Conducting a thorough assessment of the cultural, economic and social benefits brought about by the preservation of South African programming regulations and to perform a sound cost-benefit analysis

FINAL STUDY REPORT

Contents

GLOSSARY OF ABBREVIATIONS

3D	3 Dimensional
ABC	Activity Based Costing
AFP	Advertiser Funded Programmes
ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
AMPS	All Media and Product Survey
AIRCO	Association of Independent Recording Companies
ABA	Australian Broadcasting Authority
ABT	Australian Broadcasting Tribunal
ACMA	Australian Communications and Media Authority
ACA	Australian Content in Advertising
ACS	Australian Content Standard
AMPAL	Australian Music Publishers' Association Ltd
AMRAP	Australian Music Radio Airplay Project
ARIA	Australian Recording Industry Association
B-BBEE	Broad-Based Black Economic Empowerment
CCD	Canadian Content Development
CMF	Canadian Media Fund
CPE	Canadian Programming Expenditures
CRTC	Canadian Radio-television and Telecommunications Commission
CTV	Cape TV
CTS	Children's Television Standards
CRA	Commercial Radio Australia
CSN	Community Services Network
CD	Compact Disc
CAGR	Compound Annual Growth Rate
CGE	Computable General Equilibrium
CA	Conditional Access
CRC	Copyright Review Commission
OCR	DAB+ on-channel repeater
DAC	Department of Arts and Culture
dbce	Department of Broadband, Communications and the Digital Economy
DoC	Department of Communications
Dti	Department of Trade and Industry
DSO	Digital Switch-Over
DTAB	Digital Terrestrial Audio Broadcasting
DTT	Digital Terrestrial Television
DTTB	Digital Terrestrial Television Broadcasting Technologies

DVD	Digital Versatile Disc
DTH	Direct-to-Home satellite television service
DFA	Documentary Filmmakers Association
ECA	Electronic Communications Act, No. 36 of 2005
ECS	Electronic Communications Service
M-Net	Electronic Media Ltd
AVMS	European Union Audio-visual Media Services Directive
FTP	File Transfer Protocol
FTA	Free-to-Air
GATS	General Agreement on Trade in Services
GE06	Geneva 2006 Agreement
HD	High Definition
HDTV	High Definition Television
HBB	Hybrid Broadcast-Broadband
IBA	Independent Broadcasting Authority of South Africa
ICASA or the Authority	Independent Communications Authority of South Africa
IPO	Independent Producers Organisation
IPAP	Industrial Policy Action Plan
IPAP I	Industrial Policy Action Plan 1
IPAPII	Industrial Policy Action Plan 2
IFPI	International Federation of the Phonographic Industry
IP	Internet Protocol
IPTV	Internet Protocol Television
LDC	Least Developed Countries
LNB	Low Noise Block Converter)
LSM	Living Standard Measure
LPIF	Local Programming Improvement Fund
LTE	Long Term Evolution (marketed as 4G)
MDDA	Media Development and Diversity Agency
MICT-SETA	Media, Information and Communication Technologies' Sector Education and Training Authority
MFN	Most Favoured Nation
MCA	Multichoice Africa
MPCD	Multi-Platform Content Delivery
MCA	Music Council of Australia
NAB	National Association of Broadcasters
NFVF	National Film and Video Foundation
TVNZ	New Zealand Public Broadcaster
NGN	Next Generation Networks
OTT	Over the Top TV

PVR	Personal Video Recorder
PPCA	Phonographic Performance Company of Australia
POP	Points of Presence
PwC	Pricewaterhouse Cooper
PNI	Programs of National Interest
PFMA	Public Finance Management Act
PBS	Public Service Broadcasters
QSAPE	Qualifying South African Production Expenditure
RAMS	Radio Audience Measurement Survey
RF	Radio Frequency
RIAJ	Recording Industry Association of Japan
RISA	Recording Industry of South Africa
RFP	Request for Proposals
RA	Rolling Average
STB	Set Top Box
SMME	Small, Medium and Micro Enterprises
SAARF	South African Advertising and Research Foundation
SABC	South African Broadcasting Corporation
SAMRAC	South African Music Reform Association and Coalition
SAMRO	South African Music Rights Organisation
SASFED	South African Screen Federation
SD	Standard Definition
StatsSA	Statistics South Africa
SMS	Subscriber Management Services
Pay-TV	Subscription television services
TAMS	Television Audience Measurement Survey
TVE	Television Evolution
AMPCOM	The Australian Music Performance Committee
ICASA Act	The Independent Communications Authority of South Africa Act, no 13 of 2000.
OECD	The Organisation for Economic Co-operation and Development
3-DTV	Three Dimensional Television
TBN	Trinity Broadcasting Network
UK	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organisation
US	United States
VSAT	Very Small Aperture Terminals
VOD	Video on Demand
WTO	World Trade Organisation

TABLE OF FIGURES

LIST OF TABLES

1. INTRODUCTION

1.1 BACKGROUND TO THE REPORT

The intention of this report is to come up with Financial Conclusions, Technology Conclusions and Regulatory Landscape conclusions. Furthermore the report contains a cost benefit analysis and preliminary conclusions regarding the lowering of regulatory costs, promoting diversity and sector transformation and a way forward concerning the independent production sector.

As stated in the White Paper on Broadcasting Policy, published by the Department of Communications in June 1998, the emphasis on local content is premised on the principle that broadcasting must be regulated in the public interest – including ensuring that South African stories and music are reflected on air.

In the preparation of this report, the Authority was guided by the dual aim for content regulation – ensuring that local content and music is aired and that the independent production and music industries are developed. These are implemented in the context of a three tier broadcasting system (public, commercial and community), including both free-to-air and subscription services.

2. RESEARCH BACKGROUND AND METHODOLOGY

2.1 Policy and Legislative Analysis

South Africa's local television and music content policy and regulatory framework is based on four key objectives:

- To develop, protect and promote a national and provincial identity, culture and character;
- To create vibrant, dynamic, creative and economically productive local industries;
- Encourage utilisation of production companies from a range of different provinces; and
- Commission and broadcast new talent.

The legislative analysis, was conducted to establish the status quo from a regulatory perspective, and included consideration of all policies, legislation and international instruments that have an impact on the industry. The objective of this process was to ensure that we do not lose sight of the ultimate goal that inspired the regulatory approach from the outset, and also to ensure that the industry is analysed within the margins created by the legislative and regulatory framework.

The IBA promulgated the first television content regulations in 1997. These were reviewed in 2001 and new South African Music and Television Content Regulations and a related Position Paper were gazetted in 2002. The regulations became effective in 2003. Since then ICASA has developed a range of position papers and regulations to effect the principles mentioned above, including the South African Television Content Regulations (2006), the South African Music Content Regulations (2006) and the Regulations on Commissioning of Independently Produced South African Programming (2009). In addition, specific South African content requirements are set in the licence conditions of individual licensees based often on promises of performance submitted by these licensees during their application for a licence.

A range of other legislation, regulations and policies relate either directly or indirectly to the content provisions in legislation, including:

- Position papers and regulations on specific licence categories (such as those setting out the requirements for community radio and television, subscription broadcasting, private free-to-air television services and private sound broadcasting services.
- The Position Paper and regulations on Digital Terrestrial Television migration (2012).
- The Compliance Procedure Manual.
- The Position Paper and regulations on the definition of the regulation of infomercials and the regulation of sponsorship;
- The Position Paper in relation to Internet Protocol Television (IPTV) and Video-on-Demand Services.
- The Constitution, ICASA Act, Electronic Communications Act, NFVF Act and Broadcasting Act.

2.2 Cost Benefit Analysis

This chapter provides an initial analysis of the cost and benefits of the Authority's South African music and television content regulations ('the local content regulations') introduced in 2002 and amended in 2006.[1] This chapter further considers changes in the regulatory/broadcasting environment subsequent to the promulgation of the regulations and provides an overview of the music and South African television production industries.

The emphasis of the report is on the quantification of a variety of indicators associated with these regulations, including their impact on broadcasters, their impact on the amount of South African content aired and the cost thereof, and their impact on the music and independent television

1ICASA South African Content Position Paper and Regulations, 15 February 2002. Government Gazette 28454, 31 January 2006, South African Television Content Regulations, and Government Gazette 28453, 31 January 2006, ICASA South African Music Content Regulations production industries. The report also provides an analysis of the current broadcasting market conditions in so far as these relate to the production acquisition and distribution of South African television content and airing of local music.

2.3 Survey

Questionnaires were sent to all licensed broadcasters and for which contact details were available. Surveys were distributed to independent producers in a first round via the South African Screen Federation (SASFED), and in a second round via the Independent Producers Organisation (IPO) and the Documentary Filmmakers Association (DFA).

The summary of the response rate is provided in the table below. While it should be noted that not all of the respondents returned fully completed surveys (some of the questions had higher response rates than others), all appropriate data was extracted from the submissions.

Table 1: Survey response rate

Licence type	Population size[2]	Respondents[3]	Response rate
Class/community radio	162[4]	64	37%
Commercial radio	19	10	53%
Public radio	15	12	80%
Public commercial television	3	3	100%
Free-to-air television (public, public commercial and commercial broadcasting services licensees)	4	4	100%
Subscription television	3	3	100%
Class/community	5[5]	3[6]	60%

2 Number of services on air in RAMS Jun 2013.

3 Although we received 69 responses from community broadcasters, 5 of these were excluded due to insufficient data.

4 This figure is based on the number of on air community stations listed in RAMS June 2013

5 Electronic Communications Act (36/2000): "List of class licensees", Government Gazette no. 32367, 2 April 2013

6 An interview was conducted with one class licensee that did not complete the survey.

Licence type	Population size[2]	Respondents[3]	Response rate
television			

Only 15 independent producers responded to the survey sent to them by membership organisations, and of these, only four completed more than 50 per cent of the questionnaire. This is at par with other similar surveys and reflects a general trend among independent producers who often do not have the capacity or dedicated resources to collate survey data in the form required by researchers.

The researchers are of the opinion that the sample sizes for all but the independent production sector are sufficient to be indicative of general trends in the industry. In addition, where possible the data collected from the questionnaires has been compared to and supplemented with data from other industry sources to assess the validity of the findings. Statistics and data have further been collected from other stakeholders through interviews with industry bodies, government departments and state agencies to further strengthen the analysis.

The analysis is primarily based on:

- A review of existing South African research and survey data (including audience figures from SAARF All Media and Products Survey (AMPS) and Radio Audience Measurement Survey (RAMS) , census information and industry studies conducted by entities other than ICASA);
- Data gathered from purposefully designed broadcaster and producer surveys in order to put together a comprehensive picture of the quantifiable effects of South Africa's local content regulations;
- Information provided to the research team by ICASA, including compliance reports and submissions by broadcasters;
- Interviews with key stakeholders in government and industry; and
- Similar studies conducted in other countries.

