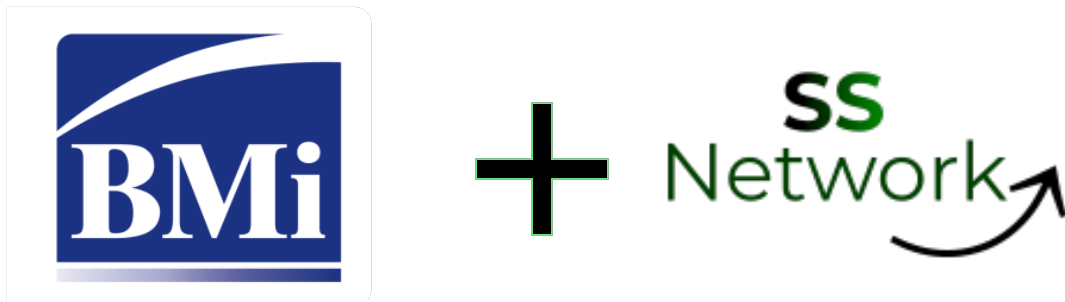


DRAFT SPORTS BROADCASTING SERVICES
AMENDMENT REGULATIONS, 2020
(NOTICE 635 OF 2020)

David Sidenberg
BMI Sport Info & SS Network
Joint Submission to ICASA



14 December 2020

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Attention: Ms. Violet Molete

Department of Communications and Digital Technologies
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By email: vmolete@icasa.org.za and pcokie@icasa.org.za

RE: DRAFT SPORTS BROADCASTING SERVICES AMENDMENT REGULATIONS, 2020

1. The author of this submission, David Sidenberg is the CEO and a Director of BMi Sport Info (BMi), a company that specialises in Sport and sponsorship research and consulting in South Africa. Sidenberg is also the founding member and CEO of SS Networks (SSN) – a sponsorship and broadcast rights commercialisation agency which is credited with structuring some of the largest broadcast deals in the country on both subscription and in particular FTA broadcast platforms. [Annexure A provides a summary of our credentials in this regard].
2. BMi was formally established in 1990 as the first and only independent research company in South Africa to focus exclusively on the sport and sponsorship market. For three decades, BMi has conducted extensive research on quantifying and measuring local trends in a wide range of sporting codes, sponsorship properties and related topics. These include participation and spectator growth trends, television viewing patterns, sponsorship quantification and valuation, broadcast and sponsorship industry trends and the commercialisation therein. BMi has further expanded into the fields of strategic advertising evaluation, digital & social media as well as consulting services in order to cover all aspects of communication, research and strategy.
3. On 9 October 2020, the Department of Communications and Digital Technologies gave “notice” that a draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020 – [herein referred to as “**Draft White Paper**”] was approved by Cabinet on 09 September 2020 and published for public comment.
 - .3.1. While our response to this Notice has already been submitted directly to the Department of Communications and Digital Technologies, we note however for this submission that where specific references to the draft Sports Broadcasting Services Amendment Regulations exist within the “Draft White Paper, we may take the opportunity to address these herein.
4. Prior to this, on or about 14 December 2018, the Independent Communications Authority of South Africa (“ICASA”) gave “notice of its intention to amend the Sports Broadcasting Services Regulations, 2010 in line with the provisions of section 4(3)(j) of the Independent Communications Authority of South Africa Act, Act No. 13 of 2000” (“the ICASA Act”), as amended and section 60(1) and (2) of the Electronic Communications Act No. 36 of 2005 (“The

ECA”), as amended and invited parties to make written representations on the draft Sports Broadcasting Services Amendment Regulations, 2018. [“Draft Regulations 2018”]

.4.1. A link to our response on the Draft Regulations - ICASA Draft Sports Broadcasting Services Amendment Regulations, 2018 – submitted on 15 March 2019 is provided for ease of reference [<https://www.icasa.org.za/uploads/files/BMI-submission-on-draft-sports-broadcasting-services-amendment-regulations-2018.pdf>]

.4.2. We note that a further representation was delivered at the formal public hearing presentation held by the Regulator during the end of May 2019 and submitted to ICASA.

5. Further to above, on 5 November 2020, the Independent Communications Authority of South Africa (“ICASA” or “the Authority”) subsequently gave notice - (Notice 635 of 2020) - of its intention to further amend the Sport Broadcasting Services Regulations, 2010 in accordance with the provisions of section 4 (3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 (“ICASA Act”), as amended and section 60(1) and (2) of the Electronic Communications Act No. 36 of 2005 (“the ECA”), as amended. “[Draft Regulations 2020”].

We thank ICASA for the opportunity to respond in writing today to these proposed amendments and confirm that we would like the opportunity to make an oral representation as well.

