



Promoting human rights and democracy through the media since 1993
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30 January 2015

**WRITTEN SUBMISSIONS BY THE MEDIA MONITORING AFRICA (MMA) ON THE NATIONAL
INTERGRATED POLICY DISCUSSION PAPER**

1. ABOUT MEDIA MONITORING AFRICA

1.1. MMA's vision is a just and fair society empowered by a free, responsible and quality media. Through a human rights-based approach, MMA aims to promote the development of:

- Media that is transparent, diverse, ethical and accountable to its audiences;
- Critical and constructive communications by the powerful; and;
- Informed, engaged and connected citizenry

1.2. MMA aims to contribute to this vision by being the premier media watchdog in Africa to promote a free, fair, ethical and critical media culture. The three key areas MMA seeks to address through a human rights-based approach are media freedom, media ethics and media quality. Established in 1993 to monitor South Africa's first democratic elections, MMA has over 20 years experience in media monitoring and direct engagement with

media, civil society organisations and citizens. MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our projects, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.

2. INTRODUCTION

2.1. This response is made by Media Monitoring Africa (MMA)

2.2. In Notice No. 902 published in Government Gazette No. 38203 dated 14 November 2014, the Minister of Telecommunications and Postal Services (“the Minister”) invited the public to make written representations on the National Integrated ICT Policy Discussion Paper (“the Discussion Document”). Written comments were invited to be submitted by 15 January 2015. The submission date was later extended to 30 January 2015. MMA thanks the Minister for the opportunity of making these written submissions and hereby requests an opportunity to make oral representations at such hearings.

2.3. At the onset, MMA wishes to record its deep concern towards the idea of a separate Broadcasting Policy Review as proposed in [Notice No. 1003 published in Government Gazette No. 38206 dated 12 November 2014](#) by the Minister of Communications. We are in favour of a single, converged Information Communication Technology (ICT) Policy Review, which has thus far included a review of all broadcasting and electronic policies of South Africa.

2.4. MMA as a key member of the SOS: Support Public Broadcasting Coalition will like to endorse the submission made by the SOS. In addition to the submission made by SOS,

2.5. We note the extensive work that has been put into the discussion document, we are also aware that our expertise is limited to only some of the areas. Accordingly the structure of our submission will focus on the following:

- Infrastructure and Services:
- Audio and Audio-Visual Content Services
- Institutional frameworks
- Internet Governance and the Protection of Children Online

3. POLICY OPTIONS: INFRASTRUCTURE AND SERVICES

3.1. Future of Postal Services

3.1.1. The Post Office has like many other state institutions in its form faced a lot of challenges. MMA is of the view that this institution despite its challenges still plays a crucial role as a key institution where people can easily get access to information. We agree with the notion made in the Discussion Document that “the general intention is to create a more efficient governance structure for the postal operator, particularly when it will have to compete with private operators in a liberalised market”.

3.1.2. MMA is completely against any form of privatization of the postal services as proposed in Section 3.2.1; MMA would propose Option Two which states the following:

“Necessary policy reforms would be adopted to allow the Post Office to reconfigure its role over and above the core provision of mail service. Based on a thorough market analysis the relevant market for expansion would be defined. This would provide for service expansion such as:

- *A focus on logistics in support of industry and within the e-commerce value chain. This may also include, for example, a role in the delivery of books to schools, and medicines in support health care;*
- *Provision of Internet access facilities for communities, or Wi-Fi zones for underserved areas. The role of the post office in e-government service delivery would be important;*

- *SAPO becoming a reseller for air-time distribution, bandwidth vouchers, hardware sales and distribution in anticipation of the demand which will be created through broadband rollout”.*

3.1.3. The above option seems most logical in a converging, digital environment. The Post Office needs to be a leader in the provision of digital equipment, internet services as well as a convenient place for citizens to access the most affordable information and communication services available to them.

3.1.4. In addition, we take note of the extensive expansion and growth of postal services in other nations including the US and UK where similarly to South Africa they have witnessed an extreme decline in traditional postal services (such as bills and letters), but have reorganised their services to cater for the booming needs originated by online sales and delivery. The growth in these countries of postal services has exceeded expectations. Accordingly we view the potential growth in this sector to be exceptional and should be a core focus area of the SA Post Office.

3.1.5. MMA believes that there is a need to revise the definition of Postal Services as noted in Section 3.2.5.1 of the Discussion Document. MMA suggests that the new definition of postal services needs to be in line with the possibilities presented by the digital era. The revised definitions should include internet and communication services, incorporating new technologies and new services.

3.2. Market Structure and Competition

3.2.1. Universal access is one of the most important basic human rights, so much so it is in our South African constitution. Every policy change that is conducted should have universal access as the baseline of the document.

3.2.2. MMA is in agreement with other stakeholders in Section 3.2.2 of the Discussion Document that are in favour of the retention of a reserved market to ensure and

guarantee universal service”, therefore MMA would like to propose the following option: **Option Three: Safeguard universal service provision**

3.3. Universal Access and Service

3.3.1. MMA would like to reiterate, as it states in Section 3.2.4 of the Discussion Document, that “universal service and access policies stress that all South Africans have the right to an effective, efficient and affordable basic postal service regardless of their geographic location or economic status”.

3.3.2. MMA believes that **Option two** as proposed in Section 3.2.4 of the Discussion Document. This option is the most beneficial solution to the postal service. To ensure that universal access is giving top priority, there needs to be adequate funding available to ensure these services are constantly available. MMA also strongly believes that governance is also central to the sustainability of the postal service as a tool of universal access. We urge the Minister to consider strong, reliable and best mechanisms that will ensure accountability and transparency of the management of the funds to be used to ensure universal access.

