



STARSAT ANNUAL COMPLIANCE REPORT

MARCH 2021

2019/2020 ANNUAL COMPLIANCE REPORT

ON DIGITAL MEDIA (PTY) LTD BROADCASTING AS STARSAT

Licence Period: 09 July 2008 - 08 July 2023

1. PREFACE

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution¹, the ICASA Act², the Electronic Communications Act³ (“ECA”) and the Broadcasting Act⁴ to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority, is to monitor compliance by broadcasters with the terms and conditions of their licences, the three Acts and any relevant legislation and Regulations.

The purpose of the report is to give an account of On Digital Media (Pty) Ltd (“the Licensee”)’s performance for the 2019/2020 financial year. Aspects of compliance that are measured comprise of geographic coverage, encryption of signal and use of licensed Electronic Communications Network Service, language(s) of broadcast, broadcast content format, training and skills development equity, staff development and employment equity plan, target market, ownership by individuals from historically disadvantaged groups, financial year end, Regulations regarding Standard Terms and Conditions for Individual Broadcasting Services, Must Carry Regulations, General Licence Fees Regulations, Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, Commissioning Protocols Regulations and South African Television Content Regulations.

2. BACKGROUND

On 9 July 2008, the Authority issued an Individual Commercial Subscription Television Service (“I-CSTS”) licence to On Digital Media (Pty) Ltd.

The shareholders as reflected in the licence are as follows:⁵

¹ The Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996)

² ICASA Act, 2000 (Act No. 13 of 2000) as amended

³ Electronic Communications Act, 2005 (Act No. 36 of 2005)

⁴ Broadcasting Act, 1999 (Act No. 4 of 1999)

⁵ Appendix A: On Digital Media’s I-CSTS licence

Shareholders Name	Percentage
<i>First National Media Investments Holdings Ltd</i>	<i>-27.87%</i>
<i>Red Gold Investments</i>	<i>-20%</i>
<i>SES Global Africa SA</i>	<i>-20%</i>
<i>Industrial Development Corporation of South Africa Ltd</i>	<i>-11.13%</i>
<i>First One Trade and Invest 12 (Pty) Ltd</i>	<i>-10%</i>
<i>A N Moodley</i>	<i>-1%</i>
<i>National Empowerment Fund Trust</i>	<i>-10%</i>

The Licensee's shareholding structure has changed and the current shareholders according to the compliance submission⁶ are:

Shareholders Name	Percentage
Hantex International Company Limited	20%
BEE Consortium/Digital Landmark (Pty) Ltd	28.8%
Industrial Development Corporation of South Africa Ltd	22%
National Empowerment Fund	19.48%
Diduscan (Pty) Ltd (In the process of transfer to new Shareholder)	9.6%
AN Moodley	0.123%

The Licensee filed a notification application to change the shareholding structure in 2014 and subsequently withdrew the Shareholder's Agreement upon the Authority's refusal to grant confidentiality on the Shareholder's Agreement.

The Licensee was then informed on 27 September 2018 to submit a notification to update their details with the Authority (i.e. to change their physical address and their shareholding structure) and a Processes and Procedures Regulations manual was forwarded to the Licensee. A reminder was sent to the Licensee on the 11 of November 2018 and the Processes and Procedures Regulations manual was sent on the 4 of December 2018. Another reminder was sent on the 6 of December 2018.

On the 11 of December 2018, the Licensee submitted an incomplete notification without a Board resolution and a Shareholder's Agreement. The Licensee was notified on 11 of December 2018 via email of the outstanding documents to the submitted notification and did not responded.

⁶ Appendix B: On Digital Media - Compliance Report 2020 Part 1

On 21 October 2019, as part of the annual compliance submission, the Licensee submitted a notification dated 08 May 2014. The Authority wrote a letter to the Licensee on 26 November 2019 advising them to file a transfer with the Licensing Department because of the 28.8% share that is held by Digital Landmark (Pty) Ltd in the On Digital Media Compliance Report April 2018 – April 2019. The Licensee was again informed to file a transfer of ownership with the Licensing Department in the meeting between the Licensee's representative and the Authority on 05 December 2019.

