of local content. The Coalition suggested a creation of local content fund to be used by any audio or audio - visual content service provider planning to produce free to air public service and community oriented local content.

The SOS supported the strengthening and growing of independent television, film production and music industries in order to ensure the acquisition of local content. It further supported the development of robust, diverse independent production and music industries that reflect the demographics and diversity of South Africa.

The SABC submitted that draft regulation 7(2) should be removed. They proposed that the commissioning of content provision in the Position Paper should be drafted as follows:

> " Public, commercial and subscription television broadcasting licensees are encouraged to commission content which covers marginalized local African languages from independent television production companies that are outside non-metropolitan areas as this will assist in the development of the creative industry in non-metropolitan areas. "

The SABC recommended that the proposed 50% quota for content sourced in non-metropolitan areas should be removed. Instead broadcasters should be encouraged to source content from such areas and the Authority should allow the content production market to grow in those areas before the imposition of quotas. They also argued that the 18 months period is insufficient for implementation of the proposed quotas.

The Public broadcaster's rationale was that the creative production HUBS do not exist outside of the major centres (Johannesburg / Cape Town / Durban). They explained that in Cape Town there are only films and advertising productions and the Durban productions are very minimal as compared to Johannesburg. They advised the Authority that, whilst it is commendable to develop markets in non-metropolitan areas, it is equally important to be cognizant of the skill and infrastructure gaps in those areas

Quality content is obligatory for the SABC therefore, same should be available in non-metropolitan areas. Thus, there is a need to up-skill content providers and to develop infrastructure in those areas.

The SABC suggested a duplication of shows into different languages on different channels to ease the amount of time and resources that need to be put into one product.

The NAB was concerned about the obligation being imposed on television broadcasting licensees to ensure that independently produced content is evenly spread. The NAB proposes that the clause be amended as follows:

> "A public, commercial, community, and subscription television broadcasting licensee must ensure that a minimum 40% of their South African television content programming consists of programmes which are independent television productions and the independent television productions. [are spread evenly between, South African arts programming, South African drama, South African documentary, South African knowledge-building, South African children's and South African educational programming."]

In their view the obligation is ambiguous and subject to multiple interpretations.

e.tv submitted that regulation 7(1) and 7(2) place restrictions on the content and form of television programmes that viewers are able to watch. They believed that the expressions in these regulations not only fall within section 16(1) of the Constitution, but that the proposed regulation of this expression involves a limitation of the right to freedom of expression. Put simply, provisions such as draft regulations 7(1) and 7(2) simply go too far, without appropriate justification. This is based on the fact that e.tv has assumed that the genre spread requirement will require an equal number of independently-produced South African documentaries, dramas, as well as arts, knowledge-building, children's and educational programmes. This is a classic form restriction that presupposes the availability of such programmes, the willingness and

capacity of the independent television producing sector to deliver, and viewer demand for such programming.

e.tv had reservations regarding the requirements that;

- programmes must be "spread evenly between, South African arts programming, South African drama, South African documentary, South African knowledge-building, South African children's and South African educational programming"; and
- 50% "of annual independently produced programmes budget is spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities.

e.tv would like regulation 7(2) to be deleted in its entirety. A concern would arise if these requirements were to apply to e.tv's programmes which are independent television productions, given its licence condition that "[a]ll programming, other than news and current affairs, be commissioned out to the independent production sector." Draft regulation 7(1) is vague in the sense that it is unclear what is meant by the term "spread evenly". It is also unclear whether the 40% requirement applies to a broadcaster's local content requirements under the draft regulations, or under its licence conditions.

e.tv proposed that draft regulation 7(1) be amended to give effect to the following;

- The reference to a minimum of 40% of a licensee's local content programming should be amended such that the reference is to that licensee's local content requirements under the regulations; and
- The genre spread requirements should refer to a spread that is objectively justifiable, taking into account the nature of the licensee, and the needs and choices of its viewers.

Draft regulation 7(1) be amended to read as follows:

> "[A] Public, commercial, community and subscription television broadcasting licensees must ensure that a minimum of 40% of their South African television content programming required by these regulations consists of programmes which are independent television productions and the independent television productions are spread [evenly] between, South African arts programming, South African drama, South African documentary, South African knowledge-building, South African children's and South African educational programming. The spread of programmes across genres must be objectively justifiable, taking into account the nature of the licensee, and the needs and choices of its viewers."

e.tv proposed that draft regulation 7(2) be amended to give effect to the following:

1. The reference to "previously marginalised local African languages" should be amended such that it refers to all official languages other than English and Afrikaans;

2. The reference to "programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities" should be amended such that it refers to programmes reflecting stories involving people from or events occurring outside these metropolitan areas; and

3. The reference to a specific percentage quota should be replaced with a "reasonable proportion" requirement.

e.tv's proposed amendment is informed by the view that the phrase "previously marginalised local African languages" could be read in two ways: either to refer to all official languages other than English and Afrikaans, or to a subset of those nine languages. They purported that the phrase could be interpreted to include non-official local African languages such as the Khoi, Nama and San languages. In the event draft regulation 7(2) is retained, e.tv submits that the wording of the vague phrase should be amended to make it clear that reference is being made to all official languages other than English and Afrikaans. Restricting the provision to a subset of these nine

official languages and/or other non-official languages is likely to render the limitation on free speech unreasonable and unjustifiable.

The NFVF was of the view that the proposal in terms of 7.2 of draft Local Content Television regulations recognizes that South Africa is a multilingual and multicultural country, both regionally and provincially. They were of the view that multilingualism is sought and promoted within the context of all South Africa's official languages. Therefore measures must be developed for phasing in and developing all those languages that have been historically marginalised and underdeveloped.

The NFVF proposed a reduction from fifty percent (50%) as proposed in the Position Paper to thirty percent (30%) for subscription and commercial television broadcasters. While the NFVF welcomed the incentive to source local content in marginalised languages and from outside of the Durban, Cape Town and Johannesburg Metropolitan cities, it is also a matter of concern that the fifty percent (50%) margin may adversely affect the sourcing of content from these traditional metros.

All broadcast tiers have a role to play in promoting South African Languages, specifically marginalised languages. What is important is ensuring that all Broadcast services do fulfil a specific role regarding language promotion.

11. REPEATS

e.tv was concerned that ICASA has not addressed its previous submissions regarding the scoring of repeats in respect of new digital channels (including incentive channels) that new digital channels should be exempt from any restrictions on repeats. The FTA commercial broadcaster argues that it will take three to five years (and possibly even longer) before there is a significant audience on the DTT platform. This means that, for broadcasters, the first three years' programming investment will effectively be sunk costs, offering no prospect of a commercial return. Repeat programming is an integral part of the multi-channel broadcasting business model around the world, whether on pay-TV or FTA.