3.4. South African Post Office (SAPO) Infrastructure

3.4.1. MMA believes and agrees that “this country-wide network of post offices positions SAPO as a key player in rural connectivity and overall ICT service delivery”. It is important to remember the importance of the postal service’s – as states in Section 3.2.6 of the Discussion Document “Post offices are also seen as potential ICT access points that could offer a broad range of services (including e-services), as well as extension of the broadband network to rural areas that do not have broadband coverage. Post offices are therefore considered as potential points of presence for broadband infrastructure provision, and this potentially places SAPO as a key element in last mile provision”.

3.4.2. MMA would like to refer and agree with Option **Two** in Section 3.2.6 of the Discussion Document, which states that *“Given the existing and the potential expansion of SAPO’s network infrastructure, it is potentially ideally placed to provide a host of value-added services to citizens, and especially in rural areas. There was strong support among the Green Paper submissions that the SAPO infrastructure must be leveraged to deliver e-services, including access services. Post offices across the nation, and especially in underserved areas it was argued must become key touch points for government services, especially e-Government. Currently SAPO does provide support for a myriad of government services, such as payment of bills, and licence applications. Given the anticipated escalation of e-government deployment, SAPO is in an ideal position to become an e-government service point. In addition SAPO could also consider other e-services which are of value to communities including, e-banking, e-tax, small business support, online job applications etc”.*

3.5. Universal Service Obligations (USOs)

3.5.1. With regards to the current universal service obligations Section 3.6.4, MMA believes that strengthening the USO framework would be beneficial (see Section 3.1 above).

3.5.2. MMA agrees that: “An improved USO framework would ensure that obligations are clearly defined, robust, capable of satisfaction and enforceable. The strengthening of the USO regime for South Africa might include provisions specific to:

- *The alignment with determinations on universal access, universal service, underserved areas and other relevant definitions to be kept relevant through periodic review.*
- *Achieving USO in respect of broadband.*
- *A requirement for a dedicated periodic consultation process with stakeholders to consider issues, including appropriate target levels of service or access, a timeline for reaching such targets, the level of service to be provided, mechanisms for monitoring and enforcement.*
- *Periodic reporting requirements for operators in respect of targets achieved and compliance on the part of licensees with their USOs”*

3.6. Universal Service and Access Fund (USAF)

- 3.6.1.** MMA believes that a universal service and access fund remains very important, especially given the converged environment that communications is moving into. Without the necessary funding and funding models, universal service will fall behind and the digital divide will become grater.
- 3.6.2.** MMA believes that the scope of the funding priorities should definitely increase to “cater for the expanded scope of ICT’s given convergence, advances in technology and market developments”.
- 3.6.3.** MMA supports **Option two proposed** in Section 3.6.5 regarding the management and control of the USAF: Given the existing challenges that currently face both Independent Communications Authority of South Africa (ICASA) and Universal Service and Access Agency of South Africa (USAASA), it is advisable to follow best practice and assign the management of the USAF to an independent committee established by ICASA. This would have the added benefit of ensuring that ICASA can maintain its core focus while at the same time ensuring the issue of Universal access is afforded due prominence.
- 3.6.4.** Regarding the mandate and scope of USAF, MMA supports **Option three** – the improved governance and accountability of USAF. There is no doubt that the USAF is an important and much needed body when it comes to universal access. There does however need to be an improvement in both the accountability mechanisms as well as the transparency and governance structures.

3.7. Consumer Protection and Quality of Service

- 3.7.1.** MMA supports the vision for the ICT policy that stresses that South African users of communications services are entitled to consumer protection. As penetration of service

increases there is bound to be greater concern on consumer protection in a digital environment. We however, believe that ICASA should be strengthened to ensure that it regulates in the interest of the public.

3.8. Spectrum management

3.8.1. MMA agrees with Section 3.7.2 of the Discussion Document which states that there is a need to effectively and efficiently manage radio frequency spectrum to ensure agility, flexibility and adaptability in spectrum administration. Therefore MMA supports **Option one** set out in Section 3.7.2 of the Discussion Document. MMA strongly believes that the current policy objectives should be maintained, but they should include the importance of universal access across all policy objectives.

4. POLICY OPTIONS: AUDIO AND AUDIO-VISUAL CONTENT SERVICES

4.1. As an independent non-governmental organisation, MMA approaches all broadcasting within a human rights-based framework. MMA's point of departure therefore includes similar values to those originally contained in the Broadcasting Act, where in the preamble it noted that:

“[T]he South African broadcasting system comprises public, commercial and community elements, and the system makes use of radio frequencies that are public property and provides, through its programming, a public service necessary for the maintenance of a South African identity, universal access, equality, unity and diversity”. (Broadcasting Act No.4 1999)

4.1.1. Within this rights-based framework, MMA understands the institutional role of the SABC as fundamental, not only to fulfilling its role as a public service broadcaster, but also to realising citizen's constitutional right to receive and impart information. Further, as a key public institution and core component of

the media environment in South Africa, the SABC's role in entrenching South Africa's democracy cannot be underestimated.

4.1.2. Given its function and purpose as a public service broadcaster, when the SABC's ability to fulfil its role as public service broadcaster is being discussed, South Africa's democracy is also under the spotlight.

4.1.3. Therefore, MMA strongly believes that there are core concepts that need to be clearly and ambiguously enshrined in any new legislation developed for the SABC. These are:

- An appointment process that would appoint members that are dedicated to the concepts of democracy, human rights and in establishing a public service broadcaster that serves the public interest rather than self seeking interests.
- Effective public accountability mechanisms including financially.
- Transparency and clarity of structures.
- Clear lines of powers for the board and management and independence from Ministerial interference.
- Independence from the powerful interests in society, i.e. government and commercial interests.
- An effective oversight structure (i.e. Parliament, the regulator and government) that does not compromise the public service broadcaster's independence, with no body dominating the oversight structure at the expense of a fellow oversight body.
- Arms length independent funding of SABC that is largely publicly funded.
- The importance of producing quality local content.
- Providing a diverse service that meets all the needs of South Africans, including the minority.