Our comments on the proposed draft Sport Broadcasting Services Amendment Regulations, 2020 follows:

Kind regards,

D Sidenberg

David Sidenberg

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RESPONSE TO THE DRAFT SPORT BROADCASTING SERVICES AMENDMENT REGULATIONS [2020]

1. INTRODUCTION

- 1.1 We have taken a great interest in the recently published draft White Paper on Audio and Audio Visual Content Services Policy Framework (AAVCS), as it relates to the ICASA Sport Broadcasting Services Regulations, and the impact that it could have on the future sport and entertainment (music, arts, lifestyle, etc.) broadcast and the communications landscape in South Africa.
- 1.2 Due to the potential overlap and interdependence between the draft AAVCS with the Sports Broadcasting Services Amendment Regulations, 2020 - which followed only a few weeks after the other- the two must be weighed-up together, while simultaneously balancing this with the reversal of the vast majority of ICASA's recommendations previously contained in draft Sport Broadcasting Services Amendment Regulations, 2018.
- 1.3 Taking into consideration the unprecedented times we live in, brought about by the enduring impacts of Covid-19, coupled with the current pressures from the recent return of live sport and competitions in only August of 2020, we would have liked more time to fully consider the implications before responding. We do however note that this process dating back to December 2018 has arguably already dragged on longer than most stakeholders would have preferred, causing ongoing uncertainty within the industry.
- 1.4 Accordingly, what is set out in this response is very much our initial response – dealing only with what has been identified as the most pressing matters – and we respectively reserve the right to make further representations should the opportunity arise.

2. MEDIA DISRUPTION & THE DIGITAL REVOLUTION

- 2.1 With reference to AAVCS, as aptly outlined in the Executive Summary of the draft White Paper and further referenced in the context provided to the “New Policy Framework”, we welcome the recognition given to 4IR and the digital revolution as a driver for unprecedented change in to the broadcast industry. The ongoing disruption from OTT players, as well as mobile operators who are rapidly deploying next generation networks and 5G capabilities serves as an important reminder to the associated challenges and opportunities this will bring to the overall broadcast landscape for the foreseeable future.
- 2.2 In a world where devices, products and services are perpetually connected, brands now have powerful ways to reach their audiences. Based on the above realities, the inevitable shift in advertising and sponsorship spend away from traditional media appears to be only a question of when, not if.
- 2.3 The growing interest in digital media has to varying degrees further suppressed growth in the sport sponsorship and broadcast industry. TV is still very important (and will remain so for some time in Africa) but the growth and maturity of digital, social, multi-screen penetration, plus how and where

this content is reaching consumers, is a matter that we continue to focus a great deal of our market research efforts towards.

2.4 Embracing content creation is also critical, as the advent of streaming content by an influx of OTT and mobile players is going to see more and more TV channels needing unique content. Flexibility from the incumbent broadcasters is going to be key to ensure they remain successful following the proliferation of new channels.

2.5 In some ways, the sports marketing industry has moved ahead of the actual SA market. As budgets continue to migrate to digital, it has both positive and negative implications. Data costs are still prohibitive, access restricted but arguably accelerated and now catching up. In the end, this should mean that the industry is nicely poised to take advantage of huge opportunities which technology and the associated digital revolution can bring. And this was all before the Covid-19 pandemic hit.

3. IMPACT OF COVID-19 ON THE SPORT & SPONSORSHIP MARKET

3.1 The sports and entertainment industry, and by association sports broadcasting rights entered 2020 already in a state of flux. It is of course true that traditional sport, like all business, is under more pressure than ever before. In certain key demographics up to 30% less people are watching TV – sport included.

3.2 In March 2020 the Covid-19 pandemic hit South Africa and for the first time ever – live sport hit the pause button. The initial threat came about with the advent of lockdown, where many campaigns and activations planned around major global events like the Olympics – and locally - events like Vodacom Super Rugby, the ABSA PSL, Comic Con, the Comrades & Two Oceans Marathons, etc., had to be postponed or cancelled, reflecting a broader theme of brands pulling non-essential/committed budget spend.

3.3 Others are simply redirecting spend towards social good – such as Covid-19 activations.

3.4 The knock-on effect on the wider industry – production, experiential and creative services companies is huge, with freelancers and especially smaller businesses facing significant financial pressures due to the cancellation of all events.

THE FINANCIAL FALLOUT FROM CANCELLED OR POSTPONED SPORTING EVENTS IS LIKELY TO BE SIGNIFICANT — AND, FOR SOME EVENTS, LEAGUES, TEAMS THE IMPACTS MAY BE LONG-LASTING.

Cancelled games and tournaments are a major talking point.

Insurance policies and contracts can only help so much.

No games mean no ticket sales and reduced media payments.

3.5 But whether we are speaking of sport specifically, or the market in general, it's simply too early to pronounce on the long-term impacts. Two Circles, a highly quoted and acclaimed international sport agency, updated its prognosis on the economic impact of Covid-19 in May 2020, predicting that the revenue generated by the sports industry globally will fall by around 40 per cent year-on-year versus the five per cent growth projected for 2020 before the pandemic hit.