Accordingly e.tv recommended that the definition of repeat in draft regulation 1 be amended to read as follows:

> "'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, but does not apply to television programming on any additional digital channel, including any incentive channel, which is broadcast by a commercial television broadcasting licensee".

e.tv considered the concerns regarding repeats that were expressed during the hearing. It now recommended that the definition of repeat in draft regulation 1 be kept unamended, with a new regulation 10(9) being included that provides as follows;

> "For the duration of the dual illumination period, any repeat on an additional digital channel, including any incentive channel, shall not be subject to the provisions of sub-regulation (8). Towards the end of this period, ICASA shall initiate a public consultation process to consider how to score repeats on additional digital channels thereafter."

e.tv's submission was underpinned by the following considerations;

1. First, should the provisions dealing with repeats remain in the form proposed by ICASA, e.tv – as a commercial FTA television broadcaster operating in a multi-channel environment – would simply be unable to comply;

2. Second, a different regime should therefore govern any bouquet of additional digital channels (including a bouquet of incentive channels) for at least the duration of the dual illumination period;

3. Third, viewers will punish any licensee that broadcasts too many repeats on any channel; and

4. Fourth, the most appropriate regulatory mechanism for dealing with concerns about repeats on bouquets of new digital channels is the channel authorization process.

The NFVF was of the view that repeats should not be limited but the extent to which repeats may contribute to the prescribed local content quota should be capped.

The NAB argued that 50% allocation for a first and second repeats will be severely limiting in the digital environment. NAB posited that the proposed restrictions on repeats be relaxed and the number of repeats should be increased to nothing less than 5 repeats, with a sliding scale for the scoring.

In their additional submission, NAB submitted that children programming repeats should not have restrictions, but should count 100% toward local content quotas. They further proposed that the Authority should adopt a tiered approach increasing the number of repeats at each tier on a sliding scale as outlined:

- First Five Repeats-75%
- Second Five Repeats- 50%
- Third Five Repeats- 30%

The NAB proposed that a new regulation 10(9) be included that provides as follows:

> "For the duration of the dual illumination period, any repeat on an additional digital bouquet, including any incentives channels, shall not be subject to the provision of sub-regulation (8). Towards the end of this period, ICASA shall initiate a public consultation process to consider how to score repeats on additional digital channels thereafter".

Their rationale was that during digital migration, television broadcasters will need more SA local content than ever. Television broadcasters have a wide range of archive programming that can be broadcast during this period. Further, it is the very nature of multi-channel broadcasting that there is a high level of repeats. This is critical to ensure

that the multi-channel broadcaster remains viable and is consistent with programming patterns for multi-channel broadcasters across the world. Repeats also provide licensees an opportunity to recoup a return on investment (ROI) in programming.

The SABC, in their supplementary submission, submitted that repeats for all local children's programming on current and incentive channels must count 100% for every run. They argued that thus far it has been scientifically proven that children learn through repetition and in most cases they are not in the position to comprehend the first broadcast of children's programming, hence the need to repeat children's programming. The SABC also submitted that foreign children animation dubbed into local languages, be allocated full points for every run. They reason that such programming is a recreation of children's programming.

The SABC suggested the following repeat score for local content;

- All local Children's programming repeats should count 100% towards local content;
- The number of points to be allocated per repeat reducing over the two repeats on a sliding scale as follows:

a) First repeat- 100% (same channel, omnibus and cross-channel)
b) Second repeats and all subsequent repeats - 80%

The SABC highlighted that there are valid reasons for children's programme repeats and those reasons are as follows;

(1) Pre-school and junior primary school learners learn best through repetition;

(2) Children's ECD programmes have a long shelf life; they are a result of thorough research and careful educational planning and design which makes them a huge investment that can be used over many years;

(3) 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;

(4) Programmes are repeated because they have a high educational value;

(5) Programmes are repeated due to audience request or popular demand;

(6) Repetition 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 learning. Children learn best in the languages they are most fluent in, which is their home language;

(7) Programmes are repeated in order to increase access i.e. create more opportunities for audiences to view our best programmes when they can; and

(8) For adults and the general public, the SABC repeat programmes that are meant to develop skills. These programmes are also repeated on requests by these target audiences.

In addition, the SABC submitted that Children programmes broadcast 12 months (one year) after its last transmission ought to be considered as a 'new' programme and consequently receive 100% point allocation. Children's programmes are produced to very specific age groups (Early Childhood Development; Tween and Teen). A tween considered 12 years old will watch a programme this year produced for tween but the following year, that tween falls under teen and will thus consume programming for the teen market.

The public broadcaster added that it is expected to provide an educational channel on DTT. The SABC currently spends on average R140 million annually on educationally specific content on its current three analogue generalist channels. The repeat mandates would prohibit the SABC from providing educational programming on its

generalist's channels and its proposed educational channel as is required through DTT regulations.

MMA was of the view that the Authority does not intend to implement quotas on repeats of children's programming. Repeating children's programming may be positive, however there needs to be a limit on the age of the programme being repeated. They proposed that the Regulator looks at how different countries regulate children's programming. MMA is entirely aware that children programming is not only costly but is also not profitable, however it contributes towards the development of our children and therefore its value to the nation must not go unrecognised.

According to MMA, children's content produced 15 years ago may not always be relevant to the education of children today. They suggested that ICASA looks into the Australian model and demand more children programming on TV. They further proposed the following:

PUBLIC TV:

- 540 hours per year of children's programming
- Of the 540 hours 40 hours of the children programmes must be, original first run, South African productions
- There should be no limit in the repeat of programmes of South African origin, all other children programming can only be repeated 4 times in a period of 3 years.

COMMERCIAL TV:

- 290 hours per year of children's programming
- Of the 290 hours 20 hours of the children programmes must be original first run, South African productions.

The NFVF supported the current regulation which does not limit repeats but limits the number of repeats which would count toward compliance, thus discouraging excessive repeat broadcasting of content.

In addition, the NFVF proposed an exception for children programming. They were of the view that educational children's programming should not be unlimited, so as to encourage the continuous creation of new content, however a higher number of repeats should contribute to compliance in relation to educational children's programming. They believe that Children's programming that is not educational should draw a lower number of repeats for compliance purposes.

The NFVF submitted that a maximum of 5 (five) repeats should count towards compliance on a sliding scale. For education children programming, a maximum of 15 (fifteen) repeats and for non-educational children's programming a maximum of 10 (ten) repeats, both on a sliding scale. They reason that this will ensue that the best interests of children are balanced against the need to monitor and protect the value of intellectual property associated with local content, particularly independent content and the need to encourage the development of new local content.

M-net and Multichoice did not agree with the Authority's statement that it does not interfere in the number of repeats a broadcaster can have, but rather limits the extent to which repeats contribute towards compliance. By limiting the number of repeats that count towards compliance (despite the value of repeats to broadcasters and viewers), M-net and Multichoice argued that broadcasters are unable to derive optimal benefit from their archives in a multi-channel environment.

M-net and Multichoice suggested that the Authority should permit a greater number of repeats to count towards compliance. They were of the view that a single broadcast of a programme or series of programmes does not recoup the costs of local content.

M-net and Multichoice also proposed that draft regulation 10(8) be amended so that it reads as follows;

"The repeats score is:

- for the first repeat of a local television content programme = 100%;
- for the second repeat of a local television content programme = 50%, and

- any further broadcast of a local television content programme will not count towards compliance with the local television content quota."

Their rationale was that in a multi-channel environment a greater number of repeats broadcast across different timeslots, days and channels will enable audiences to watch the programming they want to, given that there will be so much more competing content. In this way, local content objectives are served by facilitating the maximum number of people being able to watch local content.