4.2. Three Tier System

4.2.1. The Discussion Paper looks into the three tier broadcasting system and proposes that the fourth tier should be introduced i.e. a national/ provincial free to air (FTA) non-profit broadcaster tier. **MMA is COMPLETELY against the introduction of the fourth tier.**

4.2.2. MMA supports SOS argument that the proposed fourth tier is covered by the community broadcasting. We understand that in a digital era community broadcasting would be able to cover a community of interest and may also be national as opposed to simply geographical.

4.2.3. MMA will like to use this opportunity to reiterate its previous sentiments around the SABC public and commercial arms. The SABC as a public broadcaster need not have a commercial arm, precisely because in the past this model has not been fruitful and has left the public broadcaster destitute, with public channels being subsidising commercial channels. Instead of introducing a fourth tier, it is best that efforts are made to ensure that the current three tier system works to the benefit of the public and not commercial interests include¹

4.3. Public Broadcasting

4.3.1. MMA supports the SOS coalition's call for the SABC to become a Chapter 9 institution. It is critical that this notion is considered because; it is the one of the best way to guarantee SABC's independence.

4.3.2. MMA is also against the introduction of a Public Service Publisher, currently as it stands, ICASA has established the Digital Television Content Advisory Group (DTCAG) where by this Group has proposed a channel commissioning process whereby the SABC

¹ See MMA submission to ICASA's review on South African Local Content: www.mma.org.za/index.php/resources/enrty/mma_written_submission_to_icasa_on_the_review_of_regulation_on_south_africa/

establishes public-private, public-public and public-community partnerships to facilitate the broadcasting of public service content. **MMA strongly believes that the ICASA along with the SABC and other core public interest role players should be the ones exploring different proposals that will look into beneficial ways of commissioning, promoting, aggregating and distributing local content.**

4.4. Mandate of the SABC

4.4.1. As stated at the beginning of this section, the SABC plays a crucial role in a democratic South Africa. Its mandate needs to entrench the fundamental principles upheld by our democracy. We propose that the public mandate of the SABC ought to be clearly enshrined in an SABC Charter (in support of SOS proposed Charter) which ought to guide every radio and television service provided by the SABC. Please note that we believe that only the broad principles of public service broadcasting should be included in the Charter, the details of this mandate should be expanded on in the license conditions of SABC's various television and radio services. We propose that the following Charter be adopted:

This Charter of the Corporation sets out the public mandate of the SABC, which public mandate is to-

(1) build the nation and for this purpose to:

- (a) contribute to democracy, the development of society, gender equality, nation building and the provision of education;*
- b) safeguard, enrich and strengthen the cultural, political, social and economic fabric of the Country;*
- (c) reflect both the unity and diverse cultural and multilingual nature of the Country and all of its regions to audiences;*
- (d) develop a strong and committed public broadcasting service which will service the needs of society;*
- (e) use its best endeavours to ensure that public broadcasting services are available throughout the Country; and*
- (f) encourage the development of human resources, training and capacity building within the public broadcasting sector;*

(2) provide the public with excellent up-to-date informative programming and for this purpose to:

- (a) provide, in its public broadcasting services, radio and television programming that informs, educates and entertains;*
- (b) ensure a plurality of news, views and information;*
- (c) provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests;*
- (d) ensure that public broadcasting services provide a reasonable, balanced opportunity for the public to receive a variety of points of view on matters of public concern;*
- (e) cater for a broad range of services and specifically for the programming needs in respect of children, women, the youth and the disabled;*
- (f) include significant amounts of educational programming, both curriculum based and informal educative topics from a wide range of social, political and economic issues, including, but not limited to, human rights, health, early childhood development, agriculture, culture, justice and commerce and contributing to a shared consciousness and identity;*
- (g) include national sports programming; (h) ensure public broadcasting programming shall be drawn from local, regional, national and international sources;*
- (i) ensure that public broadcasting services comply with the code of conduct for broadcasting; and*
- (j) be responsive to audience needs and account on how to meet those needs;*

(3) contribute to the development of the Country's culture, languages and local cultural industries and for that purpose to:

- (a) encourage the development of local programming content*
 - (b) enrich the cultural heritage of the Country by providing support for traditional and contemporary artistic expression;*
 - (c) ensure, as far as is reasonably possible, that public broadcasting services provide a range of high-quality programming in all of the Country's official languages to all citizens; and*
 - (d) to nurture the Country's talent and carry out research and development for the benefit of audiences; and*
- (4) provide a public broadcasting service of the highest technical standard and for that purpose to ensure that public broadcasting services comply with international technical standards.*

4.4.2. MMA supports a variation of option one. MMA believes that the mandate of the SABC needs to be set in law. Further, we think that the legislation ought to provide for periodic and regular (at least every 5 years) reviews of the SABC's public mandate with public participation being statutorily required and enforced as part of that process.

4.5. SABC divisions into Public and public commercial divisions

- 4.5.1.** As stated earlier SABC needs to be an independent Public Broadcaster with no public commercial divisions. MMA strongly believes that these divisions have not resulted to be beneficial to the SABC. MMA supports SOS's argument that these divisions are unworkable. It is simply not possible to separate auditing, operations, advertising and commissioning in one integrated business, as the SABC is, into two operational divisions.
- 4.5.2.** We are of the view that given the language requirements of the SABC's public mandate, it is not advisable to privatise/sell off the SABC's commercial television station, namely SABC 3, without severely hampering the SABC's ability to meet its language mandate. While there may be some merit in considering privatising/selling off the SABC's three commercial radio services, namely 5 FM, Metro FM and Good Hope, this should only be considered when clear benefits as to the sales can be determined. If they are to be retained it should be clear that they are run to meet public service needs. Previous experience shows that selling off other services did little to materially benefit the SABC or enable it to meet its mandate more effectively. At the same time it must be acknowledged that while these radio stations provide a certain amount of entertainment, they do not assist the SABC greatly in meeting key public interest aspects of its public mandate.