40% DROP IN REVENUE PROJECTED FOR THE 2020 GLOBAL SPONSORSHIP INDUSTRY

YEAR	SPEND (\$US BN)	% YOY GROWTH
2015	39.2	4.0%
2016	41.0	4.6%
2017	42.6	3.9%
2018	44.3	4.0%
2019	46.1	4.1%
2020 (forecast)	48.4	4.9%
2020 (Adjusted forecast May 2020)	28.9	-37.3%

Source: Adapted from Two Circles Survey / IEG Annual Sponsorship Spend Estimates

3.6 Unpacking these numbers, globally most major sports bodies, leagues, teams, etc. generally can rely on four main sources of revenue: broadcast, sponsorship, match day (ticketing and hospitality) and merchandising and licensing.

3.7 In South Africa however broadcast and sponsorship revenues (particularly for the big three codes - soccer, rugby & cricket) are often responsible for more than 85% of total income. Therefore because the loss of match day revenue is relatively minimal in South Africa, ***ironically, in some ways many of our sport federations were for once in a more fortunate situation than their comparable international counterparts.*** At least in the short-term.

3.8 Additionally, because there was no play in lockdown, there's no travel, no accommodation, no opening up of stadiums, lights, security etc., this can at times even translate into short-term savings. Some federations (like SA Rugby) further reduced player salaries.

3.9 Our heavy dependence on broadcast and sponsorship revenue to fund sport in South Africa is however not without its own set of problems. Even prior to the Covid-19 crisis, we were already asked by many of our clients to consider the impact on sponsorship media ROI arising from the lack of coverage this past season / year by the SABC.

3.10 Despite multiple attempts dating back to 2010 by the Authority to expand the National broadcasters coverage of major sporting events of "national interest", **sadly this remains a largely unfunded mandate and therefore is limited in its capacity to effect the change perhaps envisaged.**

SABC SPORT	HOURS OF TV BROADCAST COVERAGE ALLOCATED TO SPORT ANNUALLY					
	2010	2015	2016	2017	2018	2019
% of total sport coverage (SOV)	4,2%	2,2%	2,6%	2,3%	2,8%	2,4%

- 3.11 Sport has traditionally been relatively resilient in times of economic recession, as it has tended to be one of the things consumers clutch tightest when their pockets get challenged. That logic only stands, of course, when there is a product to sell. 2020 has arguably seen the shelves empty, and from March - August it had been very difficult to sell 'pent-up demand'.
- 3.12 Now that live sport has slowly returned, it has been amazing how some of the sports leagues were able to pivot a season and get it done in say 2 months ... but as a brand or broadcaster – can we ladder up the same sales in a 2-month period compared to a normal season? – No probably not. As a FTA broadcaster, could we ever have the capacity to fulfil this expanded fixture list on such short notice? – No definitely not.
- 3.13 Rights holders & broadcasters will need to respond and step up to the new challenge if they hope to succeed in the long term. As a result of Covid-19 pandemic, **sports transition to being a digital business will be accelerated** – digital assets will finally become a more valuable part of a rights package, rather than an add-on thrown in with little thought as to the value they deliver. The so-called pivot to digital is in fact nothing new, it has merely been **amplified** due to the underlying need and unprecedented circumstance we were suddenly forced to deal with.
- 3.14 While we are encouraged by the draft White Papers recognition of the rapidly changing AAVCS environment, we note with great concern that no provision has been made by the Authority to address the proliferation of new platforms (OTT, digital media, Apps, etc.) delivering content to fans and /or the expansion of mobile internet and ubiquitous access to sports content through mobile devices. In fact quite the opposite - ICASA has all but discounted any potential for real impacts by digital players on the industry in the short term, despite lengthy debates on this very issue.
- 3.15 This repeated omission by ICASA, noticeably absent again in the Sports Broadcasting Services Amendment Regulations 2020, despite being released in such proximately immediately after the draft White Paper, underscores a serious lack of co-ordination between the two bodies to align the ICASA Regulations with the core objectives of the AAVCS framework regarding content ownership and distribution for sports federations and event owners.

5.2.9.15 The draft white paper proposes that the listing of national sporting events which are in the public interest apply in legislation not just to broadcasting, but also to the broader AAVCS market to ensure the public continues to enjoy free-to-air and free-to-view access to listed events.

- 3.16 As we ready to enter what many are already referring to as the next generation in broadcast media, (post the Pay TV era) the two bodies could not be further apart on their thinking with regard to the most fundamental issue facing the future of the industry. Failing to address this now, will relegate any attempt at further amendments of the ICASA Sports Broadcasting Services Regulations 2010, to merely debates from the past and /or calls for retention of old and largely unfulfilled status quo lists.

