



Promoting human rights and democracy through the media since 1993  
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31 August 2015

**WRITTEN REPRESENTATIONS BY MEDIA MONITORING AFRICA ON THE ICASA POSITION PAPER:  
REVIEW OF REGULATION ON SOUTH AFRICAN LOCAL CONTENT: RADIO AND TELEVISION AND ICASA  
DRAFT SOUTH AFRICAN MUSIC CONTENT REGULATIONS AND ICASA DRAFT SOUTH AFRICAN  
TELEVISION CONTENT REGULATIONS PUBLISHED 18 JUNE 2015**

**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:

1.1.1. Media that is transparent, diverse, ethical and accountable to its audiences;

1.1.2. Critical and constructive communications by the powerful; and;

1.1.3. Informed, engaged and connected citizenry

1.2 MMA aims to contribute to this vision by being the premier media watchdog in Africa that promotes a free, fair, ethical and critical media culture.

- 1.3 The three key areas MMA seeks to address through a human rights-based approach are media freedom, media ethics and media quality.
- 1.4 Established in 1993 to monitor South Africa's first democratic elections, MMA has over 22 years of experience in media monitoring and direct engagement with media, civil society organisations and citizens. We have in that time also made over 110 policy submissions on a range of media policy related issues.
- 1.5 MMA is the only independent organisation that analyses and engages with media from a human rights perspective. 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 In Government Gazette No. 38890 dated 18 June 2015, the Independent Communications Authority of South Africa ("ICASA") published the ICASA Position Paper on the Review of Regulation on South African Local Content: Television and Radio ("the Position Paper") and the ICASA Draft South African Music Content Regulations ("Draft Music Regulations") and the ICASA Draft South African Television Content Regulations ("Draft Television Regulations") and invited written comments. The original date for submission of written comments was 14 August 2015. This was extended to 31 August 2015.
- 2.2 This written submission is made by Media Monitoring Africa (MMA).
- 2.3 MMA commends ICASA for carrying out this process and publishing the position paper and draft regulations for both Radio and TV. However, as with the position paper, we are still deeply concerned about the lack of reference in the document to the actual research done by the regulator.
- 2.4 As a key member of the SOS: Support Public Broadcasting Coalition, MMA endorses the submission made by the SOS.

## **3. GUIDING PRINCIPLES OF THE SUBMISSION**

- 3.1 MMA would like to endorse the guiding set out in the submission proposed by the SOS: Support Public Broadcasting Campaign particularly the following principles:
  - 3.1.1 "The SOS Coalition envisages a public broadcaster and community broadcasters that:

- 3.1.1.1 Strengthen the goals of the South African Constitution, especially the Bill of Rights, including socio-economic rights;
- 3.1.1.2 Have strong institutional autonomy that is independent of sectional, political, commercial and personal interests;
- 3.1.1.3 Deliver programming underpinned by the principles of quality, fairness, credibility, reliability, variety and balance;
- 3.1.1.4 Deliver programming that reflects the full range of South African opinions and experiences at national and local levels including the views of women, the old, children, the youth, the poor, unemployed, rural and informal settlement residents and LGTBIAQ+ communities;
- 3.1.1.5 Lead the broadcasting sector on public service, African language and local content programming;”

#### **4. GENERAL COMMENTS ON DRAFT REGULATIONS**

- 4.1 MMA is concerned that no evidence is given to substantiate the claim made in section 2.4 of the draft regulations, that broadcasters are exceeding their local content quotas. In the interests of more effective regulation and for openness and transparency, MMA submits that it is critical the full research on which the claim is made is made public so that it can be further analysed.
- 4.2 In view of the possibility that broadcasters are currently not meeting their local content quotas, MMA supports the view of the public broadcaster in section 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.
- 4.3 MMA acknowledges the report published in 2002 however, it is still unclear whether broadcasters are fully complying with the content quotas already in place, let alone exceeding the requirements.
- 4.4 MMA supports the view of the South African Communication Forums (SACF) which states that the current local content quotas are adequate and will benefit from multichannel platforms. Lighter touch regulation, such as bouquet wide quotas, rather than specific channel quotas, is recommended initially for FTA multichannel satellite platforms.
- 4.5 MMA submits that while there may be a need for regulation to be updated and amended in certain respects we believe that digital elements should be considered and the regulations drafted so as to take possible shifts into account. Such an approach is not only more cost effective but it is also in line with drafting for what we know is going to happen.

## 5. LOCAL CONTENT QUOTAS

5.1 Definition of local content: MMA is aware that the definition in 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). We will also be making these recommendations through our submission to the ICT policy review.