For the period under review (April 2019 – March 2020), the Licensee submitted on 19 February 2021 annexures A1 - A7 which comprise the 2014 Shareholder's Agreement that the Licensee withdrew due to the Authority's refusal to grant confidentiality, the 2014 Form O, the 2014 Board Resolution, the 2014 delivery receipt and acknowledgement of receipt by the Authority and the December 2018 notification (Form O) the Licensee submitted without a Shareholder's Agreement and Board resolution. Further, in the letter dated 13 November 2020 to the Authority, the Licensee informed the Authority it has scheduled its Annual General Meeting (AGM) for the 26 November 2020 where the latest Shareholder's Agreement will be tabled for approval. Upon approval of the Shareholder's Agreement at the AGM, it will be sent to the Authority. Thus far, the Licensee has not sent the Shareholder's Agreement approved at the 26 November 2020 AGM to the Authority.

The Licensee has been informed to file a transfer with the Authority's Licensing Department on 26 November 2019 via a letter and again in the meeting of 05 December 2019. The Licensee has not filed a transfer of ownership as advised and is not taking the Authority in its confidence by disclosing full and accurate information regarding the ownership of On Digital Media.

Based on the above, the Licensee's shareholding structure remains as it is reflected on the licence. The Licensee did not comply with its responsibility to inform the Authority of changes to its shareholding structure.

3. COMPLIANCE ASSESSMENT

3.1 Service Name

Clause 1 of the schedule to the licence states that the service name is:

"Top TV"

The Licensee notified the Authority about the name change and the new service name is "StarSat". The Licensee confirms that the service name is "StarSat".

The Licensee complies with clause 1 of the schedule to its licence.

3.2 Geographic Coverage Area

Clause 2 of the schedule to the licence provides that:

"The Licensee shall provide national coverage of its broadcasting services"

The Licensee confirms that it provides national satellite subscription television broadcasting services.

The Licensee complies with clause 2 of the schedule to its licence.

3.3 Encryption of Signal and use of licensed electronic communications network service.

Clause 3.1 of the schedule to the licence states that:

"The Licensee must ensure that the output signal of its subscription broadcasting service is encrypted".

The Licensee confirms that the commercial subscription television broadcasting services they are providing, are encrypted.

The Licensee complies with clause 3.1 of the schedule to its licence.

Clause 3.2 of the schedule to the licence provides that:

"The Licensee shall use the licensed electronic communications network service of a Licensee".

The Licensee notes that StarTimes Media (SA) Pty Ltd, is a licensed electronic communications network service Licensee and provides On Digital Media Pty Ltd with the relevant communication network services⁷.

The Licensee complies with clause 3.2 of the schedule to its licence.

3.4 Language(s)

Clause 4 of the schedule to the licence states that:

"Language of broadcast is left to the discretion of the Licensee"

The Licensee notes that its programmes are broadcast predominantly in English, in local vernacular in some local content channels as well as in Mandarin Chinese, French and Indian languages.

The Licensee complies with clause 4 of the schedule to its licence.

3.5 Format

Clause 5 of the schedule to the licence provides that:

"The Licensee is licensed to provide a subscription broadcasting service aimed at the general public and niche markets".

According to the Licensee, its main target audience ranges from LSM group 6 to 9 but its broadcasting services are available to all members of the general public.

The Licensee complies with clause 5 of the schedule to its licence.

3.6 Training and Skills Development Equity

Clause 6.1 of the schedule to the licence states that:

"The Licensee shall submit its workplace skills plan to the Authority within a month of issuing of this licence and thereafter by 30th of June each year".

Further, clause 6.2 of the schedule to the licence provides that:

⁷ Appendix B: On Digital Media - Compliance Report 2020 Part 1

"The Licensee shall submit its workplace skills plan and its annual training report in the format prescribed by the Authority".

The Licensee has not submitted its workplace skills plan to the Authority. The Licensee submitted training reports for Ekurhuleni Metropolitan Municipality from Mict Seta, a training centre in Midrand, Gauteng⁸. Submitting training documents for Ekurhuleni Municipality amounts to misrepresentation by the Licensee.

The Licensee did not comply with clauses 6.1 and 6.2 of the schedule to its licence.

3.7 Staff Development and Employment Equity Plan

Clause 7 of the schedule to the licence provides that:

"The Licensee shall submit an annual compliance report in the format prescribed by the Authority".