In addition, they argued that if ICASA wants to incentivise the production and broadcasting of local content, it ought to give broadcasters who produce or commission, and then broadcast local content the full opportunity to recover their costs and gain the maximum value from their local content investment.

Linked to draft regulation 10(8) proposal, M-net and Multichoice further proposed the following amendments to the definitions set out in draft Regulation 1;

1. The current definition of "First Release Programme" should be deleted and replaced with the term "First Broadcast" which means “Television content programme on a particular channel";

2. The current definition of "Repeat" should be deleted, and two new definitions should be inserted, namely definitions of "First repeat" and "Second repeat". We propose that those definitions read as follows:

"First Repeat” means the five broadcasts of a local television content programme following the first broadcast;

"Second Repeat" means the sixth to tenth broadcasts of a local television content programme.

They argued that this proposal permits a specified number of repeats and addresses the Authority's concern that programming may be repeated indefinitely. It therefore eliminates the need to consider the question posed by ICASA in its e-mail regarding the number of years that repeats should count - only the number of repeats specified in the regulations will count towards compliance.

In addition, the Subscription broadcasters were of the view that this proposal is also in line with our overall approach, namely that these regulations should not distinguish between current and incentive channels, but rather that the regulations have a single system which is applicable to both the dual illumination period and beyond that.

e.tv submitted that subject to compliance with sections 16 and 36(1) of the Constitution, ICASA is empowered by section 61 of the ECA to make regulations dealing with independently produced South African programming. However, unlike certain other regulatory issues, section 61 of the ECA lays out the parameters of such regulations. Where Parliament has laid out such parameters, ICASA may not enact regulations which transgress those parameters. "Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can in practice do is lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it.

The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it." There thus appears to be no basis under section 61 for ICASA to regulate matters such as the scoring of repeats of local television content. This is especially when the effect of these regulations is to reclassify certain local content as foreign content, even though it meets the criteria for local content laid out in section 61(2)(a) of the ECA.

SOS agreed with SASFED's position on repeats that contradicts ICASA's intention to retain its decision on this matter. They suggested that the percentage on repeats should be reduced according to the broadcasting tier, the exposure such a repeat has initially enjoyed from other broadcasters and the time duration such a repeat is transmitted on a weekly basis. SOS added that any further repeats of the programme should not be accounted towards compliance with the content quota.

The current repeats are sufficient to achieve the intended objectives. In addition, changing the requirement may lead to monotonous television, to the disadvantage of the citizens and the harm of television. This is in view of the availability of new services which will be competing with traditional television.

Limiting number of repeats that count towards compliance is meant to ensure there is a constant supply and broadcast of new programmes. Licensees can continue to derive benefits from programming without necessarily focusing on accruing Local Content points in the process.

The argument that the Australian model dictates that 390 hours per year of children's and preschool be broadcast on television is not relevant in the current SA context because currently the public service broadcaster – SABC 1 and 2 are required to broadcast minimum 20 hrs per week = 1040 hours Annually. SABC 3 is required to broadcast minimum 12 hours per week = 624 hours annually. e.tv is required to broadcast minimum 16 hours per week = 834 hours annually.

12. GENERAL PROVISIONS: MUSIC

M-net and Multichoice proposed that the Authority revert to an exemption system, and that draft regulation 4 be significantly simplified so that it reads:

"The Authority, upon written application and good cause shown by a sound broadcasting licensee, may vary any condition imposed by regulations 3.1 to 3.5. This would replace the proposed draft regulation 4(1) to (3)."

In addition, the Subscription broadcasters posited that there is no need for draft regulation 4(4). They were of the view that South African music content requirements have already been imposed on subscription sound broadcasting licensees by virtue of draft regulation 3(4).

Mental-Wave proposed amendment of sub-regulation (1) to read;

“A sound broadcasting service licensee that cannot meet the local content requirements must, in order to be considered for a broadcast license, must apply to the Authority for exclusion, and must submit proof that there is limited music supply in their defined format.”

Mental-Wave argued the purpose of the law would be ineffectual without such. The issue of compliance should be linked to the broadcast licence and its renewal.

Furthermore, Mental-Wave proposed amendment of sub-regulation (2) to read;

“A sound broadcasting service licensee that cannot meet the local content requirements must first cease broadcasting to avoid being in breach of its licence and then submit proposals, with their renewal application in terms of sub -regulation (1), on how they will work with the music industry to address the shortage of music supply in their defined format.”

Mental-Wave proposed amendment of sub-regulation (1) to read;

“A licensee that contravenes any regulation of these Regulations is liable to a fine not exceeding the greater of R5 000 000 (five Million Rand) or 10% of the licensee's annual turnover for every day or part thereof during which the contravention continued and the suspension of the contravener’s broadcasting licence for a period at the discretion of the Authority i.e. off-air.” Their rationale is that there is a need, for appropriate and real penalties that relate to the broadcast licence.

Mental-Wave also proposed deletion of the entire section on Formulas (Format Factors). They argued that formulas do not constitute content, rather they present loophole to avoid and evade compliance.

Primedia submitted that the provision in regulation 4 is confusing, given the Authority’s findings set out in the Discussion Document, where it was stated that the Authority concedes that formats are not well defined and suggest that they might even have to be done away with. Primedia views this provision as indicative of the fact that the

Authority is uncertain of the available music supply. They further suggested that the broadcasting industry should take the lead in reviewing and defining formats.

Furthermore, Primedia found the provision of regulation 4(2) to be unreasonable in that it requires broadcasters to engage with players in a separate and unregulated industry. They stated that radio stations are not in the business of, nor do they have the expertise to engage in the production of music. They submitted that this provision is tantamount to requiring broadcasters, who find themselves in a situation where not enough product is being produced to meet their requirements, to engage in commercial arrangements or joint ventures with players from the music industry.

Regulation 4 (1) requires a licensee that cannot meet the local content requirement to apply to the Authority for exclusion and provide proof that there is limited music supply in their defined format.

Regulations 4(2) requires a licensee, who cannot meet the local content requirements, to submit proposals to Authority on how it intends to work with the music industry to address the shortage of music supply in their defined format.

It is the duty of all stakeholders to work with the music industry in ensuring that new music is produced regularly. Radio stations must present a plan of how they will work with the sector to improve the situation. The idea behind this, is to ensure that all stakeholders contribute to building the local production sector.

13. MUSIC QOUTAS

SASFED supported ICASA'S regulations on production of local music through the increase of local music obligations on SA radio broadcasting. The support of this regulation will eventually lead to a positive impact on the country as a whole.

The SABC agreed with the proposed SA music quota of 35% for commercial radio whilst it objects the 70% quota for public radio. The public broadcaster proposed 60%

SA music quota for public radio and recommends that this quota be implemented in stages as this will ensure that the audiences do not experience a sudden change in their experience of the radio station. SABC is of the view that increases of the local music quota should be based on music research with the public thereby ensuring that radio stations respond to listener needs. The SABC was of the view that 70% is high and will lead to loss of audiences. This proposed quota will hinder the growth of the public broadcaster.