3.17 With reference to Paragraph 31 of the AAVCS it states - *“The draft White Paper proposes that ICASA should remain the ‘content regulator’ for South Africa, in particular for newly defined audio and audiovisual content services, including broadcasting services. ICASA’s governance will require reviewing to stabilize it, strengthen its capacity, and improve its efficiency as an agile regulator in this complex environment.”*

We therefore respectively ask ICASA, within the context of the draft White Paper, to elaborate further on how it plans to fulfil and execute this mandate and /or how this will apply to their thinking around sports broadcasting regulations going forward?

4. SPORTS BROADCASTING SERVICES REGULATIONS (SBRs)- 2010

4.1 The efforts by ICASA to bring sports coverage to more South Africans is commendable, and is underpinned by the Sports Broadcasting Services Regulations, 2010 and subsequent draft 2018 and 2020 Amendments, which followed. The draft White Paper (AAVCS) attempts to provide further context in this regard to the Regulator.

4.1.1 *“Sports of National interest” (as defined in the “draft White Paper” AAVCS -page 10), means national sporting events, as identified in the public interest from time to time, by the regulator, after consultation with the Minister responsible for Communications and Digital Technologies and the Minister responsible for Sport, and **which the regulator must ensure are broadcast free-to-air and not exclusively be subscription** audio-visual content services.*

4.1.2 **Paragraph 30** of the same document further states that: *Sport of national interest has become a thorny issue, not just for accessibility by the public, but also for the promotion and development of these sporting codes. To ensure the public continues to enjoy free -to -air and free -to -view access to listed events the listing of national sporting events which are in the public interest will be extended to include the broader AAVCS market. The regulator will have clear guidance in legislation on the criteria to use in determining the list. The listing of events in legislation will now also include events of major public importance or cultural significance for example, presidential inaugurations or state funerals.*

4.2 Notwithstanding the presumably incorrect (typo) references to examples of “events of national interest” rather than “sports events of national interest”, a cursory review of the ICASA’s oversight and implementation of the Sports Broadcasting Services Regulations, 2010 (“SBSR-2010”) will confirm that since inception **many of the “listed events” have to date not / never been broadcast on FTA.** Additionally it has been submitted that the Regulator has:

- been unable to fully enforce many of its Regulations since introduced in 2010;
- has failed to fine broadcasters for non-compliance; and
- by its own admission has no mandate to enforce or demand any commercial terms with respect to broadcast rights and their acquisition or payment therein.

- 4.3 Despite notice given by ICASA in December 2018 of its intention to amend and strengthen the Sports Broadcasting Services Regulations, the past 24 months only serves as a further reminder of the significant challenges and limitations it faces in this regard.
- 4.4 The ongoing financial difficulties faced by the SABC are of course not new – but the direct impact this was beginning to have on the sports broadcast and sponsorship market reached an unprecedented level in 2019. This was referenced by multiple submission to the draft Sports Broadcasting Services Amendment Regulations, 2018, including the SABC’s own submission and repeated reference to an **“unfunded mandate”**. This was again discussed at great length during the subsequent end of May 2019 public hearings.
- 4.5 Yet irrespective of the lengthy ICASA hearings and despite the ongoing repeated calls for greater access to premium content for the SABC, the 2019/2020 PSL season (which was actually incorrectly slated at the time to be added to the expanded listed events proposed in the 2018 Amendments) began under a self-imposed blackout by the National broadcaster.
- 4.6 Additionally, a growing number of other iconic (and currently listed) local events – including the 50th anniversary of the Two Oceans Marathon also received no television broadcast coverage in 2019 and not surprisingly their long-term sponsor Old Mutual subsequently exited from sponsoring this and its other marathon / road running properties. *[We note with agreement that some of these events have now also subsequently been removed from the draft list of events – published on 5 November 2020, but sadly this may be too little too late for the survival of some of the iconic sports / events which have brought global exposure to our country].*
- 4.7 **Despite the above shortcomings and noted failings of the Regulations in this regard, what was perhaps more telling at the time was the complete lack of any action or even comment passed by the Authority or the National broadcaster as each event passed by – neither seemingly with a mandate or capacity to respond to the challenges which were all too painfully forecast and laid out in detail at the May hearing, only weeks prior to their eventual occurrence.**

5 REVISITING REGULATION 5 - “LISTED NATIONAL SPORTING EVENTS”

- 5.1 The new draft 2020 amended SBSR proposes a revised list of 21 “National Sporting Events”, which has been scaled back and now largely resembles the initial list from 2010, heading the multiple calls made for a return to the status quo.
- 5.2 While this will of course be welcome to news to the vast majority of stakeholders who commented in 2018, it does little to provide certainty of FTA coverage by the SABC or clarity on the ambiguities which still remain unaltered.
- 5.3 In terms of regulation 5 as amended, the aforementioned listed National Sporting Events” which **“may be** broadcast live, delayed-live or delayed by free-to-air Broadcasting Service Licensees,

clearly implies that there is no obligation on the part of FTA broadcasters or specifically the SABC to do so. Again, this is in stark contrast to the language of White Paper (AAVCS) previously references where “**the regulator must ensure [listed National Sporting Events] are broadcast [on] free-to-air and not exclusively be subscription audio-visual content services.**”

5.4 To further illustrate the severity of the situation, one need only be reminded that after missing the entire competition, the 2019 IRB Rugby World Cup Final - featuring the eventual winning Springboks team, was only broadcast by the SABC following a public outcry and subsequent intervention by the Minister and supported financially through funding provided by external commercial partners.