5.2 In terms of the local content definition we propose the following amendments:

5.2.1 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 :

5.2.1.1 By a broadcasting service licensee;

5.2.1.2 By a person who is a citizen of, and permanently resident in, the Republic;

5.2.1.3 By a juristic person, sixty percent of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;

5.2.1.4 In a co-production in which persons referred to in subparagraphs (a), (b), or (c) have at least a fifty five percent financial interest.

5.2.1.5 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

5.2.1.6 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.

5.3 MMA understands and supports the need for local content quotas. We are in full support for local content quotas that do not only protect and promote local programming but also contribute towards the promotion of cultural diversity in South Africa.

5.4 MMA welcomes the Authority's decision in section 3.7.1.23 of the draft regulations to have a 45% local content quota set for FTA broadcasters. However MMA is of the opinion that there needs to be higher local content quotas set for subscription television.

5.4.1 In relation to Subscription Satellite TV, it is important to note that these license holders have been under-regulated for years on end leading to unfair competition advantage over FTA license holders. In this regard it is to be noted that both Subscription Satellite TV and FTA compete for advertisers, and very often similar ones. Combine these elements with the considerable costs for local content and it is clear the FTA broadcasters have been bearing

the majority of costs with the Subscription Satellite providers reaping the benefits. We submit that:

5.4.1.1 The proposed increase progressively to a minimum of 20% weekly average measured over a year during the performance period.

## **6. SPORT AND LOCAL CONTENT**

6.1. MMA would like to emphasise that sport should not be considered as local content.

6.2. MMA supports the Authority's decision that local sports be EXCLUDED from the definition of local content. We believe that sport is satisfactorily covered in programme schedules and budgets.

6.3. MMA submits that while sport, especially national level games sport on a community or provincial basis, or sports that are marginalised and played locally can play an important role in content diversity.

6.4. While MMA supports the exclusion of sport from local content we do believe that provision can be made whereby local or community sporting events, such as school level and provincial events where it is not professionalised and is amateur, could contribute to a possible percentage of a broadcaster's local content quota.

6.5. The percentage could be fixed to a maximum level and would be viewed as a contributory element of local content especially for community broadcasters. MMA submits that the issue of local and/or community sports events and their relationship to local content is further investigated but the authority and views solicited on its potential value for programming diversity.

6.6. Clearly we would not envisage a scenario whereby commercial broadcasters were using local sporting events to make up their local content. Rather, we would suggest investigating such events as possible incentives to go beyond stipulated minimums with defined benefits to kick in should this occur.

## **7. SPORTING EVENTS AND PREMIUM CONTENT: THE ROAD TO EXCLUSION**

7.1. We would like to use this opportunity to highlight our concern around sporting rights and the lack of regulation of premium content.

7.2. Broadcasters should not be allowed to “lock-up” premium content rights for years because this arrangement is anti competitive as new-entrants and other broadcasters are unable to access desirable content which could potentially make their programming attractive to audiences.

7.3. 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.

7.4. We would like to encourage ICASA to revisit its decision to undertake further research on premium content issues. It is our view that reviewing local content quotas and ignoring to tighten premium content regulations is counterproductive

7.5. In this regard, we respectfully also suggest that the premium content rights must be regulated in a pro-competitive manner in order to encourage sustainable new market entrants.

## **8. CHILDREN'S PROGRAMMING**

8.1. MMA notes, with concern that the Authority intends to not implement quotas on repeating children's programming. MMA believes that the children's content produced 15 years ago may not always be relevant to the education of children today.

8.2. Although MMA is of the view that repeating children's programming may be positive, there needs to be a limit on the age of the programme being repeated.

8.3. As previously submitted for the discussion document MMA is of the view that children's programming is exceptionally important. Children account for approximately 37% of our population ([see child gauge 2013<sup>1</sup>](#)) it is critical that we cater to their needs. Children's programming can and should contribute not only towards the development of our children and assist in teaching children important life skills, but also plays a key role in identity formation and building social cohesion.

8.4. It is an embarrassment that must be borne by all South Africans that, with a few notable and excellent exceptions, we have broadly failed our children's broadcasting needs in terms of local content, and programming that seeks to build social cohesion, South African identities and respect and tolerance for our diversities.

8.5. MMA reiterates with concern the absence of any locally produced children's drama programming as well as other quality locally produced programming. While there are some exceptions, it is noted that these are as a result of externally supported sources, like Soul Buddyz or

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<sup>1</sup> [http://www.ci.org.za/index.php?option=com\\_content&view=article&id=1070&itemid=492](http://www.ci.org.za/index.php?option=com_content&view=article&id=1070&itemid=492)

Sesame Street. As such, this indicates a lack of priorities towards our nation's future. We believe that there is a need for more children programming and the quotas need to be reviewed.