The Authority also considered the methodologies followed by Australia, Canada, United Kingdom and New Zealand. These countries undertook similar studies on the impact of local content requirements. This was in order to benchmark these against the approach adopted for this study. This served as a useful reference for the methodology followed in this cost benefit analysis and the socio-economic impact of local content requirements in South African broadcasting.

2.4 International Benchmark

A preliminary scan of different countries' frameworks for local television and music content regulation was conducted in order to assess which jurisdictions should be more extensively benchmarked. The countries were compared on the basis of the following:

- Regulatory Approach to local content development
- Regulation, monitoring and compliance
- Approach to New Media and Convergence

The following criteria were considered in making a recommendation regarding appropriate benchmark countries:

- Availability of information;
- Existence of regulations;
- Approach towards independent production sector; and
- Progress regarding digital migration.

Out of an initial seven countries (Australia, Brazil, Canada, China, New Zealand, Nigeria, United Kingdom, and the European Union) it was recommended that Australia, UK and Canada be used in the in depth comparative study. The recommendation is based on the following considerations:

- These countries have had a similar approach to content regulation as that in place in South Africa – and in particular in the case of Canada and Australia informed the regulatory framework first adopted in South

Africa in the mid-1990s. Both Canada and Australia have systems in place to promote both music on radio and television content.

- The UK and Australia have in recent years reviewed their approaches to content regulation to address issues arising from convergence and digitisation among other things and the decisions they have taken in this regard offer useful lessons for South Africa.
- To focus on countries that have similar broadcasting sectors (public, commercial and community and free-to-air and subscription services). Many countries with similar size economies to South Africa do not have similar broadcasting models or regulatory frameworks. Other developing economies (such as India) have not set local content quotas as Indian content is predominant without any such regulations. Many countries in Africa do not have publisher broadcasters as in South Africa, but rather "sell" space on their schedules to content providers. Their business models therefore are significantly different to South African broadcasters.
- Finally, it is important to select countries that appear to have effective monitoring and compliance frameworks in place – and those where information on these systems is easy to access through desk-top research. From the preliminary research conducted, questions have been raised about whether many of the developing countries/emerging economies that do have local content quotas in place have effective mechanisms in place to ensure compliance.

2.5 Industry Perceptions

The purpose of this part of the report is to provide in summary an industry perspective and a review of industry perceptions of the impact of the local content regulations, respondent's views on the benefits and challenges of the regulations and recommendations regarding the approach going forward.

A standardised questionnaire was developed to structure the interviews which were conducted either face-to-face or via telephone. Thereafter, further exploratory questions were asked to ensure an in-depth understanding of the relevant industry players' perspective.

A sample of interviewees were chosen from the stakeholder list, and based on availability and time constraints, the interviews were conducted. It should be noted that industry bodies were interviewed as far as possible to ensure a deeper understanding of the views of players representing different parts of the industry value chain.

As illustrated in the report, there are certain common concerns and considerations throughout the industry, as well as sector specific concerns and considerations. These are identified and summarised towards the end of the report. The report includes views from the following:

- Free to Air Television
- Public Television
- Community Television
- Subscription Television
- Commercial Radio Stations
- Public Radio Stations
- Community Radio Stations
- Independent Television Production Sector and
- Music Industry

3. OVERVIEW OF THE SOUTH AFRICAN BROADCASTING ENVIRONMENT

This section of the report provides an overview of broadcast audience trends and outlines key changes in the overall broadcasting environment since the promulgation of the most recent South African Music and Television Content Regulations (2006).

3.1 AUDIENCE TRENDS

It is important to consider audience trends in any review of broadcasting related policies and regulations. This high level analysis of South African radio and television audiences provides the context in which the rest of the report needs to be considered.

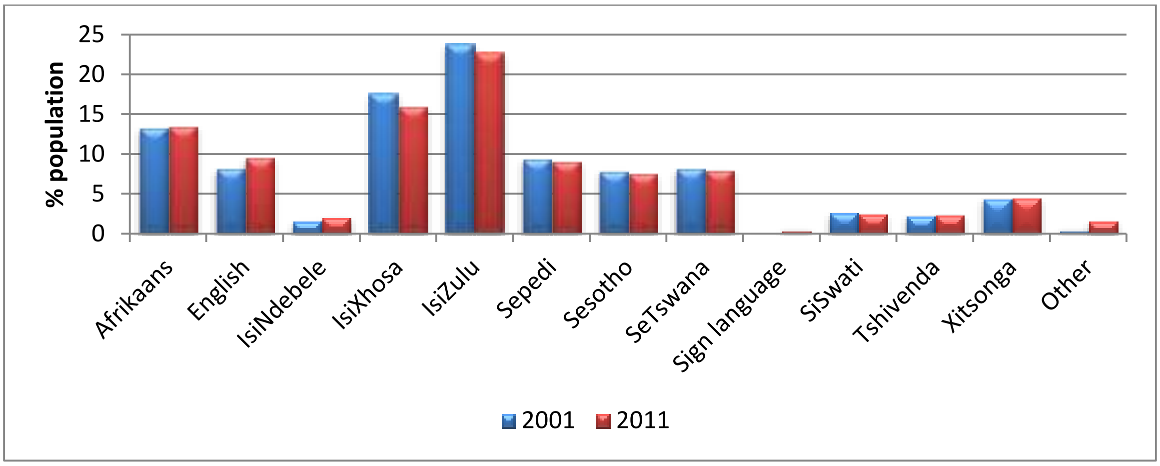
According to Statistics South Africa (StatsSA) 2013 mid-year population estimates, South Africa has a population of 52.98 million.[7] This is an increase of just over a million people from the population figures provided in the 2011 census data.

Figure 1 below illustrates the population percentage breakdown of first language speakers of each official language in 2001 and 2011 according to the census. Note that the 2011 census was the first to include information on

7 Statistics South Africa, 'Mid-year population estimates 2013', 14 May 2013, http://www.statssa.gov.za/publications/P0302/P03022013.pdf

sign language. As can be seen, isiZulu is the most spoken language (over 20 % of the population), followed by isiXhosa and then Afrikaans.

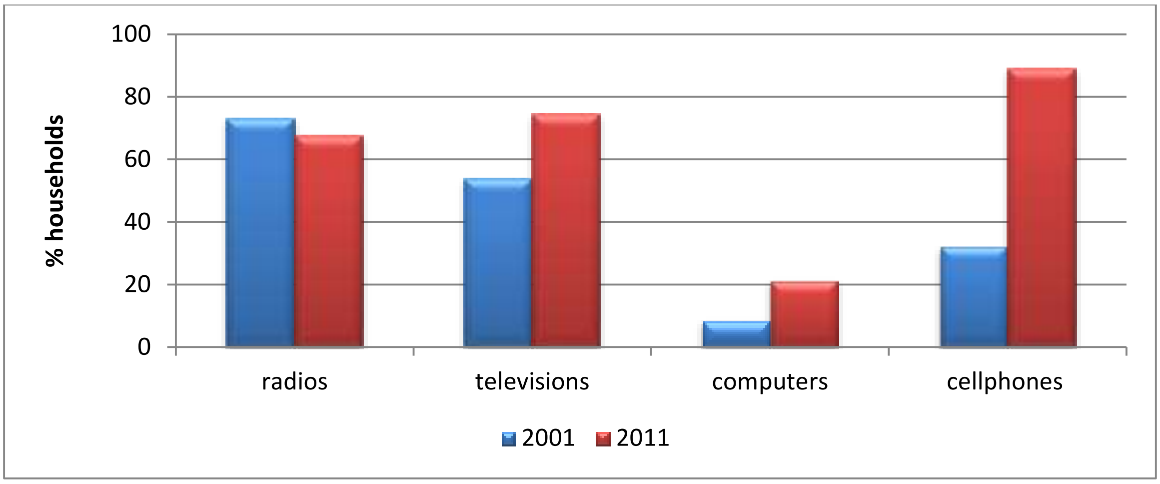
Figure 1: Population of SA by first language spoken at home



Source: StatsSA Census 2011

The census data further indicates a significant increase in the number of households with working televisions from 2001 (53.8%) to 2011 (74.5%), while the number of households with working radio sets has dropped (see Figure 2). As can be seen in section 5.2 of this report dealing in more detail with radio, however, the drop in working radio sets does not correlate to an overall drop in listenership according to South African Audience Research Foundation (SAARF) data – and, for example, more people are reporting using mobile phones to listen to radio.

Figure 2: Households with selected goods in working condition



Source: StatsSA Census 2011

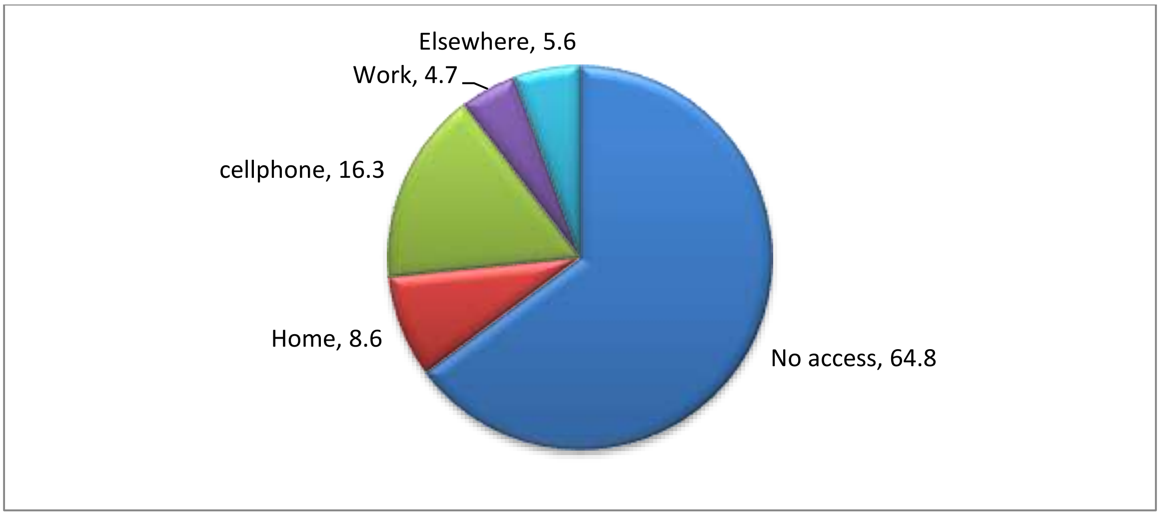
Figure 2 also provides information on computers and cell-phones as international experience has shown that, with increased access to broadband, these devices become increasingly used to access radio and/or television. It also increases access to a wide range of other audiovisual services such as music/video streaming and online stations and channels. These changes need to be taken into account when considering the impact of future content requirements on radio and television broadcasters.

According to the 2011 census[8], 65% of households do not have access to the internet. Of those that do have access, the majority connect to the internet via their cell phones.