5.5 Other sporting events of national importance as currently listed in the 2010 Regulations and /or now proposed in the 2020 Amendments, including; the 2019 ICC Cricket World Cup (which took place during the public hearings, FIFA Women’s World Cup, INF Netball World Cup, and IRB Rugby World Cup - all featuring senior South African National teams - received little or no FTA coverage.

5.6 Globally the 2019 FIFA Women’s World Cup set a new benchmark for audience interest in Women’s sport. The lack of coverage at home however by the SABC, in what was Banyana Banyana’s first appearance, was therefore a significant opportunity lost for our ladies Senior National Team. While we welcome the recent inclusion of the FIFA **Women’s** World Cup to the proposed amended 2020 list of events – sadly this however implies that unless specifically listed, Senior Women’s National Teams (i.e.: Banyana Banyana) are therefore considered to be exempt from these Regulations.

5.7 The following amended definitions as introduced in Regulation 1 of 2018 and retained again in the 2020 amendments, attempts to offer some further clarity in this regard:

- (f) By substitution of “National Sporting Event” by the following definition: “National Sporting Event” means a sporting event that is deemed to be of national interest and includes the South African Senior National Team or National Sporting Representative.”
- (h) By substitution of “National Team” by the following definition: ‘Senior National Team’ means the **highest-ranking team** in a specific sporting age group;

5.8 The language however remains vague and leaves much open for interpretation. For example, is the highest-ranking team from a national sport federation limited only to the Men’s Senior National Team, both the Men’s and Women’s Senior National Teams (highest-ranking), or perhaps the highest-ranking team for each age category? **If the objectives of the Amendments were truly meant to be inclusive, we must equally question why it is again silent on the promotion of Women and Youth sport.**

5.9 In a number of respects, the drafting remains unclear, inconsistent or else serves to produce what are presumably unintended results. The proposed Amendments must begin with eliminating any ambiguity which still exists, and further ensure that all definition of sporting events of National interest, are written and interpreted the same irrespective of whether this is found in a the AAVCS White Paper or the Sports Broadcasting Services Regulations.

6 A CALL FOR THE REVIEW OF LOCAL CONTENT RULES

6.1 South African local content rules are aimed at both showcasing South African creative product as well as building the local independent production and music industries. Quotas set in regulations are reviewed regularly (roughly every five years) and, in line with legislation, require the public broadcaster to air a higher proportion of South African content than commercial stations and channels.

6.2 The regulations further include incentives for airing more expansive programmes, neglected genres (such as arts programming) and promoting new artists (including previously unrecorded musicians).

6.3 In this regard we draw attention to the **Explanatory Background** – as contained in the Sports Broadcasting Services Amendment Regulations: **2018 – s1.6**: “*The Draft Regulations advance equality, human dignity through access to Sport of National interest to all citizens. This will further ensure that sports continue to promote social inclusion, equity, and sustainability by ensuring that even minority sports are given prominence on broadcasting systems to create opportunities provided by sports for the current generation as well as generations to come*”.

6.4 Sport is regularly called upon as a vehicle to unite the nation and famously in the words of Nelson Mandela – “*Sport can create hope where once there was only despair. It is more powerful than governments in breaking down racial barriers. It laughs in the face of all types of discrimination...*”

Yet to date local sport content in any regard is excluded from the current local content regulations. Why?

6.5 The ICASA draft Sports Broadcasting Services Amendment Regulations, 2018 attempted to address the challenges facing minority and development sport through the proposed amendment - Sub-Regulation 5.3 - Group C: Minority and Developmental Sporting Events to be Broadcast by Subscription and Free-to-Air Broadcasters. While noble in concept, it was unfortunately flawed and poorly drafted.

6.6 As referenced in Notice 635 of 2020 – PARA 5.3 – Conclusions: where it confirms: “*Whilst the Authority continues to advocate for the promotion of minority and developmental sports, it is aware of the concerns raised by various stakeholders regarding the previous iteration of the Draft Regulations (i.e., the 2018 Draft Regulations). Following further consideration, the Authority has removed the developmental sports from the current iteration of the Draft Regulations as they do not fall within the ambit of section 60(1) of the ECA.*”

6.7 Notwithstanding the correct decision taken above to drop Category C events, **this does not remove the real need to support grassroots sport**. In Soccer alone for example we have a number of leagues at varying levels from the NFD, ABC Motsepe, SAB Regional, Sasol Women’s League, youth leagues, etc., all in desperate need of coverage.