8.6. We again propose that the Regulator looks at how different countries regulate children's programming. We also need to acknowledge the challenges in funding for producing children's programming and believe that alternatives must be examined and researched.

8.7. These might include offering incentives to broadcasters for the production of children's programming, such as for example increased percentages for local programming if it is a children's programme. E.g. 30 minutes children's programming may count for 45 or 60 minutes.

8.8. MMA notes the potential positive elements of the Australian model that did not only prescribe 55% children programming for both Public TV but for also Commercial TV. This model also sets out that both Public and Commercial TV need to dedicate 390 hours per year of children's and preschool television.

8.9. While on some level the comparison with a very different economy might suggest the levels are too high, given our critical challenges it might be argued that we should in fact be demanding even higher levels than those in "developed" nations. Further if we consider that early childhood development is a national priority area for our government we need to ask why preschool children and their programming needs should be marginalised by broadcasters. To do so appears clearly to be at odds not only with our government's national priority but also with a fundamental element of local content as serving to develop, portray and reinforce national identities.

8.9.1. Looking at the Australian model, or Public TV, of the 390 hours, 25 hours of the children television must be original, first run, Australian productions. Public TV can only repeat children programmes 3 times in five years. However there is no limit in the repeat of programmes of Australian origin.

8.9.2. Commercial TV must broadcast 96 hours of original first-run Australian children's drama in any three year period with the minimum of 25 hours per year.

8.9.3. We propose that the following recommendations are adopted in relation to children's programming:

8.9.3.1. For 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. MMA again submits that incentives for broadcasters are investigated so as to encourage not only adherence and compliance but that broadcasters are incentivized to exceed.

#### 8.10.3.2 For 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.

8.11 We recommend that ICASA looks into the Australian model and demand more children programming on TV. ICASA can see this Australian model and other countries models on this [website](#)<sup>2</sup>

## 9 MONITORING AND COMPLIANCE

9.1 As stated in MMA's submission on the Local Content Discussion Document in October 2014, it is still important to note that our deepest concern is regarding the lack of monitoring compliance of licensed broadcasters by ICASA.<sup>3</sup> 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 current local content quotas, their practicality and suitability.

9.2 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.

9.3 Given the challenges around monitoring and compliance by the regulator, MMA submits that paragraph 3.7.1.1 of the Draft Regulations, in which the Authority and the licensed broadcasters argue that there are reports that show that the broadcasters generally meet or exceed their local

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<sup>2</sup> <http://www.savekidstv.org.uk/wp-content/uploads/2011/05/sktv-competitor-territory-research-post-final-updated-24.4.11.pdf>

<sup>3</sup> 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](http://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)

content quotas is inaccurate and biased and we respectfully dispute the assertion that local content quotas are being met.

9.4 MMA is currently conducting research on the quality and diversity of SABC programming, to cover the period 2014 - 2015. This is a continuation of the existing research conducted in 2012 and 2013. 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 one were to exclude repeated programming, 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.

9.5 Neither ICASA nor the broadcasters were able to dispute the findings in any substantive and concrete manner or provide any other research (with supporting methodology and raw data) that contradicted the MMA's findings. MMA is also currently busy with its 2014-2015 TV Diet monitoring; in [2013 MMA's TV Diet Research](#) revealed that only 47% of local programming is considered healthy programming. This finding shows that even when local content is being broadcast, it does not necessarily mean that the content is of a good quality.

9.6 MMA still strongly supports 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.

9.7 Under DTT the public broadcaster (and other broadcasters) will have more channels than they already have, which means they can or at least in our view must absolutely have a number of dedicated channels, one channel for news, another for education, children, sports, and entertainment, etc.

9.8 MMA is pleased to be serving on the Digital Television Content Advisory Group and supports the work being carried out. We further strongly support the group examining the monitoring methodology development.

9.9 However, question arises as to how to monitor these channels, how will the local content quotas will be met and how do we track the content. While the digital environment presents range of challenges, we are fortunate to be able to draw on the expertise and experience from other countries, and as such in South Africa we have the opportunity to develop a best practice model for monitoring and compliance in a digital environment. MMA proposes a new model for monitoring and accountability.