Figure 3: Distribution of households with access to the internet, 2011[9]

8 Data on access to the internet was not collected in 2001 so there are no comparative figures.

9 Statistics South Africa, Census 2011: Key Results, http://www.statssa.gov.za/Census2011/Products/Census_2011_Key_results.pdf



Source: StatsSA Census 2011

Radio

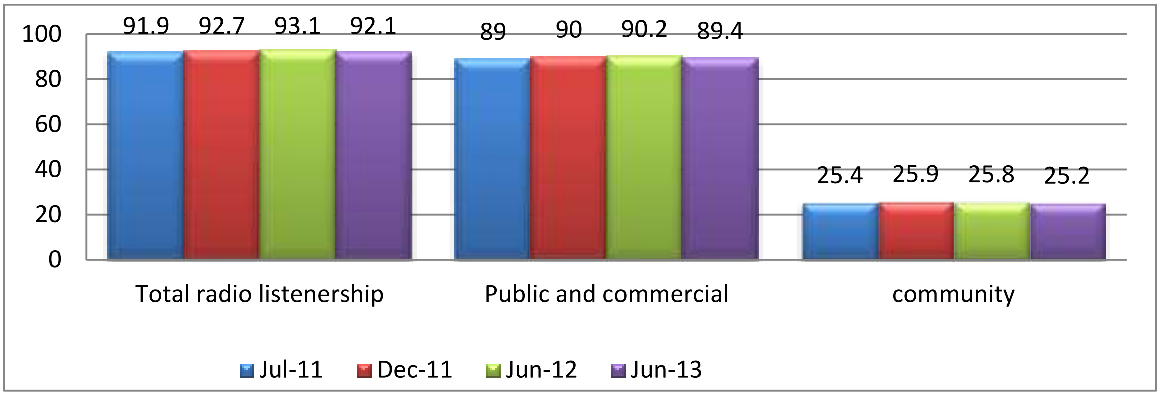
3.2 RADIO LISTERNSHIP TRENDS

In line with the increase in broadcasting licences issued, radio listenership also increased. Figure 4 specifically illustrates the increase in radio listenership between July 2011 and June 2013. Note that SAARF combines public radio stations and commercial radio stations into one category in its presentations (all referred to as commercial).

Key trends emerging from the figures indicate that total radio listenership has remained relatively stable since 2002 – with AMPS recording a past seven day listenership of 91.8% in 2002 and 92.1% in June 2013. There has however been a significant increase in listenership for community radio stations since 2005 – in line with the fact that the number of community radio registrants has doubled in the last ten years according to SAARF RAMS November 2013.

As noted previously, with the introduction of the EC Act, aspirant community broadcasters have to register with ICASA rather than go through a full licensing process. The presentation for AMPS 2005 RA indicates that community radio station listenership accounted in total for 16.2% of the adult population in that year. This increased to 25.2% of the adult population in June 2013 AMPS.

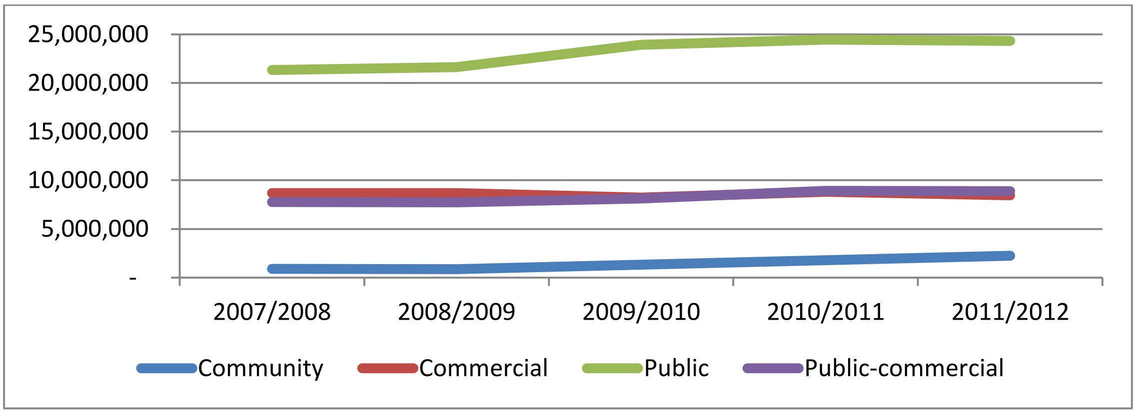
Figure 4: Radio listenership (past 7 days), percentage of adult population



Source: SAARF AMPS

Information provided by radio stations for this study (the Radio Broadcaster Survey), confirms the trends identified in the AMPS figures. As the survey only covered a proportion of all broadcasters, the listenership figures are not directly comparable, but the figure below confirms that the public stations that responded to the survey collectively have the largest listenership, followed by public commercial and commercial services. Although community broadcasters still have the smallest share of listeners, it experienced the fastest growth, more than doubling in listeners between 2007/2008 and 2011/2012.

Figure 5: Number of listeners per type of licence, 2007/2008 – 2011/2012



Source: Radio Broadcaster Survey

Given their large footprints, the public broadcaster's stations remain the most popular in South Africa according to AMPS. The five most popular stations (listed in table 2) are all part of the SABC. Among these, Metro FM is the only public commercial station and thus has lower SA music content quotas (25%)[10] than what is required of the other public radio stations (40%).

Table 2: Top five stations in terms of audience (listenership all adults 15years+)

Position	Station	Language/type	Format/target	Listenership
1	Ukhozi FM	isiZulu – public	Full service for isiZulu speakers in KZN, Gauteng, Mpumalanga and other areas.	6 956 818 (20% of adult population)
2	Metro FM	English – public commercial	Contemporary music, news and talk targeting "trendy sophisticated blacks in major metropolitan areas"	5 880 213 (17% of adult population)
3	Umhlobo Wenene FM	isiXhosa – public	Full service for isiXhosa speakers in Eastern Cape, Gauteng, S Free State and other areas	4 192 364 (12% of adult population)
4	Lesedi FM	Sesotho – public	Full service for Sesotho speakers in Free State, Gauteng, N and E Cape, NE Free State and Mpumalanga	3 884 195 (11% of adult population)
5	Motsweding FM	Setswana – public	Full service for Setswana speakers in NW Province, N Cape, NE Free State and Mpumalanga	3 277 113 (9% of adult population)

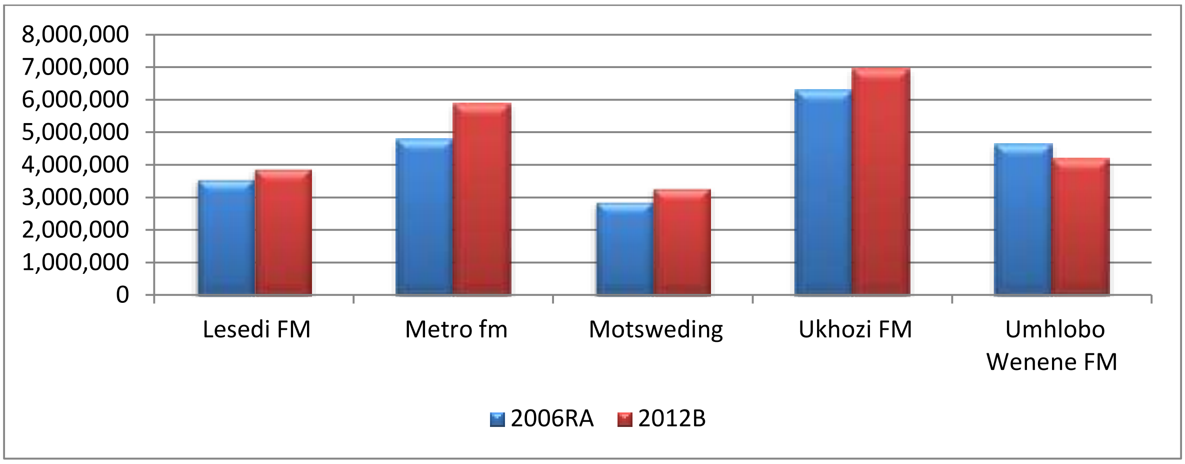
Source: AMPS 2012 B

This picture changes if listenership is considered at the provincial level. Based on SAARF RAMS November 2013, SABC stations still fill the top three positions in Gauteng (Metro FM, Ukhozi FM and Lesedi FM fall in first, second and third place respectively) but Highveld Stereo and Yfm then fall in fourth and fifth place respectively.

Listener numbers for four out of the five most popular national radio stations in South Africa have increased in absolute terms between 2006 and 2013. Only Umhlobo Wenene has decreased in absolute listenership between 2006 and 2013 according to AMPS. Absolute listenership for Umhlobo Wenene decreased from an estimated 4 638 424 in 2006 to 4 192 364 in 2012 (a 9.6% decrease). Details of changes in listenership for the five most popular national radio stations in South Africa are shown in Figure 6.

10 As Metro FM presumably plays a higher proportion of music relative to talk than public stations, it might be that it actually plays a similar absolute quantity of local content.

Figure 6: National number of listeners for the five most popular South African radio stations (past seven days), 2006 and 2012

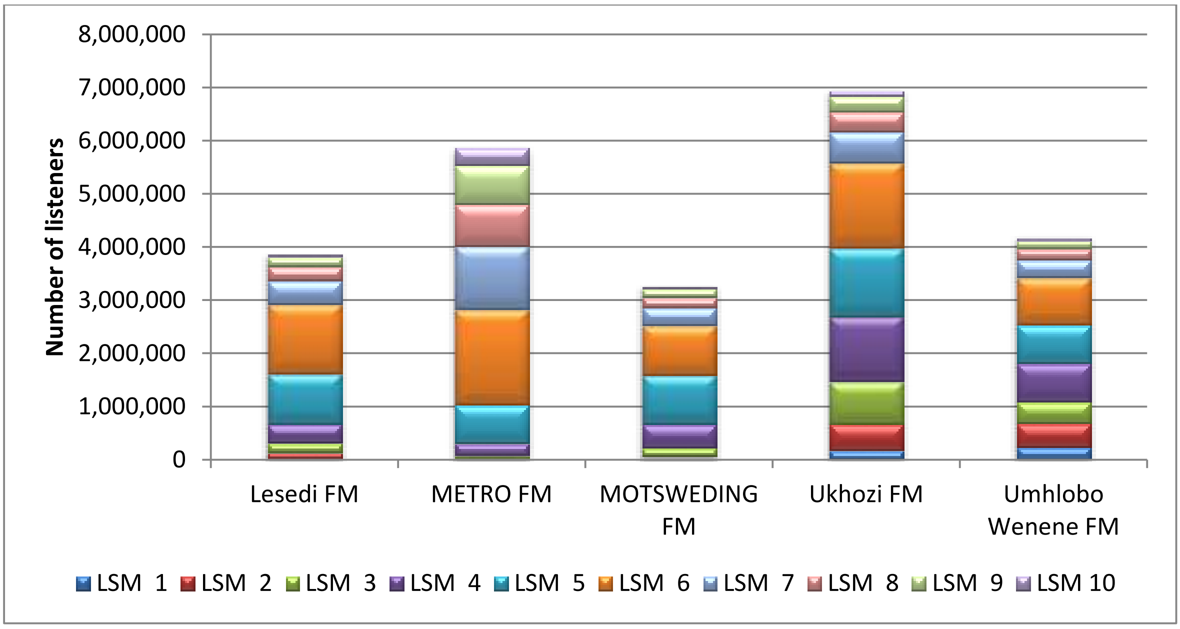


Source: AMPS 2006 RA and 2012 B

3.3 DEMOGRAPHIC DISTRIBUTION OF RADIO AUDIENCES

The LSM descriptions provided by SAARF suggest that public and community stations are particularly popular among the lower LSM levels, while commercial stations gain prominence among the higher levels. These findings are echoed in Figure 7 below, which indicates that the four most popular radio broadcasters (all public broadcasters) primarily cater for listeners in the LSM-groups 4 to 7.