The Licensee submitted the staff development and Employment Equity Plan report.

The Licensee complies with clause 7 of the schedule to its licence.

3.8 Target market

Clause 8 of the schedule to the licence provides that:

"The Licensee's primary target market is viewers in the LSM 6 to 9 bracket".

The Licensee confirms that its main target audience ranges from LSM group 6 to 9 but its broadcasting services are available to all members of the general public.

The Licensee complies with clause 8 of the schedule to its licence.

3.9 Ownership by individuals from historically disadvantaged groups

Clause 9 of the schedule to the licence provides that:

"Ownership by individuals from historically disadvantaged groups shall be no less than 30%".

⁸ Appendix C: On Digital Media – Compliance Report 2020 part 2

The Licensee reported that ownership by persons from historically disadvantaged groups constitute 57.97%⁹. However, the Authority could not independently verify the ownership structure of ODM (Pty) Ltd since the Licensee has not submitted the Shareholder's Agreement nor filed a transfer of ownership with the Authority.

Compliance with clause 9 of the schedule to the licence could not be determined and remains inconclusive. (Refer to 2. Background, above).

3.10 Financial Year

Clause 10.1 of the schedule to the licence provides that:

"The Licensee's financial year end shall be the end of February"

Furthermore, clause 10.2 of the schedule to the licence provides that:

"If this date changes, the Licensee shall in writing notify the Authority thereof within seven business days of the change".

The Licensee has not notified the Authority of any changes to its financial year end. Therefore, the financial year of On Digital Media (Pty) Ltd, remains the end of February.

The Licensee complies with clauses 10.1 and 10.2 of the schedule to its licence.

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual Regulations, 2011

The Licensee is required in terms of the Compliance Procedure Manual Regulations to submit a Form 12A¹⁰ which reports on all complaints received during the financial year under review. ODM (Pty) Ltd submitted Form 12A and attached their own comprehensive complaints report¹¹ that is in accordance with the Compliance Procedure Manual Regulations. According to the submitted complaints report, ODM (Pty) Ltd received 4549 complaints for the year under review. Billing complaints made up 87% of the total number of complaints that were received. Poor installation service problems amounted to 2% and

⁹ Appendix B: On Digital Media - Compliance Report 2020 Part 1

¹⁰ ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.

¹¹ Appendix C: On Digital Media - Compliance Report 2020 Part 2

complaints about technical problems such as loss of signal amounted to 10%. The Licensee also received complaints on Facebook (734) and Hello Peter (3).

The Licensee complies with the ICASA Compliance Procedure Manual Regulations.

4.2 Standard Terms and Conditions for Individual Broadcasting Services, 2016¹²

Sub regulation 1 of the Standard Terms and Conditions for Individual Broadcasting Services states that:

"A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- a) the name of the Licensee;*
- b) contact details including contact person;*
- c) shareholding;*
- d) physical address; and*
- e) financial year end".*

Since the licence was granted to the Licensee in 2008, the Licensee according to its submission moved to new broadcasting premises and the shareholding structure changed in 2014. The Licensee was advised numerous times to file a notification and eventually submitted an incomplete submission, without a Shareholder's Agreement and a Board resolution. The Licensee has been advised during the period under review to file a transfer application with the Licensing Department and has not done so.

The Licensee did not comply with the Standard Terms and Conditions for Individual Broadcasting Services.

4.3 ICASA General Licence Fees Regulations, 2012

Schedule 2 of the General Licence Fees Regulations as published in the *Government Gazette*, no 36323 on 28 March 2013, provides for Individual Commercial Broadcasting Service Licensees to pay annually to the Authority a licence fee of between 0.15% to 0.35% of its licensed revenue (revenue from its licensed services).

Schedule 3(5) of the General Licence Fees Regulations provides that:

¹² Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended

"Where a legal entity holds any combination of a BS Licence, ECS Licence and/or ECNS Licence, such entity must calculate the licence fee based on information contained:

- (a) On the Audited Financial Statements of that Licensed Entity; or*
- (b) Annual Financial statements signed to by the accounting officer of the licensee where the licensee is not legally obliged to provide Audited Financial Statements"*

Further, Schedule 3(6) provides for:

"All payments in respect of Annual Licence Fees are due annually"

The Licensee's financial year ends the last day of February and the Licensee has submitted its Audited Financial Statements. The Licensee provided proof of payment in respect of licence fees for the period under review but has an outstanding amount due to the Authority for the **2018/2019** Financial Year.