In light of section 6(7) read with section 8(e) of the Broadcasting Act of 1999, as amended, the SABC has to be responsive to the needs of its audiences. In line with these provisions Lotus FM strives to meet the demands of its audience.

The NAB submitted that the proposed draft regulations ignores the fact that sound broadcasting licensees are licensed according to genre/format, which is highly dependent on the actual availability of music–supply side. They averred that the Authority's study conducted in 2014, has shown that certain stations are struggling to reach their quotas, mainly due to limited supply of SA Local Content. Radio stations that meet their quotas do so purely due to the availability of music genres they are licensed to broadcast. They contended that the Authority should be mindful of the availability of volume not to be the only consideration. Quality should also be taken into account. Further they argued that licensees have an obligation to promote culture and should not be forced to accept sub-standard offerings.

In sum they posited that the number of respondents to the Discussion Document cautioned ICASA that in considering quotas, the demand side should also be considered which focuses on audiences‟ reflections of choice and preferences. They also substantiated their submission with the following reasons;

- The Freedom of Expression ("the FXI") further cautioned that consumer choice and preference are seldom captured to emphasise the promotion of local content and plurality of views. It was further indicated by the SABC in its response to the Discussion Document that any attempt to increase local content quotas should be informed by consumer research which should form a vital component to gauge consumer preferences and demand. It is concerning that

despite these observations which the NAB supports, ICASA has decided to increase the level of local content quotas across all three tiers of broadcasting.

- The South African Music Performance Rights Association ("SAMPRA") raised a concern questioning the extent to which ICASA had consulted the music fraternity to address issues of supply in relation to the requisite increase.

The NAB believed that the current SA Local Content quotas are adequate. These quotas were developed to ensure that there is a minimum threshold for new entrants into the market. Many licensees find it challenging to meet their unique quota's (these exceed the minimum threshold), and therefore cautions the Authority from applying a one size fits all approach. They argued that the radio stations are dependent on the availability/supply of local music and development of new music genres.

The Association of Christian Media (ACM) submitted that for Christian community radio broadcasters of interest (which broadcast in predominantly English), the pool of SA Local Music is limited. They therefore proposed that the music quotas be increased to 50% for community sound licensees.

They further proposed that for non-English Christian community radio broadcasters the music quotas be increased to 70%. ACM submits that South African music needs to be supplemented with music from abroad and is of the view that only 20% non-South African music is just too little.

Whilst the ACM supported the increasing of the local content quotas they argue the following for only 50% increase:

- There is a huge demand of English International Christian music in South Africa.
- International artists have large production budgets that are not available to South African artists and consequently the technical quality of local music is inferior and less attractive.

- The investment required to make South African English music competitive with what is available from the matured International market would not be possible in the South African context.
- Station viability depends largely on music, and licenses were issued in response to community demand and expectation that listeners will be able to hear their favourite (International) artist
- Reduce the International music content to 20% will render these stations uncompetitive as current listeners will access the International Christian music they want from the Internet or other digital media sources.
- The investment required to make South African English music competitive with what is available from the matured International market would not be possible in the South African context.

Link FM indicated that there are very practical limitations to the ability of "community of interest" broadcasters to reach South African music content quota of 80% envisaged in the Draft Regulations. The limitations stem from the following reasons;

- It is probably well beyond the reach of many broadcasters, particularly community broadcasters to attain the local content quotas currently in place, before taking into account the increases proposed in the Draft Regulations.
- In the case of a "community of interest" broadcast licensee, content is a limited resource because of its specific nature or "subject interest".
- This is before even giving consideration to the aspects of quality and even the spiritual accuracy of what is available within the particular Christian community of interest.
- Ensuring that the nature, style and quality of music obtained for broadcast has already been carefully considered and monitored by the respective music distribution organisations is a challenge.
- It should be considered that advertising clients are listeners with an acutely "critical ear" and who are particularly interested in listener statistics and RAMS ratings.
- Most music recording and production studios are not located in the Eastern Cape but rather in Gauteng or the Western Cape, as a general rule.

- The responsibility for stimulating the content production industry must surely lie at the door of National Government, as it is an industry initiative which is in the national interest; and
- The costs of producing quality music recordings, particularly those that are professionally produced, mixed and mastered with a radio audience in mind, is prohibitively expensive. Therefore, there is a huge financial barrier to entry that already exists for entrants into the music recording sector. This cannot be left at the door of the broadcast industry.

As a result Link FM petitioned the Authority to consider amending the Draft Regulations to include an exemption in the case of "community of interest" broadcast licensees as to the necessity to include South African radio content or, alternatively, at the minimum, leaving the South African content quotas at 40% currently in place. Link FM advice that for community broadcasters the current 40% South African music content quota is an adequate stimulus for the South African music industry.

Magic 828 pointed out that local content is a fractious issue that cannot possibly be addressed with one sweeping rule that fits all. A small country (musically) such as South Africa has a very tiny limited production of music. Taking Magic 828, which must not be confused with a Classic Hits or Contemporary adult stations – is a Golden Oldies Station relying on Chart Hits only of the past. Thus a very small amount of South African hits made Top 20 or 30 in South Africa, thus would not be able to meet the Local Content demands in the draft regulations.

Primedia submitted that the prescriptive nature of regulation 3 in particular the reference to “even spread” restrict the flexibility and editorial control that a radio station enjoys in its scheduling and in fact amounts to commercial interference by the Authority. They submitted that the provision is in direct conflict with section 2(y) of the EC Act. Therefore they recommend the deletion of the phrase “… and that such South African music should remain as currently worded in the regulations where the requirement is to ensure that “South African music is spread reasonably evenly throughout the said period. They submitted that by imposing a requirement that the little music that talk stations do in fact play not only meet local content quotas but also

be spread evenly throughout the performance period is overly burdensome and encroaches on the commercial an editorial independence and viability of a station.

Primedia proposed amendment of draft regulation 2 and 3 as follows:

- Regulation 2 which deals with application to be amended as follows:

"2.1 These regulations shall apply to the holder of any category of sound broadcasting licence subject to Regulation 2.2.
2.2 The holder of any category of sound broadcasting licence who devotes less than 15% of its broadcasting time to the broadcasting of music during the performance period shall ensure that 35% of such music played is local content and this shall be assessed as a percentage of total music played by a holder of such licence."

- Regulation 3 – insertion of the following:

"3(6) A holder of sound broadcasting licence referred to in regulation 2.2 must ensure that after eighteen (18) months of the gazetting of these regulations, a minimum of 15% of the musical works broadcast during its music programming, consist of South African music is reasonably spread throughout the music programming of such a licensee. The licensee must further increase the local content of the music played, increasing to 25% in the following year and to 35% in the third year."

Primedia submitted that it is unreasonable of the Authority to revise the quotas upward, as substantially as it is proposing, without substantiating research, especially when radio stations' ability to comply is reliant on the supply of a product by a complete separate and unregulated industry, the music industry. They submitted that it is important that the Authority sets out the process to be followed and the criteria to be applied when dealing with applications for exclusions in respect of not complying with the local content quotas due to lack of music supply. The Authority is essentially expecting the industry to conduct the research and supply proof without independently establishing for itself whether the revised quotas can indeed be met by supply across all formats.