Figure 7: Radio listenership (past seven days) by LSM Group (15+ adult population)



Source: AMPS 2012B

Television

3.4 TELEVISION MARKET ANALYSIS

South Africa has a three-tier television broadcasting system with public, commercial and community television licensees (as summarised in the table below). There are two public free-to-air broadcasters, one public commercial service, one commercial free-to-air broadcaster a selection of relatively newly licensed community broadcasters, one terrestrial subscription licensee, and two satellite multi-channel subscription services on air. In addition, during the course of this research, two free-to-air satellite services were launched (Open view by e.tv and Freeview by Sentech).

This environment is however expected to change significantly in the near future as ICASA is currently considering applications from five aspirant subscription broadcasters,[11] and the migration to digital terrestrial television (DTT) is expected to commence within 2013 or the beginning of 2014.[12]

Table 3: Market players in South Africa's broadcasting environment

	Public	**Public commercial**	**Commercial**	**Class/community[13]**
Free-to-air terrestrial	SABC 1 SABC 2	SABC 3	e.tv	1. Cape Community TV 2. Soweto TV 3. 1KZN 4. Tshwane TV 5. Trinity Broadcasting Network 6. North West TV (licenced but not on air)
Free-to-air satellite			Open View	

11 http://www.icasa.org.za

12 Department of Communications, 'Address by the Honourable Minister Dina Pule at the Digital Terrestrial Television workshop hosted by Namec, 16 April 2013'. Note that there have been many delays in the launch of DTT and the dual illumination period so it is difficult to determine if deadlines set by government will be met.

13 These are the community/class television licensees listed as licenced by ICASA in April 2013.

			(on air from Oct 2013) Free View (launched but not on air as of 5 Nov 2013)	
Subscription: Satellite (bouquets)			DStv Top-TV	
Subscription: terrestrial			M-Net	

M-Net offers a subscription service and is licenced to provide two channels (M-Net and Community Service Network (CSN)) currently delivered on an analogue terrestrial platform.[14] It sells these and other channels that they produce to DSTV. In their addendum to the Television Broadcaster Survey, M-Net stated that they no longer sell set top boxes for terrestrial services due to the expected migration of analogue terrestrial television to digital terrestrial television (DTT) in South Africa. Although digital 'switch on' was approved for 2008, it has not yet been launched. It states in its response that this lagged process has negatively impacted on its own growth and on the broadcasting environment generally.[15]

DStv offers a Direct-to-Home (DTH) digital satellite subscription broadcasting service with a past seven day audience of 9.6 million viewers.[16] It provides a number of different bouquets, each with its own selection of channels. In July 2013, DStv had 129 channels packaged into their various bouquets, as listed below.

Table 4: DStv bouquets and the number of channels

	Bouquet	Number of channels
1	DStv Premium	120
2	DStv Extra	87
3	DStv Compact	77
4	DStv Family	53

14 This will change with the launch of DTT. M-Net will then be distributed via a digital terrestrial platform and is likely to air more channels, depending on authorisation by ICASA and multiplex capacity.

15 M-Net. (2013). Memorandum to the Television Broadcaster Survey.

16 SAARF, AMPS

5	DStv Access	39
6	DStv EasyView	18
7	DStv North and South Indian	17
8	DStv South Indian	12
9	DStv North Indian	16
10	DStv Portuguesa	9

Source: Multichoice (2013)

TopTV is a relatively new subscription broadcaster offering seven different packages. The broadcaster has however been struggling and towards the end of 2012 went into business rescue, and has recently announced a name change to StarSat. A Chinese-owned subscription operator, the Star Times Group, has offered to rescue the channel[17], but as at mid-November 2013 finalisation of the purchase was still pending final approval by ICASA.

Community broadcasters are by law required to serve a particular community, to be run as a non-profit organisation, and to involve community members in selecting and producing their content. Initially, with the Independent Broadcasting Authority (IBA) licensing regime, community television licences were typically initially only granted for one year with the first one year licence granted to Trinity Broadcasting Network in 1995 (as a grandfathered channel in terms of the then Independent Broadcasting Authority Act) and the first 'new' one year licence issued to Soweto TV in 2007.[18] Currently all but one of those on air currently are operating under permanent seven year class community broadcasting services licences (Bara TV has a test licence).

3.5 TELEVISION AUDIENCE ANALYSIS

Based on SAARF's latest All Media and Products Survey (AMPS), television viewership has increased over the past decade. Results from AMPS show that just over 68% of the adult population (15+ years) had viewed television in

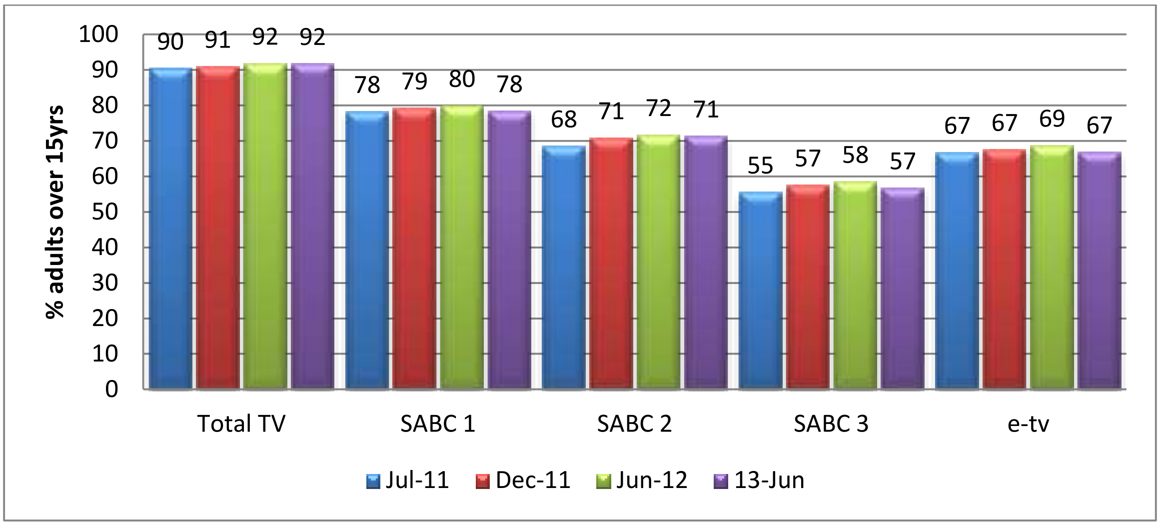
17 Sterkowitz, J. (2013). The New BFF? Screen Africa.

18 Mungadze, S. (2013). Community TV 'breaking licence rules'. Business Day Live. 31 January.

2002 (“yesterday”), while in June 2013 viewership had increased to 92% of all adults (past 7 days).[19] This correlates with the census figures showing an increase in household television ownership. The latest AMPS release shows that viewership continued to increase slightly from 90.3% of the adult population in July 2011, to 91.6% of the adult population in June 2013.

19 Note that past seven day viewership tends to be slightly higher than yesterday figures, but the two different AMPS presentations reviewed (2005 and 2012) do not provide comparable information.

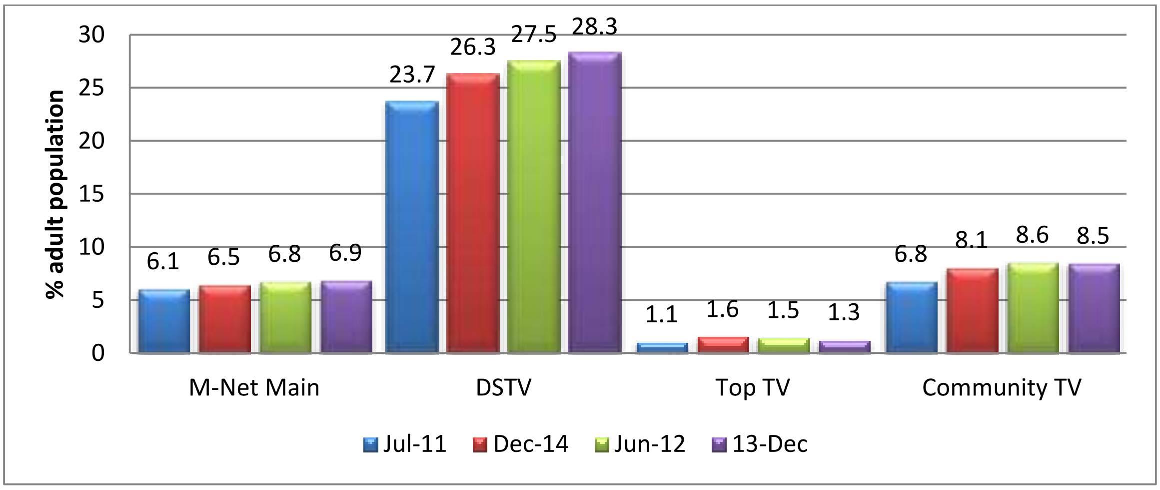
Figure 8: TV viewership past 7 days



Source: SAARF AMPS

Viewership of DSTV and M-Net[20] also increased between 2011 and 2012, while audiences for TopTV dropped over the period (see Figure 9 below). Community TV viewership grew – though this might reflect an increase in the number of community channels on air rather than more viewers for individual services.