6.8 This has in fact been further exasperated by the Covid-19 pandemic which as part of the current safety protocols requires the return to sport behind closed doors in what has been referred to as a Bio-Bubble. Safety measures such as these come at a significant cost – which even the top

echelons of the sport (DStv Premiership) will find increasingly difficult to budget for on an ongoing basis. Now imagine trying to do this in the ABC Motsepe League for a minimum of 144 teams rather than just 16. Without broadcast coverage, funding is unlikely to come from commercial sponsors. Entire seasons risk being lost, and with it our entire youth pipeline will slowly get eroded.

6.9 In Rugby we have Craven Week, Cricket, Khaya Majola & Mini-Cricket and any number of school and Varsity Sports available. Many of these have in fact been offered to FTA broadcasters at no fee, but are deemed unworthy to allocate commercial airtime, or simply too expensive to produce, relative to the potential commercial returns.

6.10 The advent of new technologies, which can provide TV broadcast quality production capabilities at a significantly reduced cost is however already available. Sadly, all that is lacking to take advantage of these advancements is the required local airtime capacity to broadcast it.

6.11 Notwithstanding the above concern, amendments to the Local content rules could be the ideal place to address such ideals. According to Paul Smith, a sports media expert from De Montfort University, the BBC is in no position to outbid Pay TV for live Premier League football, per say, but it could establish itself as an online hub for minority sports. This “will be beneficial for the sports themselves – who, via the BBC, will be able to extend the reach of their sport – as well as sports fans and the BBC”.

6.12 The greatest barrier to any real progress locally remains the obvious constraint of capacity. Over and above the lack of available budget to produce such content, the FTA Licensees simply do not have the available airtime to broadcast it. Case in point SABC Sport – where despite the investment, matches acquired and paid top price for, are still not always broadcast due to lack of available channel space for scheduling.

6.13 On this last point we have argued for years that the most effective way to enact real change in sports broadcast coverage (which all parties could support) would be to **amend the Local Content Regulations - which currently excludes sport from the list of content that qualifies.**

6.14 Noting that $\pm 65\%$ of all content must contain local content, by successfully petitioning the Department of Communications & Digital Technologies to **simply include a provision in their draft White Paper (AAVCS) for local sport to qualify as local content similar to music and the creative industries – even on a restricted basis** (i.e.: only a specified list of development / youth / women’s sports) **would do more alone for the promotion of sport and inclusion in South Africa** than all previous efforts combined.

7 MUST CARRY RULES

- 7.1 It has been argued that regulatory interventions directed at promoting competition are of no value if they ultimately undermine the value of the product on offer to the extent that the quality and availability of this product to the viewer is substantially worse than in the absence of the intervention. Not only would consumers be worse off, but the rights would be rendered valueless and it would not be attractive or sustainable for broadcasters to in fact broadcast this content.
- 7.2 With Reference to paragraph 24 of the draft White Paper: *“While Must Carry rules served their intended universal access objective, they may distort the market going forward in a changing environment of intense competition for audiences and content. Particularly, for the public broadcaster who currently has to offer its content to subscription broadcasters for free. To allow the public broadcaster to negotiate retransmission consent agreements on commercial terms with other AAVCS in South Africa and internationally, **the enabling provisions in law for Must Carry regulation will be repealed**. However, in the public interest, the retransmission consent agreements for public broadcasting services broadcast free -to-air may not be offered exclusively to a single subscription audio or audiovisual content service in south Africa.”*
- 7.3 Opposition to sport broadcast legislation stems from an underlying commitment to free market principles. Objections to the listing of their events is based on a belief that Federations are best placed to judge how to further the interests of their own sport, and in particular how to balance the potential increased broadcast revenue to be gained via pay-tv, with the benefits of greater exposure through free-to-air broadcasting. (i.e.: increased audience and potential sponsorship revenue).
- 7.4 However, the key argument in support of major events legislation is not that policy makers and regulators know better than individual sports organisations how to promote the best interests of a sport. Rather, it is, as stated, that the wider public interest in the form of cultural citizenship is served by the availability of a sporting events on free-to-air television.
- 7.5 With respect to the long standing Must Carry debate, we concede that this is a matter best left to those directly impacted by the legislation to plead their case. We note however that arguments put forward to date are over-simplified and rarely provide a full view. We therefore caution ICASA and the SABC that one must be “careful what you ask for, in case you actually get it.”
- 7.6 In the final analysis, any argument to repeal the Must Carry rules based on commercial outcomes must equally consider the following potential financial impacts:
- The public with a subscription licence benefits from amongst other the convenience of using a single set top box, rather than adding an additional aerial to receive FTA signal.
 - SABC benefits commercially as it is able to increase its overall viewer totals, and therefore can claim the associated larger total audience reach when setting rate card rates for potential sponsors and advertisers to the said channels, and
 - For subscription broadcasters, the FTA channels serve to take up spectrum (channel space) and actually compete with their own commercial channels for SOV – thus reducing rather than necessarily increasing revenue streams.