Primedia recommended that the format factors in relation to coverage of live music and interviews, as proposed in regulation 6 (1), be increased from 2 to 4. They further recommended that the format factors, in relation to promoting new musicians, as proposed in regulation 6(2), be increased from 1 to 3.

Impact Radio posed a question to ICASA on what proof would they deem sufficient to grant an exclusion with regards to the clause in the draft regulation that states:

> "A sound broadcasting service licensee that cannot meet the local content requirements must apply to the Authority for exclusion, and must submit proof that there is a limited music supply in their defined format".

Furthermore, Impact Radio pointed out that the Authority's intent in the draft regulations, to pressure the already overburdened community broadcasting sector into procuring music content to a quota of 80%, which is higher than any other broadcast sector, must by necessity be regarded with scepticism as to its practicality. The music available to Impact Radio is limited due to its specific "common interest" nature and Impact Radio relies heavily on its ability to source content from around the world.

Impact Radio also suggested that the Authority amend the draft regulations to include an exemption in the case of "Community of Interest" broadcast licensees as to the necessity to include, or alternatively, at the minimum, leaving the South African content quotas at 40% currently in place. They mentioned that ICASA conducted a "Survey of Supply and Availability", ICASA must make this available in order to confirm the accuracy thereof (incl. the verification of the Community broadcasters interviewed).

In term of regulation 3(2), Impact Radio would like the Authority to reinstate the word "reasonably" between the words "spread" and "evenly" in that clause such that it reads as the clause has always read in relation to the spread of local content. It is important that commercial broadcasters have the flexibility to determine the reasonable spread of local content throughout the performance period. The scheduling decisions are the life blood of commercial radio as they determine the "signature" sound of a particular station and to interfere with by regulation would be to unduly interfere in the commercial activities of licensees contrary to section 2(y) of the ECA.

Impact Radio painted the following picture with regard to a broadcaster sitting at 40%, wishing to achieve 80%:

- Taking the performance period into account, the performance period equates to 126 hours per week. This would be approximately 504 hours per month.
- Impact Radio would be expected to broadcast 200 interviews in 30 days during the performance period. This equates to an interview with South African musician(s) or composer(s) with a normal minimum of five 5 minutes, every 2.5 hours for the entire month. This equates to approximately 6-7 interviews every day of the month (between 5am and 11pm), every month.
- This is not achievable and as far as good radio practice goes, this is contrary to good radio.

Anthony Luka proposed that the music quotas for community and commercial broadcasters be increased to 80% and for SABC be increased to 75%. No reasons were provided for the proposed increase.

In principle, M-net and Multichoice submission was opposed to a quota increase in Draft regulation 3(4), dealing with subscription sound broadcasting licensees. M-net and Multichoice argued, the quota applicable to a subscription sound broadcasting licensee has increased by 200% (i.e. from 10% to 30%). This increase is excessive, arbitrary and unjustified. They were of the view that the Position Paper provides no reasons for the proposed increase, nor does it assess the impact of such increase.

Marc Klein submitted that legislating more local music to be played on radio stations here can have a very big impact on South African Art and Culture. At least 75% of music on radio stations and any public channels should be local.

Mental-Wave proposed an amendment to read;

> "(1) A holder of a public sound broadcasting licence must ensure upon the next renewal of their sound recording license, a minimum of 90% of the sound

recordings and music videos broadcast in the performance period, consist of South African musical content and that such South African music is spread evenly throughout the performance period"

Mental-Wave was of the view that public funds have the requirement of;

- Supporting local culture
- Providing South Africans with access to their cultures
- Interacting with culture as education.

There is no basis for public finds to be used to pay, on a policy basis, any less. In terms of community broadcasting Mental-Wave propose an amendment to read;

"(3) A holder of a community sound broadcasting licence must ensure upon the next renewal of their sound recording license, a minimum of 90% of the sound recordings and music videos broadcast in the performance period, consist of South African musical content and that such South African music is spread evenly throughout the performance period."

Public funds have the requirement of:

- Supporting local culture
- Providing South Africans with access to their cultures
- Interacting with culture as education

There is no basis for public finds to be used to pay, on a policy basis, any less.

Mental-Wave proposed an amendment to read;

"(2) A holder of a commercial sound broadcasting licence must ensure upon the next renewal of their sound recording license, a minimum of 80% of the sound recordings and music videos broadcast in the performance period

consist of South African musical content and that such South African music is spread evenly throughout the performance period."

Mental-Wave argued that if the sector with the largest financial impact in the music industry and the largest generator of royalties for copyright owners is not locally focused then the cost to the country and music industry is extremely prejudicial.

Mental-Wave proposed an amendment to read;

"Every holder of a subscription sound broadcasting licence must ensure upon the next renewal of their sound recording license, a minimum of 51% of their bouquets consist of channels made up of South African music content."

Mental-Wave was of the view that the cost to the country is equitable and fair at 51%.

The NAB submitted that for community radio broadcasters of interest, the pool of SA Local Music is limited. They therefore proposed that the status quo of 40% be retained for community sound licensees. Where possible, community sound broadcasters should have individual engagements with the Authority to agree on promises of performances toward increasing music quotas (over an agreed period of time) to a threshold that is feasible for the radio station.

Furthermore, the Association posited that in the event that the Authority 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 added 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. In addition they argue that the emphasis on sourcing geographically from local productions is illogical, particularly for community of interest stations.

The SABC submitted that it is prepared to increase its SA local music broadcasted on its 14 public service stations (language stations) excluding Lotus FM up to 60%, with an increase by 5% over a period of three years, on the commercial sound services of the SABC. They argued that the Authority's proposed increase to 70% of local content on all SABC sound broadcasting services is unachievable.

Primedia was of the view that regulations 2 in its current form does not apply to talk stations as talk stations by their very nature play less than 15% music. They proposed that there needs to be proper consultation with talk stations' licence holders before such a change can be implemented. They submitted that the proposed change ignores the talk stations format and in fact create a hybrid of talk/music station format. They further submitted that the proposal seeks to put in place a material change to talk stations' licence conditions and that such a change, cannot be put in place without due process having been followed. They were of the view that such a process should be with all talk stations' licence holders as they would be the ones directly affected by the material change.

Link FM would like the Authority to accommodate amendment to licence conditions of many community broadcast licensees regarding split between music and talk. They reason that Format Factors in the Draft Regulations allocate weighting to activities such as interviews to promote South African musicians and promotors disregarding the talk and music split of stations whereby those stations with less talk will not fully benefit from this provision.

Link FM sought clarity on whether to conclude that fulfilment of 20% quota from the coverage area is actually a proposed draft regulation or not. They reason that the Position Paper indicates that the Authority has decided to set the minimum South African music quota for community radio at 80% and the table included in the Position Paper stipulates that 20% of the quota must be sourced from the coverage area. The latter stipulation (that 20% of the quota must be sourced from the coverage area) does not appear in the ICASA Draft South African Music Content Regulations.

Regulation 2 provides that the South African content regulations apply to all sound broadcasting licensees including those who devote less than 15% of their broadcasting time, during the performance period, to music.