4.6. Foreign Services

- 4.6.1.** In relation to channel Africa and international radio services available on shortwave, satellite and Internet, the Discussion Document puts forward various options. MMA strongly to **Option one** in Section 5.6.3. which it is envisaged that the SABC would continue to administer foreign content services "on behalf of government". In our view the SABC should have its own mandate to provide foreign services as part of its news and information mandate. MMA supports **Option two.**

4.7. Parliamentary Services

4.7.1. MMA thinks that coverage of Parliament is an essential aspect of the SABC's public mandate given Parliament's centrality to the vitality of our democracy. MMA supports **Option two** in Section 5.6.3 – SABC mandated to cover Parliament, fully and comprehensively..

4.8. SABC Funding

4.8.1. MMA believes that the SABC needs to be funded through Parliamentary grants. MMA supports **Option one** in Section 5.6.4. MMA supports SOS call for a separate local content fund should be established. This fund should be open to funding local content across all three tiers of audio-visual services and across multiple platforms, including by the SABC.

4.9. Cost of SABC Mandate and what should be funded

MMA recommends that the SABC along with other key stakeholder cost the mandate of the public broadcaster. Based on the proposals set out in the Discussion Document mandate MMA supports **Option one** (in Section 5.6.4.2). MMA believes that public funds (including licence fees) should be allocated generally to the SABC rather than to specific budget item lines.

4.10. Funding Sources

4.10.1. The Discussion Document specifically requests input on the ideal ratio of funding, whether the SABC's commercial revenue should be capped and possible proposals for additional funds. MMA supports SOS view that it is difficult to stipulate the ratio of public funding required saves to say that it is critical that the SABC step costs its public mandate.

4.10.2. MMA also believes that the SABC should be allowed to access further funds through the establishment of a local content fund. One proposal is for the local content fund to be

funded by telecommunications operators that will directly benefit from the freeing up of spectrum once the digital migration has taken place.

4.11. SABC Funding Mechanisms

4.11.1. In regards to licence fees MMA supports **Option one** (in [Section 5.6.4.4](#)). MMA does not support any solution that is centred on the replacement of the licence fee with a tax; we strongly believe that is not the best solution. However we support the **Option one** that proposes these issues are addressed:

- The definition of the type of equipment that requires a TV is expanded in light of convergence to include any device capable of receiving television;
- Any subsidies (e.g. for the elderly or those on social grants) are recovered from government;
- An automatic inflation-linked increase to the licence fee versus a process of linking the licence fee to commitments over a set period (i.e. an agreed programme of action);
- A due diligence on the collection process is conducted to address any inefficiencies.

4.12. Reporting, Oversight and Accountability

4.12.1. MMA supports all proposal set out in [Section 5.6.5](#) of the Discussion Document, However we are worried that Parliament as a key oversight structure is not mentioned and we strongly believe that Parliament remains tasked with oversight functions in respect of the SABC and its public mandate.

4.13. SABC Governance and Management

4.13.1. MMA as a key member of SOS has played a leading role in raising public awareness as to ongoing problems with the SABC's governance and management particularly at Board and executive management level.

4.13.2. MMA supports **Option two** (in Section 5.6.6) which proposes to reduce the number of Board members of the SABC in accordance with widely accepted good governance principles which support smaller more accountable Boards of Directors. MMA supports the proposal made by SOS suggesting that the SABC Board be made up of the following board members:

- seven non-executive members; and
- three executive members, namely the chief executive officer (CEO), Chief Operating Officer (COO) and the chief financial officer (CFO).

4.14. SABC Appointment of Non Executive Members of the Board

4.14.1. MMA supports **Option one** (in Section 5.6.6), which Parliament calls for nominations and, after a public process, makes recommendations of members for appointment members for appointment to the President, and of option two which envisages the establishment of an appointment committee.

4.14.2. MMA supports SOS Vision Document, where SOS sets out its proposals for a new method of appointing non-executive members of the SABC Board in Annexure 4 thereto and we provide it In Annexure 1 of this submission for your ease of reference.

4.15. SABC Term of Office

MMA supports the proposals put forward in the Discussion Document to keep the current term of office of SABC board members at five years but to put a system in place to ensure continuity on any board.

4.16. SABC: Role of shareholder/Minister:

4.16.1. MMA disagrees with any proposal that places the Minister/shareholder in power to intervene and direct the board to take actions. Problems with Ministerial interference have been legion in the recent history of SABC and policy makers are urged to take decisive action to recommit the SABC in to being a public broadcaster as opposed to a site of government interference.

4.16.2. MMA supports SOS submission that argues that the only appropriate body to perform oversight functions and to take appropriate action including in respect of intervention and direction of the SABC board is Parliament.

4.17. Premium Content

4.18. MMA believes Premium Content is an important competition issue. MMA believes Broadcasters should not be allowed to “lock-up” premium content rights for years because this arrangement is anti competition as new-entrants and other broadcasters are unable to access desirable content which could potentially make their programming attractive to audiences. This practice results in the current scenario in South Africa where new subscription broadcasters are not surviving because most of the premium content is locked up by one Subscription TV.

4.19. We would like to encourage ICASA and the Competition Commission to play a joint role on undertaking further research on premium content issues.

4.20. Diversity of Ownership

4.20.1. MMA supports the SOS position that supports the general proposal put forward in this paragraph of the Discussion Document that ICASA should be given the power to determine ownership limitations subject to a statutory obligation to develop a diversity of voices test that can be used to assess the diversity of available broadcasting and audio-visual services periodically.

4.21. Diversity in News

4.21.1. In August 2012, MMA released a schedule analysis and news quality report titled '[Lack of Diversity \(Repeat\): Analysis of SABC News and Programming](#)', which monitored the SABC for the duration of 45 days. This report examined local content quotas, repetitive news stories and overall quality of news bulletins. The findings of the research clearly demonstrated that the SABC was filling up their local content quotas with excessive amounts of repeated programming, posing a problem in regard to the diversity of News. It is for this reason that MMA supports **Option two** (in [Section 5.10.2](#)) that requires ICASA to conduct regular reviews to assess the diversity of news

4.22. Language Diversity

4.22.1. MMA recognises 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 of African languages in both scheduling and budgetary provisions. It is for this reason that MMA supports **Option two** that encourages the SABC Radio to continue to plan to cover all the South African Official languages.