Figure 9: TV viewership past 7 days: Other channels



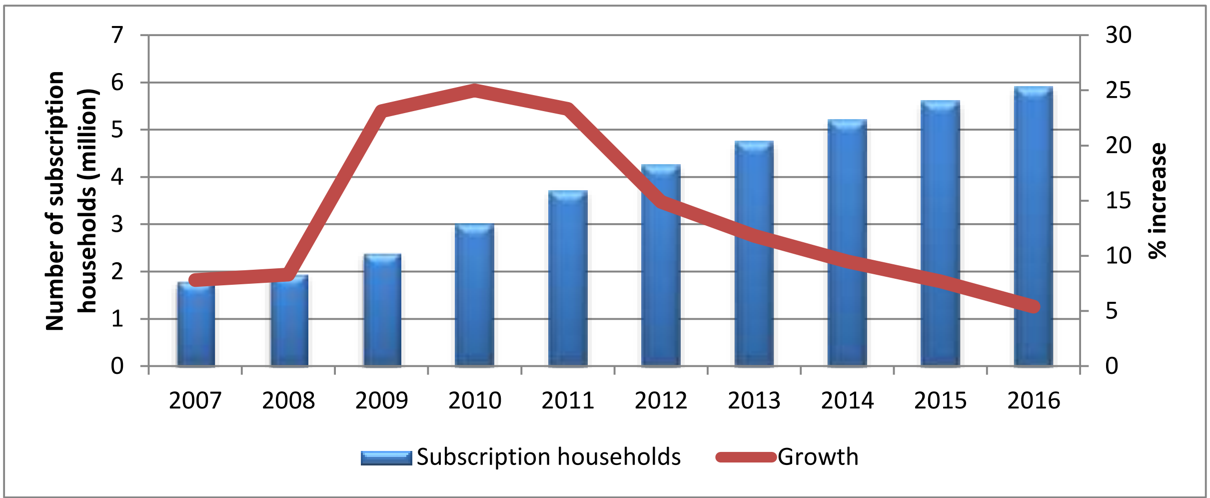
Source: SAARF AMPS

What these figures do not show is the large increase in the number of subscribers to Pay-TV (subscription television) in recent years. In its latest South African Entertainment and Media Outlook (2012-2016), PwC reflects that the

20 M-Net and Community TV include terrestrial and satellite viewing.

number of subscriber households more than doubled between 2007 and 2011 (from 1.8 million in 2007 to 3.7 million in 2011), and projects that the number will continue to grow.

Figure 10: Increased popularity of subscription television[21]



Source: PWC: 2012 -2016 South African Entertainment and Media Outlook

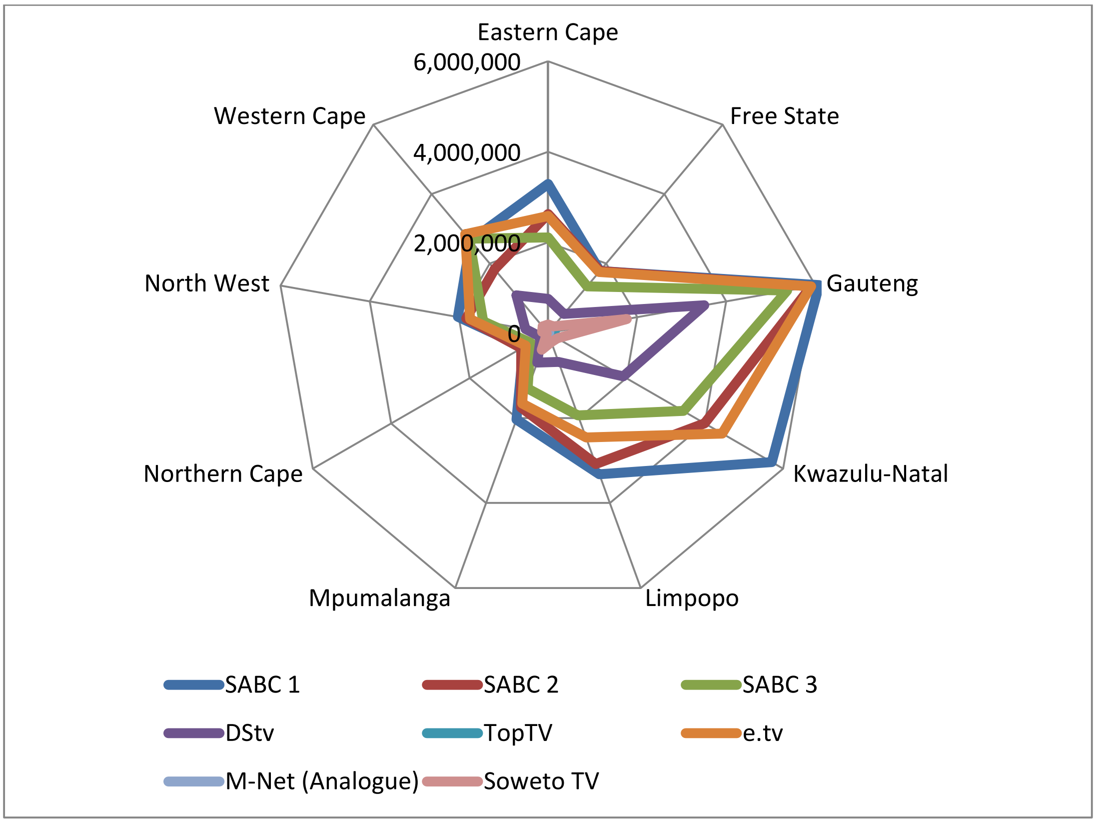
Multichoice (through DStv and M-Net) dominates the subscription television market. The other on air subscription broadcaster, On Digital Media (Top TV), had only 513 000 viewers in July 2011 – June 2012, compared to DStv's 9.6 million viewers estimated over the same period.[22]

When viewership numbers (as reported in the Television Broadcaster Survey) are compared between provinces, free-to-air broadcasters such as the SABC and e.tv dominate viewership in all provinces. Of subscription broadcasters, DStv has by far the largest number of viewers (in line with the results presented by AMPS), and broadly follows the same trends as free-to-air broadcasters in terms of relative size per province. M-Net's terrestrial broadcasting and Top-TV services have limited reported viewership relative to all of the other channels. The largest share of viewers of Soweto TV is located in Gauteng, followed by Mpumalanga. TBN only broadcasts in a portion of the Eastern Cape, and reported that they have a viewership of between 500 000 and 600 000.

21 Note that the figures from 2007-2011 are actual, and those from 2012 onwards are based on PwC projections.

22 SAARF, AMPS

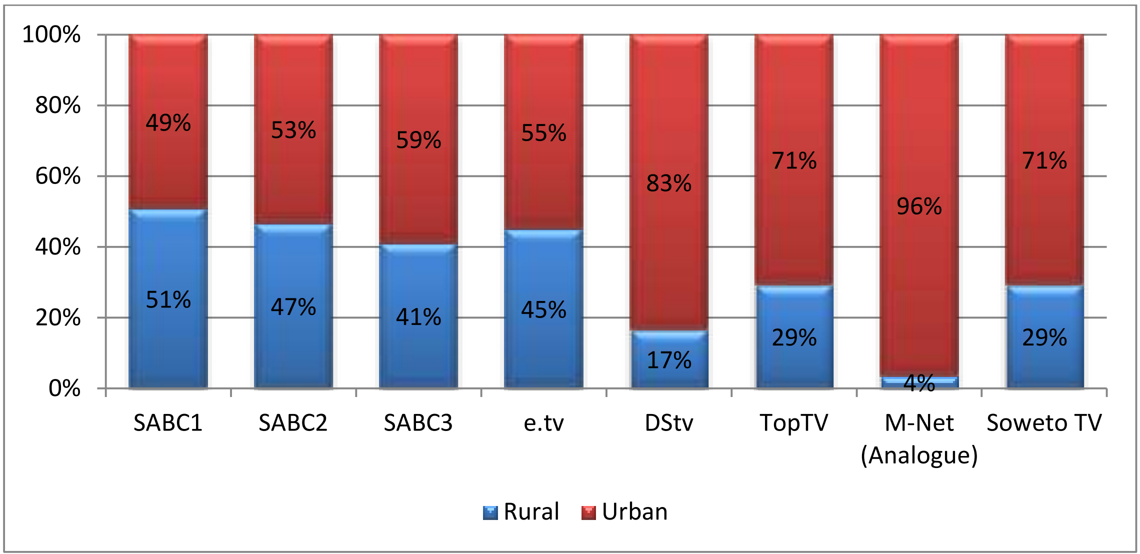
Figure 11: Viewership numbers per province, 2011/2012 (past 7 days)



Source: Television Broadcaster Survey

When comparing rural and urban coverage, the results reported in the Television Broadcaster Survey indicate that subscription broadcasters (DStv, M-Net and TopTV), as well as the only class licensee that provided audience data in this regard (Soweto TV) have lower audience figures in rural areas relative to free-to-air broadcasters. Within the context of an analysis of local content broadcast, these trends suggest that, although people in rural areas do not have as wide a choice of services, they do have access to a large quantity of local programming given the relatively higher minimum requirements to which free-to-air broadcasters generally are subjected.

Figure 12: Proportion of viewers in rural and urban areas per broadcaster, 2011/2012 (past 7 days)



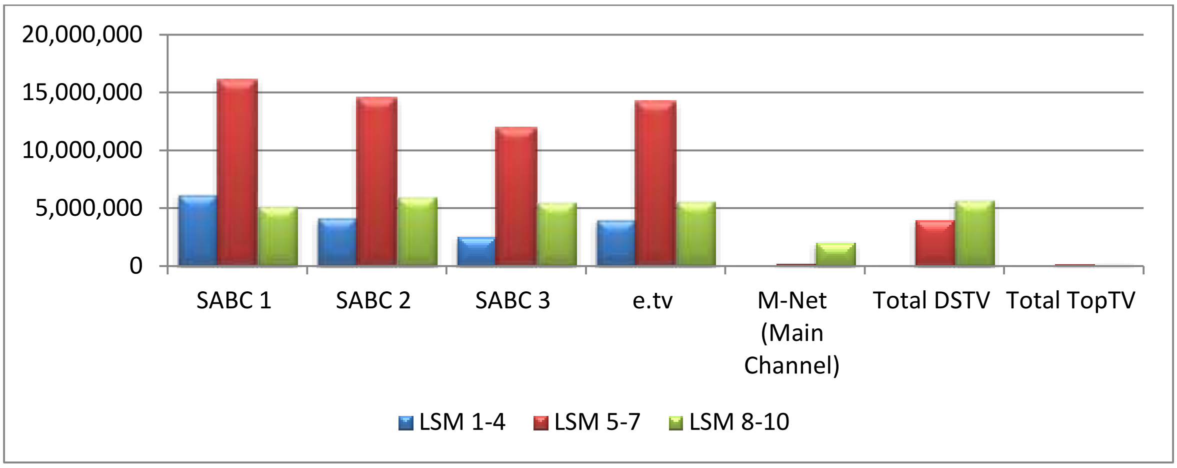
Source: Television Broadcaster Survey

Considering that rural areas in South Africa typically have a higher incidence of poverty[23], the trends presented above are reflected in an analysis of television audiences by LSM levels. Based on data collected through AMPS, the majority of viewers of free-to-air broadcasters fall in LSM 5-7. Of all broadcasters, SABC 1 has the largest number of viewers in LSM 1-4.