Regulation 3 prescribes the minimum local content quota for each of the three sound broadcasting service categories and further prescribes that the minimum

South African music played "is spread evenly throughout the performance period".

Regulation 4 (1) requires a licensee that cannot meet the local content requirement to apply to the Authority for exclusion and provide proof that there is limited music supply in their defined format.

Regulation 6 is concerned with the format factors that a radio station can use to essentially score additional points towards the South African music content quotas, which factors, the Authority is suggesting remain unchanged.

The Authority encourage subscription broadcasters to broadcast audio sound channels devoted to playing South African local music.

14. MONITORING

The NAB was of the view that the Authority seems to have ignored its written submission that reporting is administratively onerous on both radio and television licensees. NAB members have confirmed that reporting is labour intensive as it is done manually, and automation software is costly, and not readily available. Broadcasters are further concerned that often they are required to re-submit information already provided to ICASA. On the other hand, licensees are not confident that monitoring is satisfactorily done as it is based on spot checks, and this does not necessarily reflect a true compliance picture of a licensee.

In addition, the NAB submitted that there is a lack of alignment in the Authority's systems, and that there is a need to simplify and standardise reporting mechanisms. It is their view that the Authority ought to speedily and timeously provide licensees with their monitoring reports. The Authority must ensure that there is consistency in reporting timelines.

MMA submitted that the reported failure by ICASA to undertake one of its core duties has led to the lack of tangible data around compliance and has accordingly cast a

shadow of doubt around the current local content quotas, their practicality and suitability. The current practice has seen the reliance on the existing licensees for data.

Given the importance of the issue it is critical that compliance is independently, accurately and continuously monitored using the same standards and criteria. Furthermore MMA alluded that the Authority and the licensed broadcasters argue on Paragraph 3.7.1.1 of the Draft Regulations, that there are reports that show that the broadcasters generally meet or exceed their local content quotas is inaccurate and biased – and as such this assertion is disputed. This is due to the challenges around monitoring and compliance by the regulator.

According to MMA, research on the quality and diversity of SABC programming, to cover the period 2014 – 2015 is being conducted. The research examines local content quotas, repetitive news stories and overall quality of news bulletins. Although the research has not yet been finalized, current data suggests very similar trends to the results of both the 2012 and 2013 monitoring which demonstrated that the SABC was filling up their local content quotas with excessive amounts of repeated programming. If repeated programming were to be excluded, the SABC would clearly be far below its mandated local content requirements. Already it can be seen that at least one channel is currently not meeting their local content quota.

Furthermore, MMA supported 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 is critical that the methodology embraces Digital Terrestrial Television (DTT) in South Africa.

In addition to the reporting obligations, MMA would like ICASA to investigate adopting the certification system for local content, which has been adopted by the Canadian Radio-Television and Telecommunications Commission and provides an additional confirmation of compliance. One of the most unique features of the Canadian broadcast industry is that it is largely self-regulating.

SOS encouraged ICASA to explore Canada's barcode registration system that ensures that the introduction of innovative tracking systems meant for local content

across channels, broadcasters and platforms are effective. This is mainly because broadcasters are able to hide budget acquisition through a clause that allows to claim commercial confidentiality. They asserted that the origins of the dual monitoring system was due to a more complex subscription broadcasting sector. Thus while SOS appreciates that setting aside a percentage of the acquisition budget was a simpler system, it made it difficult to know exactly what is included in the acquisition budget.

Furthermore, SOS recognised the complex nature that involves monitoring and it thus encourages that it is essential that monitoring and compliance are streamlined for ICASA and broadcasters alike. It proposed that ideally broadcasters should be allowed to self-regulate while ICASA plays a more auditing role. SOS noted the independent's production continuous battles meant to ensure and compel ICASA to regulate the enforcement of monitoring and compliance by broadcasters. They pointed to the fact that between 1999 and 2015, ICASA has only produced 4 reports on local content compliance by the SABC.

Kagiso Media was of the view that the format factors need to be radically simplified by focusing only on the kinds of genres of local programming that ICASA wishes to promote at a point in time. The proposed format factors are too complicated for broadcasters to comply with and are too complicated for ICASA to monitor and assess the level of compliance.

Kagiso Media was also not aware of any monitoring and compliance reports on local content compliance of any broadcaster to date which;
- deal specifically with compliance format factor reporting
- reflect an actual computation of currently applicable format factors even though these have been in existence for many years
- deal with the effectiveness or otherwise of the format factors in terms of promoting specific genres of SA TV Content.

Kagiso Media recommended that;

(a) ICASA should review tri-annually the effectiveness of the specified format factors based on industry practice and produce a public report;

(b) the review must contain details of the level of SA TV Content being produced in the particular genres or languages or areas which are specified in the format factors; and

(c) ICASA must identify additional or alternative genres, languages or geographic areas that remain ignored or under served in the production of SA TV Content and include these in the format factor calculations.

The aim is to have a measurement performance indicator of the effectiveness of format factors and industry compliance therewith.

SASFED recommended the introduction of innovative electronic tracking systems so that local content can be tracked across channels, broadcasters and platforms. ICASA should explore the Canadian barcode registration system that ensures the registration of local content to allow for the tracking of content across different channels, broadcasters and platforms.

The purpose of monitoring compliance by licensees is centred on the public interest principles and in doing so ensures that local cultures and languages are preserved.

The monitoring methodology that the Authority uses to monitor compliance is in line with other international best practices and the Authority's mandate. Although the Authority's approach to monitoring is in line with the above, it is important to note that these countries are much more advanced and when they moved to DTT they equally experienced challenges initially, which were overcome with time. The Authority appreciates the fact that its methodology should embrace DTT. Although still in the analogue era, and whiles the Authority investigates methods to improve its methodology, it seems currently that the methodology is in line with the countries that have moved to DTT.

15. AUDITED REPORTS

The SABC posited that compliance reports and financial statements should be audited once a year. The SABC recommended that the set timeframes should be reviewed so

as to accommodate instances wherein broadcasters are unable to fulfil their reporting obligations due to reasons beyond their control. They reason that for them the reports can only be available after they have been approved by Parliament and the Minister of Communications. Thus, for the SABC, a reasonable time for submission of audited reports would be 7 months after end of the financial year.

e.tv was concerned that if the submission of those audited monitoring reports requirement entails the appointment of independent auditors it would add cost and complexity to broadcasters' annual financial audit. The FTA Commercial broadcaster submits that it is the function of ICASA to check and "audit" the monitoring reports of broadcasters and that it would be unduly burdensome to put additional requirements on broadcasters to have their reports audited.

The NAB was of the view that the requirement to submit audited monitoring reports is onerous on broadcasters, and adds another administrative layer and will add to an escalation of costs for broadcasters. The NAB is opposed to this clause and proposes for its deletion in total.

In its additional submission, the NAB recommended that the Authority should consider the Canadian web-based methodology of reporting as explored in the ICASA-Pygma Study. Further they advocated for the paperless approach adopted by the South African Revenue Services (SARS). Furthermore they argued that the licensees have internal mechanism of vetting ICASA's compliance reports; thus, another auditing requirement will be a duplication of activities.

In respect of audited financial statements the Authority has a discretion to waiver the timelines based on the reasons provided.