4.23. South African Music and Television Content

4.23.1. MMA is in support of **Option one** – status quo but to be implemented effectively by ICASA. It is critical that ICASA is able to fulfil this function as part of its licensing conditions and public mandate. This option calls for the status quo to remain but with an emphasis on the need to continue to reinforce South African content and music in all genres with a graduated approach.

4.24. Must Carry Rules

4.24.1. MMA supports **Option four** (in Section 5.12.1) put forward in this paragraph of the Discussion Document, which proposes that subscription broadcasters would be required to carry all free-to-air television licences.

4.25. Must Carry Rules: Who Pays?

4.25.1. MMA supports **Option two** put forward in Section 5.12.2 of the Discussion Document, which proposes that free-to-air television broadcasters must be fairly compensated for carriage by subscription broadcasters according to the value they add to the networks. The regulator would be tasked with setting out the criteria for determining value.

4.26. Events of National Interest

4.27. MMA supports **Option two** in Section 5.12.3 – status quo plus. MMA believes that this would ensure that the rights must be made available at reasonable fees, pay-TV providers must finalise any sub-licensing agreement timoeously and anti-hoarding provisions must be introduced.

5. POLICY OPTIONS: INSTITUTIONAL FRAMEWORKS

5.1. It's important to note, our deepest concern regarding the lack of monitoring compliance of licensed broadcasters by ICASA.² The reported failure by ICASA to undertake one of its core duties has not only led to the lack of tangible data around compliance but also has cast a shadow of doubt around the capacity of the independent Regulator to actually carry-out its key duties. Given the importance of the issue it is critical that compliance is independently, accurately and continuously monitored using the same standards and criteria in order to ensure that ICASA is an independent and reliable regulator. IT is for this reason MMA strongly motivated for

² Please see MMA and SOS Submission to ICASA during the ICASA review of the broadcasting regulatory framework:
www.supportpublicbroadcasting.co.za/images/uploads/SOS_Answers_to_Questions_Posed_by_ICASA_-_Regulatory_Review_-_31_May_2012_-_final.doc+&cd=1&hl=en&ct=clnk&gl=za

the formation of the Digital Content Advisory Group, a core task of which is to work on a monitoring methodology and strategy for a digital environment.

5.2. MMA supports SOS call to make ICASA a complete chapter 9 institution.

5.3. ICASA Oversight and Accountability

5.3.1. MMA supports the recommendations made in Section 7.5.3 especially recommendations t the additional reporting requirements for ICASA.

5.4. ICASA Responsibilities

5.4.1. MMA notes the proposals put forward in Section 7.5.4 of the Discussion Document and supports all of them.

5.5. ICASA Spectrum Management

5.5.1. MMA supports option one as proposed in Section 7.5.4.2 of the Discussion Document, in terms of which ICASA would retain responsibility for managing the frequency spectrum but would be required to strengthen its capacity in this regard.

5.6. ICASA: Complaints and Compliance

5.6.1. Given the challenges around monitoring and compliance by the regulator, MMA Submits that Option one (in Section 7.5.4.3) is adopted. However MMA asserts that ICASA effectively monitors compliance and relies on its own independent variable data to ensure licensees comply with their licence conditions.

5.7. Reviewing ICASA's Decisions

5.7.1. MMA supports option one as proposed in this paragraph of the Discussion Document, in terms of which only a court can review ICASA decisions.

5.8. ICASA Structure

5.8.1. MMA Supports SOS view that the current appointment provisions system provided for in section 5 of the ICASA Act are unconstitutional due to the role that is played therein by the Minister. Consequently, SOS strongly urges policymakers to consider the recommendations of the Report of the *ad hoc* Committee on the Review of Chapter 9 and Associated Institutions, 2007, at pg. 202/3, in which it is recommended that the provisions relating to ICASA Councillors' appointments "be reviewed to support and assert the Authority's independence further. The President, on the recommendation of the National Assembly, should appoint the councillors. i.e. regarding qualifications of councillors for appointment, at least a third of those appointed should have technical expertise. This will obviate the need for technical advisers".

5.8.2. MMA supports **Option one** in Section 7.5.6. as proposed in this paragraph of the Discussion Document provided the above suggested changes are implemented.

5.9. ICASA Funding

5.9.1. To protect ICASA's independence MMA supports option two – self-funded. This option calls for ICASA to be completely self-funded. Its budget however would still be approved by Parliament and it would be required to hand over surplus funds collected.

5.10. Self Regulation and Co- Regulations

5.10.1. MMA is of the view that content regulation ought to be primarily conducted through self-regulatory bodies and codes, provided these have been approved by regulators such as ICASA.

5.10.2. MMA also believes that content regulatory bodies and codes which have been set up on an incremental and *ad hoc* basis without due regard for the increasing convergence of technologies and platforms and the challenges posed by widespread use of social media.

5.10.3. MMA supports SOS view that the current regime, where regulation and/or co-regulation is technology-specific, will prove unworkable in the era of convergence. Consequently, MMA and SOS are of the view that statutory bodies such as ICASA and the Film and Publications Board (“FPB”) together with self-regulatory bodies such as the Broadcasting Complaints Commission of South Africa (“BCCSA”) and the Press Council, as well as bodies such as the Internet Service Providers Association and the Wireless Applications Service Providers Association and interested civil society bodies need to come together to develop a co-regulatory scheme for audio-visual content services across all platforms: print, cinema, broadcasting, Internet etc.

