



ODM ANNUAL COMPLIANCE REPORT

MARCH 2022

2020/2021 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 the performance of On Digital Media (Pty) Ltd ("Licensee") for the 2020/2021 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, South African Television Content Regulations and ICT Covid-19 Regulations first published in April 2020 and the subsequent amendments following the proclamation of the State of National Disaster.

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)

The ICT Covid-19 Regulations as amended, sought to exempt specific service licence conditions and/or revised quotas and such those, will be reflected in the body of the report accordingly.

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

Table 1. Change to shareholding at ODM

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 shareholders according to the Licensee's compliance submissions to the Authority for the financial years **2018/2019** and **2019/2020** are:

Table 2. Change to shareholding at ODM

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

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

The Licensee's shareholding structure has changed again and the shareholders according to the compliance submission for the **2020/2021** financial year are:

Table 3

Shareholders Name	Percentage
<i>Hantex International Company Limited</i>	<i>20%</i>
<i>Digital Landmark (Pty) Ltd</i>	<i>28.8%</i>
<i>Industrial Development Corporation of South Africa Ltd</i>	<i>22%</i>
<i>National Empowerment Fund</i>	<i>10%</i>
<i>Michael Arthur Dearham</i>	<i>19.077%</i>
<i>AN Moodley</i>	<i>0.123%</i>

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 copy of the Processes and Procedures Regulations, 2016, was forwarded to the Licensee. A reminder was sent to the Licensee on the 11 of November 2018 and another copy of the Processes and Procedure Regulations, 2016 was sent to the Licensee on 04 December 2018. Another reminder was sent on, 06 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 the Licensee simply did not respond.

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 2018/2019 submission. 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 that was held on, 05 December 2019.

For the 2019/2020 financial year, the Licensee submitted on 19 February 2021 annexures A1-A7 which comprise of 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 had 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 would be tabled for approval. Upon approval of the Shareholder's Agreement at the AGM, Licensee said it would be sent to the Authority. Thus far, the Licensee has not sent to the Authority, the Shareholder's Agreement they had indicated would be approved at the AGM they had held on, 26 November 2020.

The Licensee's shareholding structure has changed as reflected in Table 1 to Table 2 and the Licensee was advised to file a transfer with the Authority however, they have failed to do so. Further, since April 2021 the Licensee's shareholding structure has changed once more from Table 2 to Table 3 and the Authority has not been notified of those changes. The Licensee is in contravention of sections 13(1) and (2) of the ECA and regulation 2(1) of the Amendment Standard Terms and Conditions for Individual Broadcasting Services, 2016 as amended.

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 confirms 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 services⁶.

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 and 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 and its broadcasting services are available to all members of the 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".

⁶ Appendix B: ODM ICASA Compliance Report Apr 20 – Apr 21

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

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

The Licensee did not submit its workplace skills plan to the Authority by 30 June 2020 for the period under review. The Licensee submitted a confirmation of a receipt of an application from MICTSETA, for the 01 April 2021 to 31 March 2022 financial year dated, 01 September 2021 and not for the period under review (2020/2021). Further, the Licensee attached a letter of acceptance from the University of Witwatersrand for the Chief Executive Officer to study for a Master of Business Administration program and not proof of registration from the University. Furthermore, the Licensee submitted attendance registers to training courses that were presented or facilitated by the Licensee's own employees including the new shareholder.

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%".

The Licensee reported that ownership by persons from historically disadvantaged groups constitutes 58%⁷. 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 and notification with the Authority.

Compliance with clause 9 of the schedule to the licence could not be determined and remains inconclusive. (Refer to no. 2. Background, above).

3.10 Financial Year end

Clause 10.1 of the schedule to the licence provides that:

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

Further, 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.

⁷ Appendix B: ODM ICASA Compliance Report Apr 20 – Apr 21

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual Regulations, 2011

The Licensee is required in terms of the Compliance Procedure Manual Regulations, 2010, to submit a Form 12A⁸ which reports on all complaints received during the financial year under review. ODM (Pty) Ltd submitted Form 12A and attached their own comprehensive complaints report⁹ that is in accordance with the Compliance Procedure Manual Regulations, 2010. According to the submitted complaints report, ODM (Pty) Ltd received 1292 complaints for the year under review. Billing complaints made up 79% of the total number of complaints that were received. Technical service problems such as loss of signal, poor installation and Electronic Program Guide amounted to 20% and complaints related to customer relocation amounted to 1%.

The Licensee complies with the ICASA Compliance Procedure Manual Regulations. 2010.

4.2 Standard Terms and Conditions for Individual Broadcasting Services, 2016¹⁰

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".*

⁸ ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.

⁹ Appendix C: ODM ICASA Compliance Report Annexures C to H

¹⁰ Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in Government Gazette No. 33294 dated, 14 June 2010, as amended

Since the licence was granted in 2008, the Licensee according to its submission moved to new broadcasting premises and the shareholding structure changed in 2014 and in April 2021. The Licensee was advised numerous times to file a transfer of ownership and eventually, they submitted an incomplete submission, without a Shareholder's Agreement and a Board resolution. The Licensee has not fulfilled its obligation of informing the Authority of changes in its shareholding structure.

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:

"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 paid its General Licence Fees on 31 August 2021. However, the Licensee did not submit its Audited Financial Statements instead submitted a confirmation of income from the Auditor.

The Licensee is partially 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 the last day of February 2021 and the Licensee paid its USAF fees on 31 August 2021.

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 authorisation¹¹ 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.

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:

¹¹ Appendix C: ODM ICASA Compliance Report Annexures C to H

"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 that in its submission, they have said the following:

"We do not produce or commission the production of local and/or international content, hence we acquire both local and international content 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, it 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, 2016

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 20 236 450.17 on acquisition of locally ready to broadcast content. The Licensee spent 11%¹² of its annual content acquisition budget on local content acquisition.

The Licensee did not comply with Regulations 6(1), 6(2) and 6(3) of the ICASA Local Television Content Regulations, 2016.

5. CONCLUSION

For the 2020/2021 financial year, the Licensee did not comply with the Training and Skills Development Equity obligations, the Standard Terms and Conditions for Individual Broadcasting Services Regulations, Regulations on the Commissioning of Independently Produced South African Programming, the ICASA Local Television Content Regulations and partially complied with the General Licence Fees Regulations. The Licensee will be notified of the contraventions with the Regulations and a potential referral to the Complaints and Compliance Committee (CCC), of the Authority.

6. TERMS OF REFERENCE

6.1 Appendix A: I-CSTS Licence of ODM (Pty) Ltd;

6.2 Appendix B: ODM ICASA Compliance Report Apr 20 – Apr 21;

¹² Appendix B: ODM ICASA Compliance Report Apr 20 – Apr 21

- 6.3** Appendix C: ODM ICASA Compliance Report Annexures A - H;
- 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