16. EXEMPTIONS

On the backdrop that quotas across all tiers remain unchanged NAB welcomed the retention of the exemption clause to further cater for licensees that are unable to meet their current quotas. ICASA has over the years had to consider exemption applications for specific stations which do not have an adequate supply of music in their licenced

format. Based on the studies ICASA conducted, it is evident that licensees are meeting their current quotas, and where possible exceed these quotas.

With regards to clause regulation 4(1) Kagiso Media submitted that the draft regulations do not clearly set out a process with regard to applying for exclusion from the prescribed local content quota. It is suggested that there needs to be a formal process requiring a public notice and comment procedure. To this end the Process and Procedure Regulations would need to be amended and have a new form (i.e. Form O for class licence and Form P for individual licence).

Link FM was against the provision that sound broadcasting licence applying for exemption must submit proposals on how they will work with the industry to address the shortage of music supply in their defined format. They believe that this will further burden the already overburdened community broadcasters with the responsibility to take meaningful steps to and exert significant influence over stimulating growth in the South African music content sector, which is not entirely reasonable.

17. CONTRAVENTION AND PENALTIES

M-net and Multichoice proposed that the draft regulations leave penalties to be dealt with in terms of s17D and s17E of the ICASA Act, read with ICASA's Regulations Regarding Fines and Penalties of 2002. These proposed penalties are unreasonable, excessive and completely disproportionate to the objectives of the Regulations and the harm that could be caused by a contravention of the regulations.

The SABC submitted that the Authority should consider each case on its merit and consider alternative non-monetary punitive measures in cases of deliberate violation of the conditions. They raised the challenges that the broadcasting industry is faced with, such as lack of funding, regulatory bottlenecks and shortage of digital content and supplicate the Authority to consider these in order to determine an appropriate penalty.

The NAB submitted that the Authority should consider reducing non-compliance penalties. Their rationale is that the Authority does not respond to licensees in a timely fashion – if at all.
In addition, the Association pointed out to the Authority that a penalty based on annual turnover is exceptionally onerous. They argued that the proposed penalties for the contravention by both commercial television and radio broadcasters is set at a staggering R5 million or 10% of the licensee's annual turnover for each day, or part thereof, during which the contravention continued. While the penalty for community sound and television licensees is a fine not exceeding R50 000.

The NAB further proposed that;

- Any contraventions of the SA Local Content Regulations be referred to the CCC for determination;
- The quantum of a fine recommended by the CCC should not exceed R1 million;
- ICASA to harmonise the contraventions and penalties of its Regulations to align them with the fines adequately provided for in the ICASA Act (sections 17B, 17D and 17H of the ICASA Act) and there is no need to insert penalty provisions in the draft regulations.

TBN and Link FM were of the view that the penalties proposed are punitive and unrealistic. Link FM indicated that the likelihood of non-compliance on the part of community broadcast licensees, and particularly "community of interest" broadcast licensees (for example, due to lack of available content) makes the penalties even more draconian. TBN requested clarity as to whether sub-paragraph (2) of Regulation 9 on Contraventions and Penalties is to be interpreted as mutually exclusively from sub-paragraph (1). More accurately, should sub- paragraph (1) be interpreted not to apply to community television broadcasters?

18. RECORD KEEPING REQUIREMENTS

The SABC suggested that the record-keeping requirement should be aligned to legislative provisions of section 53 of the Electronic Communications Act of 2005,

which provides that broadcast material should be kept for 60 days. Regulatory requirement has a major impact on storage requirements as well as cost. To store digital material for a broadcaster with numerous channels may be problematic as a huge storage space will be required.

M-net and Multichoice proposed that the opening to draft regulation 11(1) be amended so that it reads: "Public, community and commercial television broadcasting licensees must keep and maintain logs …" Given that subscription television broadcasting licensees will now be subject to an expenditure requirement, subscription television broadcasting licensees should only be required to keep records of their total expenditure on local content sufficient to demonstrate compliance with the applicable provisions of the Regulations.

The Subscription broadcasters also proposed that current draft regulation 11(2) be renumbered sub regulation (3), and that a new sub-regulation (2) be introduced to deal with the recordkeeping requirements of subscription television broadcasting licensees. They further suggested that it be worded as follows: "Subscription television broadcasting licensees must keep an audited record of the amount of their expenditure as contemplated in regulation 6". M-net and Multichoice proposed new wording in the latter part of paragraph 79, from first submission, such that the recordkeeping requirements imposed on subscription television broadcasting service licensees be the following:

> "Each subscription television broadcasting service licensee must include a note at the end of its annual financial statements in which the auditors must indicate whether or not the licensee complied with the spend requirements set out in regulation 6 of these Regulations."

Mental-Wave proposed sub-regulation (2) be amended to read:

> “(2) The logs, statistical forms and records contemplated in sub -regulation (1) must be preserved in original for a period of not less than 7 (seven) years after the date of last entry”

Mental-Wave argued these are copyright records and may be referred to years ahead in a digital world storage of records is easy, efficient and takes not space – it is not a burdensome compliance.

19. GENERAL COMMENTS

M-net and Multichoice submitted that sector developments require a fundamental re-assessment by the Authority of whether there remains a need for television local content regulations, and the nature of any such regulations. Their rationale was that traditional broadcasting services are at a huge disadvantage in that they currently have significant regulatory restrictions and obligations, including local content obligations, imposed upon them, whilst mobile and online audio-visual content providers are subject to little or no such restrictions and obligations.

Further, they were of the view that the disjuncture between the evidence before the Authority on the one hand, and its Position Paper and the draft Regulations on the other hand, is such that the latter cannot be described as "evidence-based regulation". They believe that the thorough analysis and work in the Consultant's Report, the detailed representations made by interested parties, and the references to international best practice do not seem to have prompted the Authority to consider whether there is any market failure as regards local television content, whether regulatory intervention is still required, and if so what the nature of that regulation ought to be.

Mental-Wave submitted that the Authority must include a proviso that all terms used where applicable is as used have meaning as per the Acts meaning the collective of "section 4(j) of the ICASA Act read with section 61 of the Electronic Communications Act (Act 36 of 2005 as amended), the Copyright Act 98 of 1978 as amended, the Regulations, the Performers Protection Act 11 of 1967 and the Collection Society Regulations". This will improve understanding and use of the Bill, and decreases future argument over what would be termed bad drafting – definitions are the backbone here.

With respect to "Application of these regulations, Mental Wave proposed the amendment of the sentence to include 'music videos'. This is because, music is

communicated directly to the public in primarily two ways – sound broadcast and music videos (cinematographic films) – addressed only one would leave the other, which bears direct relation; music videos are royalty bearing from the VPL point of view and musical/literary work point of view and a hit track has a music video typically.

They further suggested the following;

Amend: The Independent Communications Authority of South Africa (ICASA) has in terms of section 4(j) of the ICASA Act read with section 61 of the Electronic Communications Act (Act 36 of 2005 as amended) made the regulations in the Schedule"

Amend to include "….and read with the Copyright Act 98 of 1978 as amended, the Regulations, the Performers Protection Act 11 of 1967 and the Collection Society Regulations"

The reasoning is that the Copyright Act and its related Acts form the governance of copyright i.e. Music content in South Africa.