8 RECOMMENDATIONS

- 8.1 ICASA's determination that OTT services should not be seen as part of the market for the distribution of television services amount to a serious flaw which undermines the 'Draft Findings' conclusions and subsequent draft Amendments. In Africa and elsewhere, OTT services are emerging that allow providers to surmount market entry difficulties. In part, this has become possible because of a rapid increase in smartphone penetration as mobile operators promote pay as you go business models aimed at potential subscribers who do not have accounts or credit histories and who form a key part of the target market for OTT services. The advent of the current Covid-19 pandemic will only serve to accelerate this shift and amplify the potential options available to consumers.
- 8.2 We encourage the Authority to revisit its narrow focus on FTA and subscription broadcasters and broaden their scope to include OTT players and other potential new entrants. Without doing so would relegate the sport broadcast industry to the past, rather than future-proof it for what is expected to be one of the most exciting, yet disruptive periods in the history of broadcast media to date.
- 8.3 As referenced in 5.2,9.1 of draft White Paper – “ *Sport has a long history of playing very critical role in national identity, social integration and the development of culture in a country. However, Sport has also become a very big business in terms of the economic growth in sports- related activities resulting in sports bodies becoming companies and operating like business organisations. This is partly due to the rise in the value of TV sports broadcasting rights which has had a very positive impact on the development of major and minority sports.*” It is therefore imperative that Listed events must receive guaranteed coverage, and where possible Live coverage. With rights come responsibilities and therefore, there must be penalties should such sought after listed events not be televised.
- 8.4 The efforts by the Department of Communications and Digital Technologies and ICASA to bring sports coverage to more South Africans is admirable, however the financial realities facing the SABC, together with the disinclination of e.tv to spend on sports rights are major issues that are not going to be rectified overnight. It is therefore imperative that where a sport of national interest is listed for **which the regulator must ensure are broadcast free-to-air, that this must also coincide with a comparable funding mandate to ensure it can be delivered.** Without this it is unlikely to achieve the desired results and will only serve to perpetuate the status quo.
- 8.5 Exclusivity remains a fundamental commercial requirement for broadcasters. S5.2.9.14 of the draft White Paper (AAVCS) “*proposes that it should remain the policy intention to continue to ensure that key national sport events are aired free-to-air, whilst acknowledging that certain exclusive sports events are critical to the viability of the subscription model.*” We believe this also applies to FTA broadcasters and the broader AAVCS market.
- 8.6 Further clarity is also required as to whether or not a single FTA broadcaster will be permitted to acquire exclusive Live broadcast rights (FTA and /or all including subscription) and whether or not

they are entitled to broadcast their FTA rights across multiple channels / platforms, including online streaming services, Mobile, and Facebook for example.

8.7 **“Use it or Lose it”** - Exclusivity must also come with an obligation to broadcast – the practice of warehousing content, particularly digital media, (i.e.: broadband, internet and mobile streaming rights) cannot be permitted.

8.7.1 Similarly, this logic should also be extended to apply equally to the 21 listed National Sporting Events, where those events not acquired by FTA broadcasters, must then be removed.

8.8 Last but certainly not least, we continue to urge the Authority, to **revisit the current Regulations on South African Local Content Rules:** TV & Radio, where serious consideration must finally be given to the inclusion of local sport, under specified guidelines to be added to the list. It is only through initiatives such as this that capacity can be built within the confines of the Public Broadcasters mandate, which can enable change and build support for future discussions on Regulations such as the Amendments currently under review.

ANNEX A: OUR CREDENTIALS

30 years of active representation as an independent sports marketing and communications research & consultancy business in South Africa.

BMi Sport Info was formally established in 1990. Through the development of unique research products, BMi has remained at the forefront of this industry for the past 30 years and is recognised as a leader in the field, both within South Africa and internationally.

BMi was initially launched as the first and only independent research company in South Africa to focus exclusively on the sport and sponsorship market. Over the last 3 decades we have subsequently expanded into the fields of strategic advertising evaluation, digital & social media evaluation as well as consulting services in order to cover all aspects of communication, research and strategy.

As per the previous point, BMi has tracked sport and the sponsorship market since our inception and therefore have a proven track record and databases on audio and audiovisual content services – particularly as it relates to the Sport and Broadcast landscape in South Africa.

SS Network CC is an insights and consulting agency aimed specifically at facilitating the evolution of the sponsorship industry growth from an insular approach, to fit the broader goals and objectives of a corporation's overall marketing and communication strategy.