5.11. Universal Service

5.11.1. MMA supports **Option two** (in [Section 7.7](#)) as proposed in this paragraph of the Discussion Document, in terms of which the Universal Service And Access Agency (“USAASA”) would be dissolved and its existing regulatory functions transferred to ICASA, with the provision that ICASA is made a chapter 9 institution and adopts a comprehensive and independent turn around strategy

5.12. Protection of Children, content standards and Classification

5.12.1. Children programming is exceptionally important given that children account for approximately 37% of our population ([see child gauge 2013](#)). MMA emphasis that content regulation ought to be primarily conducted through self-regulatory bodies and codes, provided these have been approved by regulators such as ICASA.

6. INTERNET GOVERNANCE AND THE PROTECTION OF CHILDREN ONLINE

6.1. Data protection and privacy

- 6.1.1.** MMA submits that we should seek to follow and develop polices being applied in western Europe as there have been some precedent-setting cases in the last two years. We need to consider that in broad terms, there already exists clear obligations to correct content online – failure to do so may result in civil action. For example, if a person is referred to as a criminal and then it emerges the person is not a criminal, a website is under a legal obligation to correct such a statement as failure to do so opens them up to civil action and in the UK criminal prosecution as well.
- 6.1.2.** Despite this there can be circumstances in which a person may apply for certain issues to be forgotten and cleared. It is our submission that the ICT policy should allow for the creation of the right to be forgotten and set the framework to balance the rights to freedom of expression, right to dignity and proportionality. In this regard, we would support the Minister, who makes reference in the discussion paper to consider the following elements from the European Union Court of Justice:
- 6.1.3.** “On the “Right to be Forgotten” individuals have the right - under certain conditions - to ask search engines to remove links with personal information about them. This applies where the information is inaccurate, inadequate, irrelevant or excessive for the purposes of the data processing (para 93 of the ruling). The court found that in this particular case the interference with a person’s right to data protection could not be justified merely by the economic interest of the search engine. At the same time, the Court explicitly clarified that the right to be forgotten is not absolute but will always need to be balanced against other fundamental rights, such as the freedom of expression and of the media (para 85 of the ruling). A case-by-case assessment is needed considering the type of information in question, its sensitivity for the individual’s private life and the interest of the public in having access to that information. The role the person requesting the deletion plays in public life might also be relevant.”
- 6.1.4.** While we seek to ensure African solutions it seems difficult to imagine why we would not wish to consider and develop a South African approach to the issue of the right to be forgotten. Given

our leadership role on the continent it would seem a logical and necessary step for the digital era. Accordingly, we submit that the policy adopts a similar approach and then develops specific regulation focused on data privacy and the right to be forgotten.

**6.2. Is there a need to introduce specific policies and rules regarding privacy in South Africa?
Please motivate your response and indicate what, if any, policies and rules you propose.**

6.2.1. While we have some progressive legislation in the form of the POPI and ECT Acts, the tendency is toward and emphasis only on unsolicited marketing. We would urge that all relevant laws are reviewed in light of the future ICT policy and that the emphasis is placed on protecting and respecting the rights of citizens. We envisage a sliding scale of privacy in line with European Court of Human Rights' ruling, allowing for greater information to be placed in the public domain as the public role of an official is of great concern to the public. Thus ensuring more protection of data and privacy for ordinary citizens and at the same time allowing and ensuring accountability of public officials and people in the public eye.

6.2.2. We also need to consider that in the digital era those with great power and potential for abusing that power (either for nefarious (for example terrorism, extortion, black mail, etc) or less nefarious marketing purposes) are commonly outside of the formalised State apparatuses and often in fact are beyond any national borders. Multinational social media platforms, multinational social media services and multinational mobile operators and service providers may all fit into these categories. What is essential is that ordinary people's privacy is protected, respected and promoted by any policy that focuses on these areas. Furthermore privacy should always trump commercial interest. Again we would submit that we draw from international experience in developing such policies and not allow the public interest to be determined by commercial interest.

6.2.3. We would support a multi-stakeholder approach in developing any such policies, as each key role player has a crucial role to play. Industry bodies need to develop effective monitoring mechanisms, and accountability systems as do bodies like ICASA and the Minister of Communications. Basic rules for example would necessitate that each time a person utilises a

service, common plain language terms are used and that there is informed consent by users/citizens for their information to be utilised by any such service. In this regard the policy principle in addition to public interest must be informed consent.

6.3. Protection of children's privacy online

6.3.1. We would strongly support such moves provided they balance children's right to impart and receive information and to participate in matters that affect them. Children's privacy online is vital not only to protect them against potential predators but also to protect them from commercial exploitation. In the USA children are exposed to around 1.6 billion USD worth of Junk Food Advertising alone. As online access becomes more prevalent and advertising more subtle it is essential that children are protected and empowered to protect themselves against any such onslaught.

6.3.2. In this regard, we would encourage the Minister to consider and take as a position of departure the Children's Online Protection of Privacy Act (see: <http://www.gpo.gov/fdsys/pkg/FR-2013-01-17/pdf/2012-31341.pdf>). The Act allows for the protection of children online and helps protect against unsolicited marketing.

6.3.3. While this goes some way in addressing the issue of privacy we feel that the Minister also need to consider the issue of digital literacy as a core element of enabling children to help protect themselves. Accordingly we submit that digital literacy should be implemented as a matter of urgency in school curricula.

6.4. What role could the DTSP and/or ICASA play in relation to ensuring online privacy protection?

6.4.1. We submit that the DTSP should develop appropriate policy and regulations in line with our constitution and our recommendations above. We envisage ICASA playing a great oversight role ensuring that the industry develops and pays for effective self-regulatory and accountability mechanisms. We submit that an independent body consisting of representatives of the public, NGOs, academics and civil society together with one representative from the industry and one from government form a body that can regulate and hold members accountable for breaches in

privacy. The body would receive and after developing appropriate adjudication and due process mechanisms also develop accountability mechanisms and sanctions. The aim of such a body would be to operate as a cheap, speedy and effective mechanism for addressing complaints and also seeking sanctions. Where bodies choose not to subscribe to such mechanism they will be subject to standard civil and criminal proceedings as currently occurs in the media sector for print and broadcast media.