SASFED concurred with the National Integrated ICT Policy Review Report that the public content environment in South Africa has been commercialized to the extent that public interest programming is often neglected. There is a need to conduct an investigation into local content industry and its capacity to deliver content across all languages and provinces. The investigations should also include recommendations that should be announced by late 2016 with an intention to provide updated versions on an annual basis.

The SOS called for a basket of regulations and incentives to ensure that local content including in international and African continent, is supported. They suggest a basket of regulations tight with incentives in order to ensure that local content through public service and community broadcasting content is supported. They were in support of the current regulatory system that ensures the regulation of broadcasters and content providers but with a hierarchy of obligations.

In addition, the Coalition believed that the pyramid sequence to regulate should be public broadcasting, free to air commercial broadcasters and subscription broadcasters respectively. However, it advocated for a special regime to be created for regulating the community broadcasting.

The Coalition was also of the view that ICASA has taken decisions without convincing and giving clear arguments for its positions. For instance, ICASA's research on Local Content Discussion Document, 2014, points to serious problems around format factors, which broadcasters ignored because they are rigid. However, despite all these findings, ICASA still decided to retain the status quo in the regulatory mechanisms.

Further the SOS indicated that regulations should be appropriate to the multi - channel environment and in the process 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 inter services providers. This means that the global realities require regulators to adopt a flexible approach. But this approach should not undermine the goal of ensuring that regulations are diverse, rich in relation to the public service and community oriented audio - visual and audio content environment.

Although SOS noted the critical importance of local content in a digital environment, it similarly pointed to the fact that international studies indicate that local content issues of culture, language and religion are neglected. Furthermore, the international studies complain about the commercialisation and deterioration of the quality of content in the multi - channel environment. SOS also argued that particular priority should be given to local content destined for prime time broadcasting on the new DTT and piloting and development of new programming and together with programming formats.

The NFVF supported the underlying principle that the provision and showcasing of local content should be regulated in the public's interest. They were of the view that space for distributing local content should be carved out and that independently produced and owned local content should be developed to provide a suitable foundation for the regulation.

They further supported the submission that programming should promote a South African programming objective in recognition of the fact that local content encapsulates the South African identity in its diversity.

In addition, the Film and Video Foundation was of the opinion that the regulation should address the issue of capacity and resources and look at ways of assisting and speeding the rate at which the existing agencies operate. The regulations failed to map out a working relationship with agencies such as the NFVF and the Department of Trade and Industry (DTI), who currently fund national festivals. Furthermore, the regulations note that there is a need to increase export opportunities of local content and has made suggestions including others "hosting of local content festivals to show case and facilitate trading in local content in the country, development of strategic relationships between overseas markets and the local content digital industry and to establish mechanisms for timely market intelligence to facilitate the building of a continuing presence in overseas markets".

The Film and Video Foundation added that the regulations must focus on platform neutrality and regulatory parity, particularly as the platforms used by the public to access local content moves beyond traditional streams such as television and radio. Several broadcasters and network providers have packaged content specifically for the mobile platform. Mobile platforms are increasingly becoming the main access point for local content for most South Africans.

Furthermore, the NFVF rejected the notion of relaxing local content regulations to cater for the digital migration. Local quotas should be maintained to ensure the developmental foundations required to foster increased local programming, are constructed during the migration.

In sum, the NFVF supported the proposed regulations stating that Local content is to be developed and created in anticipation of the multichannel environment presented by broadcasting migration to stimulate content development in South Africa and to further job creation. The regulation is meant to provide the public, government entities and private companies with an opportunity to play an active role in the shaping of South Africa's policy on the development and broadcasting of local content.

Kagiso Media cautioned the Authority that the draft regulations focus on entirely on the broadcasting sector and perhaps undervalue the ability of other ICT platforms to contribute to local content in one form or another. Kagiso Media does imply that

regulation must be imposed upon the internet, rather the ICT sector as a whole must contribute to the objects of the ICASA Act and underlying statutes in contributing to local content. Kagiso Media further adds that regulation has failed to keep pace with technological developments and that local content regulatory framework has become inappropriate given the competitive threats posed by the disruptive internet based technologies and services.

The NAB was of the view that the Copyright Review Commission's (CRC) proposals relating to SA Local Content are ultra vires. They encouraged ICASA to address these concerns during its engagement with the DTI on the Copyright Amendment Bill given that the DTI has simply transposed the CRC recommendations into the Bill. They believe that the recommendations relating to the increase of SA music quotas, emanating from the CRC Recommendations are ultra-vires the powers of the CRC as well as the DTI, and not in line with section 192 of the Constitution.

Magic 828 was concerned that many Commercial Radio Stations have blatantly flouted their licensing conditions with ICASA failing to correct such irregularities. The radio station indicated that it seems when a license is granted they discover their format is not as enriching as expected, they merely change it. This has created a scenario where musically they all sound the same. For instance how can a licensed Talk Radio Station play 100% music when it feels like it and not only in daily shows but a complete weekend? "Talk" is "Not Music". Other stations have gone from Jazz to R & B etc. Classic Hits seems to be the order of the day and local content in many instances totally ignored.

Link FM and TBN point out that when community broadcasters are referred to in the Draft Regulations by the Authority no distinction or wholly insufficient distinction is drawn between geographic community and community of interest community broadcasters. Community of interest licences subscribe to the idea of creating a national pride and promoting national interests. It is important to recognise that this can only realistically be done by promoting the "interest" which is the common denominator of the community that it serves. As an example, a Christian "community of interest" radio broadcast licensee, while recognising different cultures in South

Africa and, indeed, different faiths, would not generally apply effort to promoting those cultures and faiths which are not in keeping with its Christian interest.

The Authority considered the CRC proposals in reviewing the local content regulations[1] and noted that while it has sole responsibility for determining the regulatory approach to South African content, it is not bound by any recommendations from the DTI or DAC, although it is still important to note these[2].

The Authority is of the view that the depth of base research work done prior to the decision to regulate is sufficient a reason to continue regulating local content. The Report which the Authority worked on alongside the Consultants prompted the accurate decision by the Authority. The Authority has differing mandates that impact on each other and the Authority aims to fulfil these in a balanced manner.

20. CONCLUSIONS

This Reasons Document concludes the process of reviewing the regulations on South African Local Content on Television and Radio. The Authority has decided to increase the quotas for different tiers of broadcasting in order to promote the broadcast of Local Content in the airwaves as the last increase took place in 2002. After publication the Authority will monitor compliance to ensure that broadcasting licensees comply with the set content quotas. Similar to other countries, South African Broadcasting industry, through local content play a role in protecting and developing the country's national cultures and identities, extending choice for the public and promoting usage of all official languages and production of content by a wide range of South Africans.

[1] 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, pages 88 – 91, 95, 137, 138 and 292, and **Discussion Document on Review of Regulations on South African Local Content: Television and Radio** published in General Notice 529 of 2014,Government Gazette No. 37803, pages 11, 21, 26, 29 and 30,

[2] **Discussion Document on Review of Regulations on South African Local Content: Television and Radio** published in General Notice 529 of 2014, Government Gazette No. 37803, page 11.