Its CEO has been at the forefront of the sports sponsorship industry and is recognized as a thought leader in the measurement, valuation and commercialisation of sponsorship and broadcast rights, not only in South Africa, but internationally as well.

Our comprehensive set of service offerings are positioned to assist Rights holders, Sport Federations, Professional Sport Teams and Athletes, Stadium Owners, Event Promoters, commercial partners, and ultimately the participants and fans.

We assist our clients to achieve their strategic objectives such as maximising existing revenue streams, creating new innovative revenue streams, increasing awareness, or increasing market share.

Our 3 decades of local experience, combined with the vast knowledge and data on the broadcast and sport sponsorship industry, ensures that our clients will receive an unrivalled service offering.

Committees / Advisory Boards Served on:

- Nelson Mandela Bay Stadium: Business of Sport Indaba & Strategic Framework – June 2019
- SAFA Commercial Marketing & TV Advisory Board, Media Strategic Studies Committee – Special Member – 2012-2018 and Oct 2020 - Present
 - Steering Committee and member of the drafting team for the 2013 National Boxing Indaba,
 - Commercial Model for the launch of the Netball Premier League on behalf of the DG of Sport (2013)
 - Steering Committee member, representing business for the delivery of South Africa's first National Sport & Recreation Plan (NSRP), launched in late 2011
 - Chairperson for the NSRP Funding Framework Task Team (2011)
 - South African White Paper on Sport, 2011 – Author of the revised Sport Sponsorship & Broadcast inputs
 - AUB / UNESCO Feasibility study on the proposed launch of an African Audiovisual Observatory
 - SASCO National Federations Audit (2010.)

In addition to offering the services listed above, Sidenberg has been called upon as a keynote speaker at numerous conferences and sporting code conventions, to discuss worldwide trends and best practices on topics spanning from, overall rights issues to sports tourism and the commercialisation and sponsorship of sport. He has also written for numerous publications including Sport Business International and is called upon to lecture at our Universities on Sponsorship & Broadcast Industry.

Sample of Published Studies

- *ICASA Draft Sports Broadcasting Services Amendment Regulations, 2018 – [Submission – 15 March 2019 – [<https://www.icasa.org.za/uploads/files/BMI-submission-on-draft-sports-broadcasting-services-amendment-regulations-2018.pdf>] and formal public Hearing presentation 11 July 2019*
- *Esport South Africa 2016 & 2018 – South African Landscape Reports*
- *SABC Sport & Programme Sponsorship Policy [2010- 2013]*
- *GEDA & GSRAC – “2009 SoccerEx Socio- Economic Impact Report”, 2010*
- *Supreme Council for Sport in Africa Zone 6 – “A Case for Sport”; 2007 & 2012*
- *Sponsorship SA – An Investor’s Guide [2008]*
- *A Review of Sports Broadcasting Rights, Policies & The Proliferation of New Media Platforms; Telkom Media Broadcast Content Rights Acquisition Strategy Inputs*
- *Gauteng Sport Recreation Arts & Culture - “Home of Competitive Sport” Strategy*
- *Study establishing the impact of sport on the SA economy.*
- *Strategic framework for SA Sport.*

OTHER: LINKS TO INDEPENDENT PRESS REPORTS ON OUR CREDENTIALS

<https://www.linkedin.com/pulse/psl-brings-stardust-cold-facts-icasa-hearings-sibusiso-mjikeliso/>

<https://www.trendsmap.com/twitter/tweet/1133330450548690945>

<https://www.businesslive.co.za/fm/features/2019-06-13-calling-foul-on-icasas-bid-to-open-up-pay-tv-market/>

<https://tisoblackstarevents.co.za/events/the-future-of-media>

<http://www.sportindustry.co.za/about-us/people/david-sidenberg>

<https://www.youtube.com/watch?v=MZc2Kst5Wck>

<https://www.iol.co.za/personal-finance/a-sporting-chance-to-score-a-win-12663856>

<https://yzeup.com/yzeup-sweat-your-sponsorship-assets-seminar/>

<https://www.sajr.co.za/news-and-articles/2019/03/14/you-guys-had-toilet-seats-so-i-stayed->

<https://www.marketingawards.co.za/council-judges/>

https://twitter.com/BraWilly_Seyama/status/1039088415864700928

<https://www.facebook.com/sawasf/photos/a.636349216507476.1073741828.630619163747148/783967135079016/?type=3>

<https://www.pressreader.com>

<http://www.acceleratesport.com/tag/bmi>

<http://businessmediamags.co.za/bd-insights/business-day-business-of-sport/merchandising-is-key-to-the-growth-of-sport/>

https://www.youtube.com/watch?time_continue=127&v=-zmg991_PJo

<https://themediamonline.co.za/2017/12/think-of-esports-as-entertainment-not-a-sport/>

<https://www.bizcommunity.com/Article/196/810/185078.html>