6.5. What if any measures and mechanisms could be put in place to strengthen intellectual property protection?

6.5.1. We submit that in terms of our existing international trade and copyright protection obligations South Africa is already under onerous obligations to protect copyright. These rules are carried through international treaties as well as into domestic laws. For government or other public matters and as far as reasonably possible, we would advocate for the adoption of creative commons licencing processes and policies. Given the existing copyright protection obligations under international law and that many commercial deals are subject to additional digital copyright there does not appear to be an urgent need for revision of international copyright obligations. Where local service and innovation are developed however we would urge the state to exercise the same level of radical protection over South African copyright as they are obligated for international bodies.

6.6. Are there any policy provisions that should be introduced in an ICT White Paper and/or related legislation (such as the EC Act, the ECT Act and/or the ICASA Act)?

6.6.1. We submit that there should be the adoption of creative commons for government publications and promotion of open source software and open source strategies.

6.7. Protection of children

6.7.1. How could a White Paper on ICT-related policy strengthen provisions to protect children, if at all?

- 6.7.2.** There are often two approaches to children and the internet. One seeks to limit it and the other suggests unlimited access. Like so many other areas relating to children's policy what is required is nuance and shades of grey. Critically however we must ensure that the policy that relates to children seeks to maximise the potential of their access and engagement with the internet and media for the fulfilment of their rights and potential but also ensure that we also minimise harm that may be caused. It is imperative that children acquire the skills necessary to engage with the internet and media, and that they are given the freedom to use and access them and also be protected from the dangers associated with them. MMA submits that the Minister and the ICT policy review panel must explore ways to balance these priorities.
- 6.7.3.** MMA believes that children should be able to benefit from the Internet according to their age. Children must have opportunities to use the Internet to access information that can help them easily understand and exercise their rights. These include rights to access to health, education, information as well as freedom of expression, freedom of association privacy, and equally importantly their right to play. MMA also submits that all policies around children, the internet and ICT's as well as media should be in line with our Constitution and ensure that the best interests of the child are paramount.
- 6.7.4.** It is self-evident that children today face risks that are closely linked to their exposure to the internet and new media formats and platforms.
- 6.7.5.** Traditionally, concerns about the internet focus on the potential hazards of children's new found ability to communicate far more broadly and widely. While communication with family and close friends is considered essential for children's social development, what is less desirable and very troubling for parents especially, is children communicating with unknown or undesirable contacts through the internet using platforms such as chat rooms, social media or emails.

- 6.7.6.** In such instances, MMA believes that restrictions on the internet or access to social media will not provide long-term solutions. Rather MMA encourages the Minister and ICT policy review panel to look at various mechanisms that will encourage children to be aware of both the benefits and risks associated with the use of the internet, that is, encourage children to self-regulate.
- 6.7.7.** Prior to the explosion of the internet and exponential development of the internet it was a lot easier to try and regulate, protect and limit access to harmful material to children. The age of information and content abundance means that not only do our children need new skills in learning (sifting through information rather than the mere act of trying to find and access it in a book) but they also need new skills in engaging with and critically analysing the content they are exposed to.
- 6.7.8.** It is critical for example, that issues of cyber bullying, exposure to harmful content are addressed in our ICT policy. MMA submits that research on how these and similar issues are addressed in other countries is drawn on in developing appropriate options for our own policy. We may need for example to consider an option for a one-stop reporting mechanism where if children are exposed to or receive harmful content they are able to quickly report it, and appropriate action taken.

6.8. How can self-regulation and co-regulation assist in this, if at all?

- 6.8.1.** One of the ways children can easily self-regulate is when they completely understand the digital environment. Much has been made, and appropriately so, of the importance of basic literacy skills. While these remain critical national priorities it is equally vital that digital literacy³ skills are mainstreamed. MMA therefore submits that it is essential the Minister and the ICT policy

³We understand digital literacy in these terms digital literacy = digital tool knowledge + critical thinking + social engagement. Then it's worth knowing its main characteristics. It supports and helps develop traditional literacies; It's a life-long practice; It's about skills, competencies and critical reflection on how these skills and competencies are applied; It's about social engagement" From: <http://www.theguardian.com/higher-education-network/blog/2012/may/15/digital-literacy-in-universities>. See also <http://www.jisc.ac.uk/media/documents/funding/2011/04/Briefingpaper.pdf> for understanding digital literacy in capability terms.

review panel look into ways of integrating digital literacy into the school curriculum for all children. Obviously this will require all schools to have computers and internet - a goal South Africa has been struggling for years to achieve.⁴ MMA submits that our success, in economic, rights based and social terms as a nation will be deeply impacted by the capability of our children of all ages to be digitally literate. Further ensuring digital literacy will also go a long way in minimising the risks associated with the internet and digital media.

6.9. What other mechanisms might be necessary to protect children – e.g. could ICASA be required to develop specific rules and/or licence conditions related to this?

6.9.1. While we can understand the concerns about online payment and the need to find suitable and more protected methods for doing so –especially to prevent children from carrying out unsolicited payments, the suggestion for requiring credit card payments and details for all such transactions is misplaced. Not only do the majority of our people not have credit cards, but the latest online trends are for more secure forms of payment and such mechanisms are also time consuming and would discourage online expenditure. As an adult it is time consuming to have to enter details every time an online payment is made. We would therefore recommend developing latest trends of online payments. These being tested by Apple appear to be acquiring support.

6.9.2. Despite South Africa having one of the most progressive Constitution in the world in so far as our section on children is concerned, and despite having some of the world’s most progressive pieces of legislation on children including the Children’s Act and Child Justice Act, there is relatively little protection for children online. Accordingly, we would support the introduction of a Children’s Online Privacy Protection Act which would not only seek to empower and ensure effective participation of children but would also serve to help protect them online. Such a piece of legislation would also regulate payment methods and mechanisms. It would also see the development of reporting mechanisms for any violations that would also be easily accessible by children and caregivers.