The audience of subscription broadcasters is largely comprised of viewers in LSM 8-10 who presumably have the means to pay for television subscription. Subscription television's audience of LSM levels 1-4 is negligable.

23 Leibbrandt, M., Wooland, I., Finn, A. & Argent, J. (2010). Trends in South African Income Distribution and Poverty since the Fall of Apartheid. OECD Social, Employment and Migration Working Papers, No. 101, OECD Publishing.

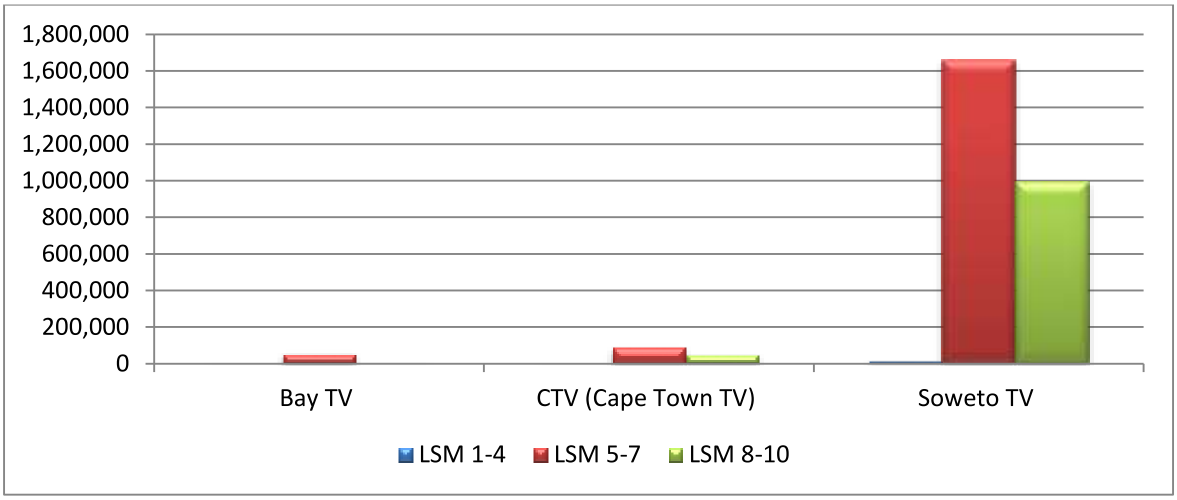
Figure 13: Number of viewers in different LSM groups per free-to-air and subscription television broadcaster 2012 (past 7 days)



Source: AMPS 2012B

When considering the viewership of three community broadcasters included in AMPS, we find that, as for free-to-air broadcasters, the majority of viewers fall in LSM 5-7. Soweto TV however also has a relatively large percentage of viewers in LSM 8-10.

Figure 14: Number of viewers in different LSM groups per community television broadcaster 2012 (past 7 days)



Source: AMPS 2012B

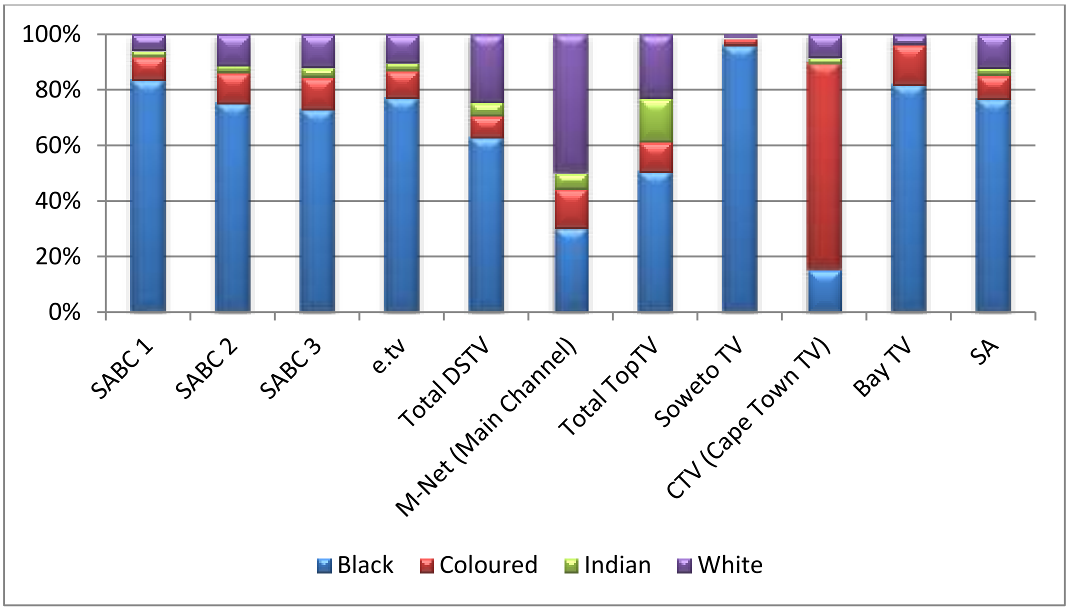
The licence conditions of SABC 1 and SABC 2 require them to screen a higher proportion of content in official languages other than English, compared to SABC 3 or e.tv. These differences, however, do not seem to be directly reflected in the proportion of viewers by population group of these broadcasters. While SABC 2, for example, has to screen programmes in SeSotho, SeTswana, XiTsonga, TshiVenda, Afrikaans as well as English, its proportion of viewers by race group appears to be relatively similar to SABC 3 which predominantly broadcasts in English.

Different trends are however observed between free-to-air, subscription and community broadcasters in terms of the race of their viewers. Figure 14 illustrates these trends and compares them to the population breakdown of South Africa (as indicated by the bar labelled 'SA' in the figure below).

Whereas SABC 1 attracts the largest share of black viewers, the three subscription broadcasters attract the largest share of the white viewers.

The focus on specific interest groups, characteristic of community broadcasters, are apparent in the race profile of their viewers, with Soweto TV almost solely attracting black viewers, and Cape Town TV attracting a disproportionate share of coloured viewers.

Figure 14: Proportion of television audiences by population group, 2012 (past 7 days)



Source: AMPS 2012B

3.6 INDEPENDENT PRODUCTION SECTOR MARKET ANALYSIS

3.6.1 Growth in the film and television production industry

According to the DTI, the film and television sectors have been doing relatively well, especially considering the effects of the global financial crisis. The Department's Industrial Policy Action Plan (IPAP) largely ascribes this growth to the television industry:

"*The film industry managed to grow by 3.1% during the 2008/09 crisis years, but paradoxically took a severe hit in 2010/11, with overall growth declining to only 1%. Meanwhile, the television industry performed strongly over the same period growing by 13.4% from R20.326bn to R23.051bn*".[24] It is unclear from the strategy whether or not the DTI includes the advertising industry in its definition of the television industry.

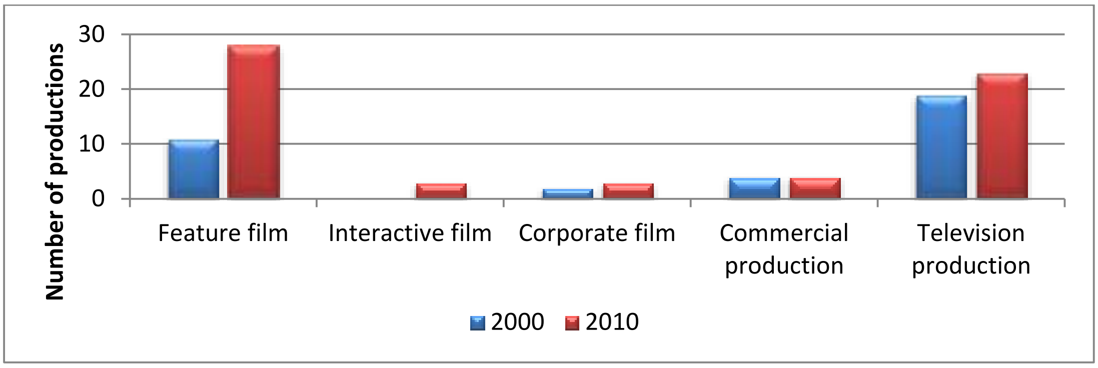
A University of Pretoria study meanwhile reports that in 2008, the real value added to South Africa's economy by the film and television industry amounted to R6.8 billion.[25] The NFVF in 2010 further states that the number of feature films and other productions created specifically for television increased significantly between 2000 and 2010, though this report does not indicate if, for example, there was any drop after 2009.[26]

24 DTI (2013) Industrial Policy Action Plan Economic Sectors and Employment Cluster: IPAP 2013/14 – 2015/16 http://www.thedti.gov.za/news2013/ipap_2013-2016.pdf. (p.115)

25 Pouris, A. & Inglesi-Lotz, R. (2011). The Economic Contribution of Copyright-Based Industries in South Africa. Institute for Technological Innovation: University of Pretoria

26 NFVF. 2010. 10 Years Review of the South African Film and Video Industry 2010. (p.76).

Figure 15: Domestic content creation for television production, 2000 & 2010



Source: NFVF (2010)

The 2013 PwC Entertainment and Media Outlook projects further growth for the sector, with a 10.3% increase for the television sector (from R23.051 billion to R37.551 billion) for the years 2011 to 2016, and a 4.2% increase in the film sector (R2.88 billion to R3.569 billion) over the same period.[27]

3.6.2 Production incentives

In 2004, the DTI introduced two incentive programmes specifically designed to promote the film and television production and post-production industry, and in doing so create jobs and develop skills.[28] The South African Film and Television Production and Co-production Incentive, and the Foreign Film and Television Production Incentive (developed to attract foreign producers to South Africa) are explained in the table below.

Table 5: DTI Film and Television Production Incentives

Incentive scheme	Description
South African Film and Television Production and Co-production Incentive	Requirements • Apply before commencing principle photography • Minimum QSAPE24 of R2.5m • 50% of principle photography in SA and a minimum of 2 weeks. Eligible formats • Feature films • Tele-movies

27 PwC. (2012). South African Entertainment and Media Outlook: 2012-2016. (p.42)

28 DTI (2013). Presentation on the dti Manufacturing Incentive Programmes: IPAP Launch: 2013. http://www.dti.gov.za/ipap/Incentive_Presentation.pdf

	• Television drama series or mini-series • Documentary or documentary mini-series • Animation • Excluded - Reality TV Incentive is calculated at 35% of QSAPE for the first R6m and 25% for the remaining portion
Foreign Film and Television Production Incentive	Requirements • Apply before commencing principle photography • Minimum QSAPE of R12m • 50% of principle photography in SA and a minimum of 4 weeks Eligible formats • Feature films • Tele-movies • Television drama series or mini-series • Documentary or documentary mini-series • Animation • Excluded - Reality TV The incentive is calculated at 20 % of QSAPE

Source: Kaiser (2013) p. 38.