The Licensee is non-compliant with the ICASA General Licence Fees Regulations.

4.4 Universal Service and Access Fund Regulations, 2011

Regulation 3(1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund ("USAF") as published in the *Government Gazette* No. 34010 on 10 February 2011, provides that:

"Every holder of the licence granted in terms of Chapter 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of the annual turnover, to the Fund".

Further, Regulation 3(2) provides that:

"A BS Licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its USAF contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are of the same financial year"

The Licensee's financial year for the period under review ended on 29 February 2020 and the Licensee provided proof of payment of USAF fees.

The Licensee complies with the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund.

4.5 Subscription Broadcasting Services Regulations, 2006

Regulation 3.1 of the Subscription Broadcasting Services Regulations as published in *Government Gazette* No. 28452 dated, 31 January 2006 states that:

"A subscription broadcasting service Licensee may not add a channel to its service unless the Authority, on application by the Licensee, has authorised the channel".

Channels of ODM (Pty) Ltd are all approved by the Authority and so, the Licensee applies for ICASA's channel authorisation¹³ before adding new channels on its bouquet.

The Licensee complies with Regulation 3.1 of the Subscription Broadcasting Services Regulations.

4.6 ICASA Must Carry Regulations, 2008

Regulation 4.1 of the ICASA Must Carry Regulations, as published in the *Government Gazette* No 31500 on 10 October 2008 provides that:

"All subscription broadcasting service licensees must carry the channels of the public broadcasting service licensee, designated as must carry channels as part of the service offering, subject to Regulation 5".

The Licensee has confirmed that it carries all three channels of the South African Broadcasting Corporation (SABC).

Regulation 8 of the Must Carry Regulations provide for:

"The subscription broadcasting service Licensee must submit a copy of agreement within thirty (30) days of such agreement being concluded and signed".

The Licensee submitted its agreement (signed in 2010) with the SABC.

The Licensee complies with Regulations 4.1 and 8 of the ICASA Must Carry Regulations.

¹³ Appendix C: On Digital Media - Compliance Report 2020 Part 2

4.7 Regulations on the Commissioning of Independently Produced South African Programming, 2009.

Regulation 4 of the Regulations on Commissioning of Independently Produced South African Programming as published in the *Government Gazette* No 32767 on 01 December 2009 provides that:

"A licensee must submit an annual report to the Authority setting out its respective procurement activities in respect of independently produced South African programming from independent producers for the year preceding the date of the report. The report will include, inter alia:

- (a) a list of the names of independent producers from whom programmes were commissioned;*
- (b) the number of programmes and episodes commissioned from independent producers;*
- (c) the number of programmes commissioned from historically disadvantaged individuals and small and medium independent producers in the production industry; the total amount spent by the licensee on independently produced South African programming; and details of any disputes which occurred between the licensee and independent producers and the manner in which they were resolved".*

The Licensee has not submitted its annual report of their procurement activities and notes that in its submission *"We do not produce or commission the production of local and/or international content, hence we acquire content in a completed broadcast ready form directly from channel and content providers and schedule broadcasts accordingly"*. However, On Digital Media's own content procurement policy of 2010 approved by the Authority states that:

"There are six (6) main methods that ODM will employ to procure content from Independent Producers in South Africa:

- Straight Commissioning – content acquired by ODM and completely financed by ODM with the Intellectual property rights residing with the network.*
- Re-Commissioning – commissioning of additional or new content that is similar or the same to content already commissioned by ODM.*

- *Co-productions – ODM will enter into co-productions with Independent Producers and/or other broadcasters at its sole discretion after editorial and financial consideration and evaluation.*
- *Licensing – the acquiring of completely finished programmes – prices are negotiated with the license rights holder.*
- *Acquisition of existing formats – ODM to negotiate for the utilization of existing format rights with format rights holder.*
- *Advertiser Funded or Sponsored programmes – commercial programmes fully funded by a sponsor who buys airtime from the network for commercial exploitation”.*

From the six methods above and the Licensee’s own admission of only acquiring completed broadcast ready content (licensing), On Digital Media does not comply with its own content procurement policy.