- 9.9.1 The new methodology would include the public interest at the centre of the monitoring and accountability. However, in order to have a strong monitoring system, the support of the various players, broadcasters, telecoms, government and citizens needs to be available.
- 9.9.2 In relation to the actual monitoring, MMA welcomes the decision that the bouquet of content looked at as a whole, however, MMA believes that monitoring within each of the channels will still need to be conducted to analyse what is exactly being broadcast.
- 9.9.3 In regard to the above, we urge ICASA, in addition to the reporting obligations set out above, to investigate adopting the certification system for local content that has been adopted by the Canadian Radio-Television and Telecommunications Commission which provides an additional confirmation of compliance.
- 9.9.4 One of the most unique features of the Canadian broadcast industry is that it is largely self regulating. This means Canadian broadcasters have developed an efficient system that permits any member of the general public to give direct input into their content programming standards.
- 9.9.5 This system provides Canadians direct access to the regulatory system, without having to wade through government hearings and 'red-tape' and without having to wait for long periods of time for a decision. We propose that ICASA considers the following mechanism as used by Canada for the certification of programmes considered South African local content:
- 9.10 The main aim of the certification of all programming is to allocate all South African local content with a serial number, genre and language. For the certification system to be successful, it will require a working relationship between the producers, broadcasters and the Authority. The certification system will also require that all stakeholders agree and understand what is meant by South African local content.
- 9.10.1 It is important that all producers, whether commissioned or not, understand the need to submit all their South African local content programming to the Authority, and mechanisms to do so are clearly outlined to them
- 9.10.2 When a programme is being certified as South African, it should be assigned a certification number:
- An "S" number for a domestic South African programme
  - An "SR" number (Special Recognition) for an international co-venture/co-production programme
  - A "D" number for dubbing of a foreign production

- All programming that is commissioned to independent producers by the broadcasters should, in addition to certification number, have the “C” symbol at the end. For example programme XX is commissioned by the broadcaster to the producers the certification number should be S10000**C**

9.11 Once a production is certified by the Authority, the producer should be sent a letter outlining the details of the certification including the title of the production, the certification number, genre and language.

9.11.1 As licensees, broadcasters are ultimately responsible for the programming they broadcast and as such should obtain a copy of the letter of certification from the producer before airing any programme that they intend to claim as South African.

9.11.2 When the programme is broadcast, the broadcaster must enter it into its programme logs, the name of the programme, the certification number, genre and language as they appear on the certification letter.

9.11.3 It is also the responsibility of broadcaster to ensure that the correct certification number entered into its programme logs is the actual number issued to that specific programme.

9.11.4 For long running programmes such as Soapies or entertainment programmes, producers should submit their episodes either monthly or quarterly and each episode will have a different certification number.

9.11.5 Details of this certification system can be found at the Canadian Radio-television and Telecommunications Commission [website](#).

9.11.6 Regarding accountability, the following is recommended:

9.11.6.1 ICASA currently has in our view significant powers that are seldom exercised though –and for this aspect to be present – we need to ensure that ICASA is able to operate as a strong, independent effective regulator. So again assuming we have won this crucial battle – which we absolutely have to win:

9.11.6.2 The Authority can exercise its authority, and through regular engagement can ensure effective accountability.

9.11.6.3 Here we can use the speed, and simplicity aspects of the new technology to help provide indicators and raise alerts with broadcasters or telecoms operators.

9.11.6.4 MMA proposes that aspects of public engagement be tallied on a monthly basis, in terms of viewer/listener engagement and surveys. Similarly some of the information which is digital

could be easily assessed, e.g. schedule analysis.

## 10 CONCLUSION

- 10.1 We thank the Regulator for the opportunity once again to participate in this process and request that should oral hearing take place we would like to use such an opportunity to present our views in person.
- 10.2 In an ever increasingly digital age where not only platforms converge but also where citizens are being swamped by international content the role and importance of local content could not be greater. While the digital world offers almost limitless options for the amount of content there is a need to ensure that we meet the needs of citizens.
- 10.3 This means ensuring that people see themselves, their stories, their languages, their realities presented and represented. It means we have an even greater responsibility to our children to ensure that their needs as South Africans and Africans are not marginalised and added as after thoughts.
- 10.4 The digital future also means that not only do we have an independent, effective and strong Regulator, but one that regulates in the public interest, one that is at the forefront of monitoring and compliance in a digital age.
- 10.5 The role of the Regulator and importance of accurate independent monitoring cannot be underestimated, as the well known African proverb runs; until the lions get their own story tellers, history will always be told from the perspective of the hunters. In the current instance until and unless we realise the Regulator of the lion, the needs, quotas, compliance and perspectives that will dominate will be those of the hunter.

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