The South African Film and Television Production and Co-Production incentive is specifically designed to assist local producers. It offers a rebate for 35% of the first R6 million of qualifying South African production expenditure (QSAPE)[29], and for 25% of expenditure above R6 million. In 2012/2013 the DTI disbursed rebates to the value of R254 million for SA productions and co-productions that had an aggregate QSAPE of R1.73 billion.[30]

The number of productions approved for rebates by the DTI is listed in
Table 6, with the total rebates allocated illustrated in Figure 16. The number of productions approved increased across all categories, with the largest growth experienced in the number of SA productions that received rebates.

29 QSAPE reflects production expenditure on items provided by South African entities/individuals (e.g. copyright, and goods and services).

30 DTI. (2013). Presentation to the DTI Manufacturing Incentive Programmes: IPAP Launch.

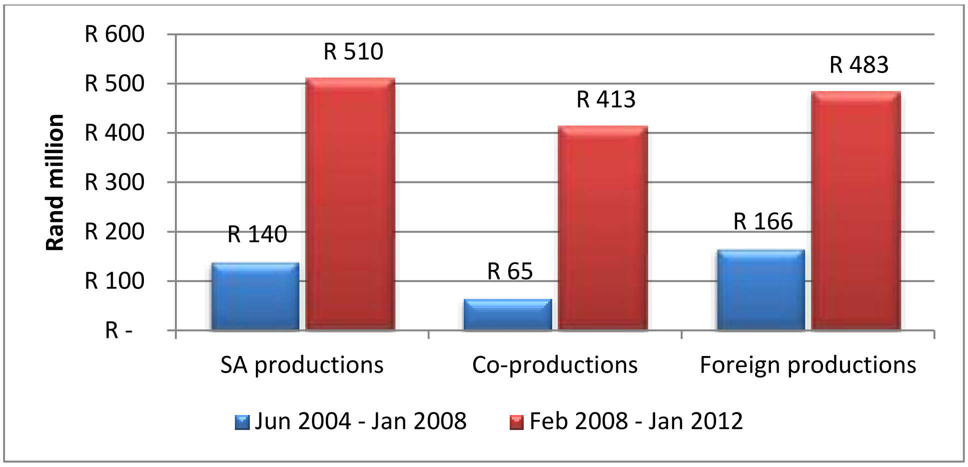
Table 6: Productions approved by the DTI

	Jun 2004 - Jan 2008	Feb 2008 - Jan 2012
SA productions	16	181
Co-productions	7	66
Foreign productions	26	50

Source: Kaiser (2013)

While more than three times the number of SA productions relative to foreign productions was approved for rebates, the total amount in Rand allocated to rebates to foreign productions is only marginally below that of those given to SA productions. This appears to be a result of the higher production expenditure and larger QSAPE spending of foreign films.[31]

Figure 16: Rebates paid by the DTI



Source: Kaiser (2013)

Based on the extent to which these rebates have assisted the industry, it is not surprising that many production companies reported that they rely heavily on public funding for their projects (as illustrated by the results from a survey done by the NFVF in 2010, shown in Table 7 below). Own investment and licensing fees are also key sources of funding according to this NFVF report.[32]

31 Kaiser. (2013). Trade in Creative and Cultural Goods and Services, in the context of EU-South Africa Development of Creative Industries in South Africa. EuropeAid/131470/L/ACT/ZA.

32 NFVF. 2010. 10 Years Review of the South African Film and Video Industry 2010.

Although the survey showed that loans were the least favoured funding mechanisms, these represented a significant proportion of the funding mark-up of companies that did rely on loans.[33] After loans and equity, licensing by broadcasters or distributors makes up the third largest proportion of the funding mark-up (note, however, that this does not separate film and television productions and that commissioning will likely weigh heavier when only considering television productions).

Based on the success of existing state funding initiatives for film and television production, a number of government departments (including the DOC, the DTI and the DAC) are expanding their support mechanisms.

Table 7: Sources of funding for film and television productions, 2010

Source of funding	**Average % of funding (number of respondents)**
Own investment	23.72 (18)
Equity	35.50 (10)
Loans	35.71 (7)
Licensing (broadcaster of distributor)	33.53 (17)
Government (e.g. DTI, NFVF, film commissions)	27.47 (18)
Others	28.33 (9)

Source: NFVF (2010)

In its latest IPAP strategy, the DTI states that it further plans the following interventions:

- *"Upscale the roll-out of the South African Film and Television Production Incentive, with a special focus on telemovies, television drama series, mini-series, documentary or documentary mini-series, video gaming and animation, to further grow the employment and work opportunities afforded by these formats.*
- *Broaden participation by implementing B-BBEE and transformation interventions and revising the incentive budget threshold to include low-budget productions.*

33 NFVF. 2010. 10 Years Review of the South African Film and Video Industry 2010. (p.69)

- *Review and redevelop the Film Customised Sector Strategy to target the constraints within the industry in a more comprehensive way to create positive impacts on the total value chain, beyond the primary production process."* [34]

  All of these interventions can be expected to positively impact on local content productions.

In spite of the DTI's large scale investment in the local content industry and its plans for further interventions, some of the interviews with broadcasters and stakeholders brought to light the fact that the rules set by these funding mechanisms are not always easy to meet. The SABC, for example, noted the challenges in working with the DTI on co-productions. The Public Finance Management Act (PFMA) requires them to get approval from the Minister of Communications for such co-productions and "*the process of getting this can be bureaucratic and limiting*".[35]

E.tv in turn noted that it is of the view that television licensees should also be allowed to access these DTI rebates (rather than just independent producers). They stated that this would assist in growing the industry[36] as television productions typically create more sustainable employment.

3.6.3 Concerns within the Independent Production industry

In contrast with the above findings, interviews with members of the independent production sector[37] indicated that producers are facing difficult times. They report that there has been a "brain drain" from the sector due to limited work opportunities.

Interview respondents specifically emphasised that the rates being paid by broadcasters for commissioned productions have dropped, based on their own experience. Some actors and writers claimed that they are getting and accepting rates on par to those that they received in the 1980s. SASFED said

34 DTI, "IPAP 2013/2014 – 2015/2016", page 116,

35 Interview with SABC. 16 October 2013.

36 Interview with e.tv. 18 October 2013.

37 SASFED interview

that the crisis has affected both new and established companies, and that some of the big companies have drastically reduced their number of staff in the past few years.

This echoes findings in the 2009 study done by the IPO on the impact of the global economic and SABC financial crisis on the sector ("The Mirror Crack'd").[38] The study deals specifically with the situation in 2009, and has not been updated. It was based on a telephone and email interviews with members over a period of six weeks. It indicates that many independent production companies had been forced to close between 2008 and 2009 as a result of the global economic and SABC crisis. The study states that:

> *"The 2008/2009 SABC financial and management crisis has resulted in an immediate and drastic reduction of income and certainty to the production sector. An estimated R500 million in anticipated annual commissions (some already contracted) has been 'put on ice'. This together with outstanding debts and royalty payments projects over R600 million estimated loss in production spend this fiscal year."*

The impact of the failure of the public sector as experienced through the SABC crisis is assumed to have been partially mitigated by the addition of local content subscription channels, notably M-Net's Mzansi Magic channel that started broadcasting in 2010. Mzansi Magic explicitly aims to "*engage producers and explore possibilities beyond traditional commissioning models. In partnership with South African filmmakers, [the channel] will seek to empower emerging talent to produce compelling content with local and universal appeal, but also to ensure that key skills are transferred to the industry*".[39] Without market entry by channels such as Mzansi Magic, the

38 The Independent Producers Organisation (together with the South African Screen Federation), "The Mirror Crack'd: Report on the Global and SABC financial crisis on the independent television and film production sector", 18 November 2009

39 Yolisa Phahle – Channel Director for Mzansi Magic in (2010) Mzansi Magic – New Local Channel. Available online: http://www.mnetcorporate.co.za/ArticleDetail.aspx?Id=1513

impact of the SABC crisis on producers and investment in the sector might have been more severe.

A further challenge specific to South Africa's film industry is the relatively small proportion of the population that frequents the cinema. According to the DTI IPAP Strategy, box office figures for 2011 show that South African-produced films only captured a 3% share of the total R1.206 billion market. It stated that an NFVF Box Office Report for 2011 confirmed that of the 204 films shown in South African cinemas, only 22 were locally produced.[40]

Reasons that are often cited include a lack of access to cinemas in the townships, the high price of cinema tickets, and a lack of relevant content.[41]

In 2010, the NFVF launched a project to increase the number of cinemas in township areas. The project has the dual aim of giving black South Africans easy access to theatres, but also to provide a platform for local filmmakers to showcase their work. The South African film industry is therefore almost entirely dependent on South African broadcasters for local distribution, and increasingly local investment in South African content.

Broadcasting Sector

3.7 CHANGES IN THE BROADCASTING ENVIRONMENT

There have been a number of major changes in the broadcasting environment since the South African television and music content regulations were first revised in 2002.[42] These changes are important to take into account when developing a new regulatory framework, and to note in considering the socio-economic indicators for the sector. Key changes or events include:

- The Electronic Communications Act (ECA) was promulgated in 2005, and came into force in July 2006 – with key amendments to the licensing

40 DTI, "IPAP 2013/2014 – 2015/2016", page 116, http://www.thedti.gov.za/news2013/ipap_2013-2016.pdf

41 NFVF (2013) South African Film Industry Baseline Study. April.

42 The position paper was published in 2002, however the regulations became effective in 2003. The subsequent changes were not substantive.

framework for community radio and television stations. In terms of the ECA community broadcasters are classified as class licensees and as such go through an expedited registration rather than full licensing process. This has led to a rapid increase in the number of community radio stations licenced (from about 100 licensees before 2005 to over 200 licenced stations in 2013). The legislative changes have resulted in a less rigorous licensing process and have limited the grounds on which ICASA can refuse an application.

- Government has also subsequently finalised a Digital Terrestrial Television (DTT) migration framework, and ICASA has developed regulations in line with this. However, there have been numerous delays in the launch of DTT which have impacted on the sector as a whole. The SABC experienced governance and financial crisis in 2009, which necessitated a government guaranteed bank loan of R1.475 billion. As a result of the financial crisis, payments to independent production companies were delayed with severe consequences for many producers. In addition, commissioning of new content by the SABC was also limited and/or put on hold. SABC has stated that it will later in 2013 be releasing its first substantial Request for Proposals (RFP) for South African content since 2008.[43] In an interview for this research, SABC confirmed that they would be issuing an RFP in the course of 2013. They noted that they had issued more limited RFPs between 2008 and 2013. The most recent RFP had been issued in November 2011.[44]

ICASA licenced another four satellite subscription TV broadcasters in 2007– though only one of these (TopTV) had launched by October 2013. In 2002 Multichoice (including DStv and M-Net) was the only subscription service, and it is still dominant in the Pay-TV market given that TopTV has only been operational since 2010. At its launch, TopTV sold 360 000 decoders but by

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43 See Screen Africa, 'SABC RFP book latest', 24 July 2013, http://www.screenafrica.com/page/news/television/1631851-SABC-RFP-book-latest.UfeeC22Tk1I

44 Interview with SABC Television staff, 16 October 2013

early 2012 only half of these decoders were reported in use.[45] Top TV holding company On Digital Media (ODM) is currently in business rescue[46], and the service was re-launched as Starsat following the acquisition of shares in ODM by Chinese broadcaster Star Times. In July 2013, ICASA held hearings into applications by a further five aspirant subscription television broadcasters.