⁴While we lag behind it is noted that the importance of access is noted in the National Development Plan as well as several Political parties’ manifestos.

CONCLUSION

MMA thanks the Department of Telecommunications and Postal Services for the opportunity to make this submission.

Please do not hesitate to contact me at the numbers below should there be any queries over our submission, or if we can be of assistance in developing any of the recommendations further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W Bird', with a large, sweeping flourish underneath.

William Bird

Director

Media Monitoring Africa

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APPENDIX 1: PROPOSED PROCESS TO APPOINT THE SABC BOARD

The SOS Coalition proposes an appointment process such as the following be adopted consequent to extensive debate and discussion with citizens, audiences, interested stakeholders, etc. The SOS Coalition further supports this appointments process generally applying to the appointment of ICASA Councilors too.

Public Participation, Transparency and Political Consensus

The appointments process in respect of the SABC Board currently has insufficiently protected the public broadcaster from interference. To strengthen this process the SOS Coalition submits that Parliament needs to embrace the principles of maximum public participation, transparency and political consensus.

As regards maximum public participation Parliament needs to:

- publish prominent advertisements in a number of high circulation national and regional newspapers and run a series of public service announcements across all SABC channels calling for nominations for potential board members
- give sufficient time for the nomination process
- appoint an appointment panel of civil society leaders to assist it in the process of short-listing, interviewing and recommending members of the SABC Board. The panel is to be made up of seven representatives of civil society, including:
 - a representative of a freedom of expression or other human rights organization
 - a media-related trade union representative
 - a representative from the independent film and television production sector organization
 - a broadcasting or media studies academic
 - a freedom of expression, media or broadcasting lawyer
 - an appropriately skilled economist with expertise in the media sector
 - a representative of the Pan South African Languages Board.

As regards maximum transparency, Parliament needs to:

- publish the names of all nominees and those nominating them; including electronically on the Internet
- publish the long-list of candidates to be interviewed (as determined by it on the advice of the civil society panel) together with their CVs, including electronically on the Internet
- ensure interviews of long-listed candidates (which are to take place before the Parliamentary Portfolio Committee on Communications and the civil society advisory panel) are open to the public and to publicise these widely, including on SABC radio and television stations
- publish written reasons as to why the final shortlist of candidates was selected by the Parliamentary Portfolio Committee on Communications (as determined by it on the advice of the civil society panel), including electronically on the Internet
- publish the short-list of candidates for public comment before the Parliamentary Portfolio Committee on Communications makes recommendations to the National Assembly⁵

As regards Political Consensus, Parliament needs to:

ensure that no person can be appointed to the SABC Board without the agreement of:

- at least five members of the civil society advisory panel
- at least one of the two largest minority parties represented in Parliament

Criteria for appointment

Besides improving the actual appointments process (set out above), the criteria for appointment to the Board must be strengthened. In our view the criteria ought to be the following, namely that the Public Interest Representatives on the SABC Board must when viewed collectively:

- (a) enjoy the confidence and trust of the broad spectrum of South African society

⁵ This is a recommendation made in – Parliament of the Republic of South Africa (2007) *Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions*.

- (b) be broadly representative of South African society in terms of: race, gender, regional, economic and social interests
- (c) act as trustees of the public interest in that they are committed to fairness, freedom of expression, the right of the public to be informed, and openness and accountability
- (d) have, collectively, qualifications and / or experience in at least the following areas: corporate governance, finance, broadcasting policy and regulation, journalism, the business of content production and the application of new technologies
- (e) broadly represent the following key constituencies and stakeholders in society including, but not limited to, business, labour, and NGOs active in the human rights field

We further think it is important to protect institutional memory and to ensure the well-functioning of the Board by ensuring that Board appointments are staggered to ensure an overlap of terms of office of at least one third of Board members at any one time.

Another important issue regarding appointments is the issue of disqualification criteria. We think that the currently provisions in the Broadcast Act do not sufficiently protect the public from conflicts of interest which have arisen in relation to the previous two boards. Consequently we think that these should be bolstered to protect against political and / or commercial conflicts of interest too.

Disqualification criteria

A person may not be appointed as a Board member if he or she–

- (a) is not a citizen of the Republic
- (b) is not permanently resident in the Republic
- (c) is a senior public servant above the level of national director
- (d) is employed as a member of a public body which funds or regulates the broadcasting industry
- (e) is a member of Parliament, any provincial legislature or any municipal council
- (f) is a national office-bearer or senior employee of any party, movement or organisation of a party-political nature
- (g) has a direct or indirect financial interest in the broadcasting industry, other than a passive investment stake

- (h) is an un-rehabilitated insolvent
- (i) has been declared by a court to be mentally ill or disordered
- (j) has at any time been convicted, whether in the Republic or elsewhere, of:
 - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or
 - (ii) an offence under this Act
- (k) has been sentenced, after the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), to a period of imprisonment of not less than one year without the option of a fine
- (l) has at any time been removed from an office of trust on account of misconduct

A person who is subject to a disqualification contemplated in subsection 3.5.1 (a) to (h) may be nominated for appointment as a Board member, but may only be appointed if at the time of such appointment he or she is no longer subject to that disqualification

If at any stage during the course of any proceedings before the Board it appears that any Board member has or may have an interest which may cause such conflict of interest to arise on his or her part

- such Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter and determine whether such Board member is precluded from participating in such meeting by reason of a conflict of interest; and
- such disclosure and the decision taken by the remaining Board members regarding such determination, must be recorded in the minutes of the meeting in question.

If any Board member fails to disclose any interest as required by subsection (2) or, subject to the provisions of that subsection, if he or she is present at the venue where a meeting of the Board is

held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board will be null and void.