The Licensee did not comply with Regulation 4 of the Regulations of the Commissioning of Independently Produced South African Programming, 2009.

4.8 ICASA Local Television Content Regulations

Regulation 6(1) of the ICASA Local Television Content Regulations published in the *Government Gazette* No. 39844, on 23 March 2016 provides that:

"A subscription television broadcasting licensee must ensure that within twenty-four (24) months of gazetting of these regulations in the case of existing licensee or within 24 months of issuing of a licence to a new licensee or within such longer period as the Authority may determine, a minimum of 15% of their annual content acquisition budget is spent on local television content programming”.

Further, Regulation 6(2) provides that:

"A subscription broadcasting service licensee that acquires channels must ensure that, a minimum of 15% of their total annual channel acquisition budget, measured across its service as a whole, is spent on channels with local television content that are compiled and up linked from South Africa”.

Furthermore, Regulation 6(3) states that:

"The broadcasting by a subscription television broadcasting licensee of licensed free-to-air public television broadcasting services, licensed free-to-air commercial television broadcasting services and licensed community television broadcasting services will not count towards its compliance"

The Licensee states in its submission that it does not produce or commission the production of local or international content, content is acquired in a completed broadcast ready form and is scheduled accordingly.

During the period under review, the Licensee spent R 22 672 917.82 on acquisition of locally ready to broadcast content. The Licensee spent 9%¹⁴ of its annual content acquisition budget on local content acquisition.

The Licensee is non-compliant with Regulations 6(1), 6(2) and 6(3) of the ICASA Local Television Content Regulations.

5. CONCLUSION

For the 2019/2020 financial year, the Licensee did not comply with pertinent compliance requirements and applicable Regulations. The Licensee failed to comply with sub regulation 1 of the Standard Terms and Conditions for Individual Broadcasting Services in that it failed to file a notification regarding changes to their physical address, contact person and shareholding structure within seven (7) days of the occurrence of the changes. The Licensee has been advised to file a transfer of ownership with the Licensing Department, has failed to do so and the shareholding structure remains unresolved. Ownership by Historically Disadvantaged Individuals also remains unresolved due to the Licensee's failure to file a transfer of ownership with the Authority. The Licensee submitted training reports for Ekurhuleni Metropolitan Municipality which is an indication of misrepresentation.

The Licensee failed to comply with the General Licence Fees Regulations, has outstanding annual licence fees due to the Authority from the 2018/2019 financial year. The Licensee also does not adhere to the Regulations on Commissioning Protocols, its own content procurement policy and the ICASA Regulations on Local Television Content by spending 9%

¹⁴ Appendix B: On Digital Media - Compliance Report April 2020 Part 1

of its annual content acquisition budget instead of 15% that is stipulated in the Regulations. The Broadcasting Compliance Unit will approach the Licensee for a discussion on its non-compliance, with a potential referral to the Complaints and Compliance Committee (CCC).

6. TERMS OF REFERENCE

- 6.1** Appendix A: I-CSTS Licence of ODM (Pty) Ltd;
- 6.2** Appendix B: On Digital Media – Compliance Report 2020 Part 1;
- 6.3** Appendix C: On Digital Media - Compliance Report 2020 Part 2;
- 6.4** Appendix D: Regulations on Standard Terms and Conditions for Individual Broadcasting & Individual Electronic Communications Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended;
- 6.5** Appendix E: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011;
- 6.6** Appendix F: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011;
- 6.7** Appendix G: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended;
- 6.8** Appendix H: Subscription Broadcasting Services Regulations, 2006 as published in *Government Gazette* No. 28452 dated, 31 January 2006;
- 6.9** Appendix I: ICASA Must Carry Regulations, 2008 as published in the *Government Gazette* No 31500 on 10 October 2008. Appendix J: ICASA Local Television Content Regulations published in the *Government Gazette* No. 39844, on 23 March 2016. (**Repealed** - *ICASA South African Television Content Regulations, 2006 as published in Government Gazette No. 28454 dated, 31 January 2006*); and
- 6.10** Appendix K: Regulations on Commissioning of Independently Produced South African Programming, 2009 as published in the *Government Gazette* No 32767 on 01 December 2009.

END

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