The introduction by Multichoice in 2010 of a range of lower cost bouquets should also be noted (including for example DSTV Lite and DSTV Compact). There was only one DSTV package available at the time of finalising the current regulations. The introduction of the Personal Video Recorder (PVR) for subscribers to Pay-TV is further worth noting given that viewers with PVR can determine their own prime time viewing. According to PwC this has been very successful, with PVR subscriptions increasing by 37% between 2011 and 2012. There were more than 650 000 PVR (DSTV Premium) subscribers in 2012.

There have further been increases in the number of television channels broadcast, though apart from licensing of community television there have been no additional free-to-air TV broadcaster licences issued. Information submitted by Multichoice in response to the Television Broadcasting Survey indicates that in July 2013, there were 44 local television channels available on the DStv service. Table 8 below indicates the increases in the number of channels available between 1991 and October 2012.

Table 8: Number of television and radio broadcasting services licences

Medium	1991	2004	Oct 2012
TV (incl. terrestrial and satellite, and public, private and community)	7	67	180
Radio (incL. public, private and community)	34	117	215[47]

Source: OMD's 2013 Media Outlook

45 PricewaterhouseCooper, South African Entertainment and Media Outlook: 2012 - 2016

46 See toptv.co.za for details on business rescue proceedings.

47 This figure it seems is based on the number of station on air according to SAARF RAMS rather than the number of radio services licenced.

This table does not include free-to-air satellite television services launched in 2013. Both e.tv and Sentech have launched satellite free-to-air services. At the time of finalising this report, e.tv's OpenView satellite service was on air, though Sentech's Freeview offering was not as yet broadcasting. OpenView launched in October 2013 with a number of channels, including four new e.tv branded services. One of these is an entertainment focused South African channel (eKasi) and another airs African content (eAfrica). ICASA has not set out any regulatory obligations that will apply to free-to-air satellite services.

Further community television services have been licensed subsequent to the regulations being finalised. There are currently six community television licensees (five permanent and one temporary), whereas only one community television service was on air at the time of finalisation of the regulations (Trinity Broadcasting Network). All five permanent licensees had launched their services by the end of October 2013.

Mobile TV, Internet Protocol TV (IPTV), and Video-On-Demand (VOD) services are also additional services that have become available subsequent to the finalisation of the regulations.

Several South African internet radio stations have been launched (such as Ja.FM by Jacaranda and 2OceansVibe Radio) streaming radio-like content to listeners.

ICASA has licenced a number of additional commercial radio licensees (including Capricorn FM in Limpopo, M-Power in Mpumalanga, North West FM in the North West Province, Power FM in Gauteng, Smile FM in Cape Town and Vuma FM in Durban). The regulator is currently considering further licence applications in secondary markets of the Free State and Eastern Cape, as well as additional applications for licences being offered in the primary markets of Gauteng, Durban and Cape Town.

4. REGULATORY ANALYSIS

This chapter sets out the policy and legislative context of local content regulation in South Africa. It provides an analysis of the relevant international, regional and South African policies and legislative provisions underlying the regulation and therefore sets the policy basis for reviewing the current regulations. World Trade Organisation agreements are also included in this section for completeness – although South Africa has asserted its right to exclude audio visual material from these. The analysis in this section is based on a review of related international agreements, relevant legislation and regulations, as well as inputs from interviews with members of ICASA on challenges they have faced in implementing some of the requirements set in law.

4.1 POLICY ANALYSIS

4.1.1 International Conventions

Freedom of expression is protected in several international instruments, and includes the right of a person to access a diversity of information and material. Local content related broadcasting regulation it has been argued can be a means of promoting such diversity of expression and should be developed in consideration of this principle.[48]

a) United Nations: Universal Declaration of Human Rights

Article 27 of the Declaration states that:

> *"Everyone has the right freely to participate in the cultural life of the community, (and) to enjoy the arts…*
>
> *"Everyone has the right to the protection of the moral and material interests resulting from any ….. artistic production of which he is the author".*

48 Article 19, 'Local Content Rules in Broadcasting', March 2001

Article 22 provides that;

> "*Everyone…..is entitled to realisation, through national effort and international co-operation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*".

Article 19 stipulates that:

> "*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers*".

b) United Nations: International Covenant on Economic, Social and Cultural Rights (1966)

This Covenant recognises the right to cultural self-determination.

> Article 15(2) recognises the right of states to take steps "*to achieve the full realisation of this right*" including "*those necessary for the conservation, the development and the diffusion of ….culture*".

This Covenant guided the development of the UNESCO-sponsored Action Plan on Cultural Policies for Development agreed on in Stockholm in 1998. This Plan recognised that *"(t)he defence of local and regional cultures threatened by cultures with global reach must not transform the cultures thus affected into relics deprived of their own development dynamics*" and therefore recommended that Member States of UNESCO should:

> *"Provide communications networks, including radio and television and information technologies which serve the cultural and educational need of the public; encourage the commitment of radio, television, the press and other media to cultural development issues, such as the promotion of local, regional and national cultures and languages, exploration and preservation of the national heritage and promotion of the diversity of cultural traditions*

and indigenous and national cultural identities, while guaranteeing the editorial independence of the public service media".

c) Convention on the rights of the child (Office of the High Commissioner for Human Rights)

This Convention sets out a number of culturally related rights of the child. Article 17 is particularly pertinent to this study. It says:

"State Parties recognise the important function performed by the mass media and shall ensure the child has access to information and material from a diversity of national and international sources….To this end, State Parties shall:

- *Encourage the mass media to disseminate information and material of social and cultural benefit to the chid…;*
- *Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources…."*

d) United Nations Educational, Scientific and Cultural Organisation (UNESCO) Declaration of the Principles of International Cultural Co-operation (1966)

Article 1 states:

"Each culture has a dignity and value which must be respected and preserved

"Every people has the right and the duty to develop its culture."

e) UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005)

While the entire Convention is centred on the promotion and protection of cultural diversity, Article 5.1 is particularly relevant to the right to develop country policies to promote diversity of cultural expressions:

"The Parties….reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions …"

f) World Trade Organisation: General Agreement on Trade and Services

The principles of trade in audio-visual services[49] are contained in the General Agreement on Trade in Services (GATS). It is one of the sectors where the number of WTO members with commitments is the lowest (30, as of 31 January 2009).[50] Basically GATS mandates WTO member governments to progressively liberalise trade in services through successive rounds of negotiations.

There are four major areas of services negotiations:

- market access;
- domestic regulation;
- GATS rules on emergency safeguard measures, government procurement and subsidies; and
- implementation of LDC (least developed countries) modalities (i.e. special treatment for LDC's under GATS Article IV.3).

There are two types of obligations under GATS: (i) general obligations that apply to all members and all service sectors covered under GATS regardless of whether or not specific commitments have been made; and (ii) sector-specific commitments regarding market access and national treatment for sectors and activities that members agree to open to international trade.

Under the general obligations, there are two main principles: (i) WTO member countries must afford each other most favoured nation (MFN) treatment (*i.e.*, prohibition on discrimination that requires countries to afford "treatment no less favourable than that accorded to like services and service suppliers of

49 Audiovisual services include motion picture and video tape production and distribution services, motion picture projection services, radio and television services, radio and television transmission services, and sound recording.

50 http://www.wto.org/english/news_e/news09_e/publ_05feb09_e.htm

any other country"); and (ii) countries must ensure transparency of local regulations (*e.g.*, countries should publish measures of general application, and allow a period of public comment prior to their issuance).[51]

Audio-visual services are not as liberalised as a number of other services, including telecommunications services, and many countries maintain rules prohibiting foreign ownership of broadcasters and reception of foreign satellite television programming. Many countries have also retained the right to set content quotas for broadcasting and other related services.

South Africa is one of the countries that has abstained from making commitments regarding market access for the audio-visual sector within the framework of the GATS, thus preserving its freedom of action at this level.

4.1.2 African and SADC instruments and agreements

a) African Union: The African Charter on Human and Peoples' Rights (1981)

Article 9 of the African Charter on Human and Peoples' Rights states that all people have the right to freedom of expression.

The African Commission on Human and Peoples' Rights (ACHPR) has adopted the Declaration of Principles on Freedom of Expression in Africa to guide interpretation of this right. It specifically states that the right to seek, receive and impart information and ideas "either orally, in writing or in print, in the form of art, or through any other form of communication" is a fundamental and inalienable right indispensable to democracy.

Article II emphases that freedom of expression "*places an obligation on the authorities to take positive measures to promote diversity*".

51 http://www.ictregulationtoolkit.org/en/section.1651.html

b) African Union: Charter for African Cultural Renaissance (2006)

Although this Charter has not as yet come into force as according to AU records it has not yet been ratified by a sufficient number of countries (including by South Africa), it is still pertinent to note. The Charter for African Cultural Renaissance was adopted to replace the Charter for Culture which was adopted in 1976 and came in to force in 1990. The provisions in the two Charters are similar, though the more recent instrument recognises the effects new technologies might have on cultural diversity.

The Charter recognises in its Preamble that rapid development of information and communication technologies "constitute a challenge for cultural identities and cultural diversity". Some of the key relevant provisions include:

- Article 9 requires States to create an enabling environment for cultural innovation and development and "*(t)o this end….guarantee freedom of expression for all citizens and cultural stakeholders*".
- Article 18 recognises the need to develop policies to promote and protect African languages.
- Article 20 states that States should "*encourage the use of the information and communication media for … cultural development and promotion*".
- Article 21 also deals with ICTs and specifies that States should insure that such technologies are used to promote African culture and that members of the AU should "*create an enabling environment that will enhance the creation, protection, production and distribution of cultural works*".

c) Southern African Development Community: Protocol on Culture, Information and Sport (2000)

South Africa ratified this Protocol in 2005. It focuses on harmonising policies on culture, information and sport between SADC member states.

Article 11 sets out areas for cultural co-operation between member states including "*(e)nsuring that culture plays a significant role in the economic development of the Region*" and promotion of indigenous languages.

Article 14 deals with the development of cultural industries and commits members to "*make cultural industries a major cornerstone of their national economies*" and "*take such measures as are necessary in order to nurture, protect and promote*" this sector.

Article 17 includes the following key objectives:

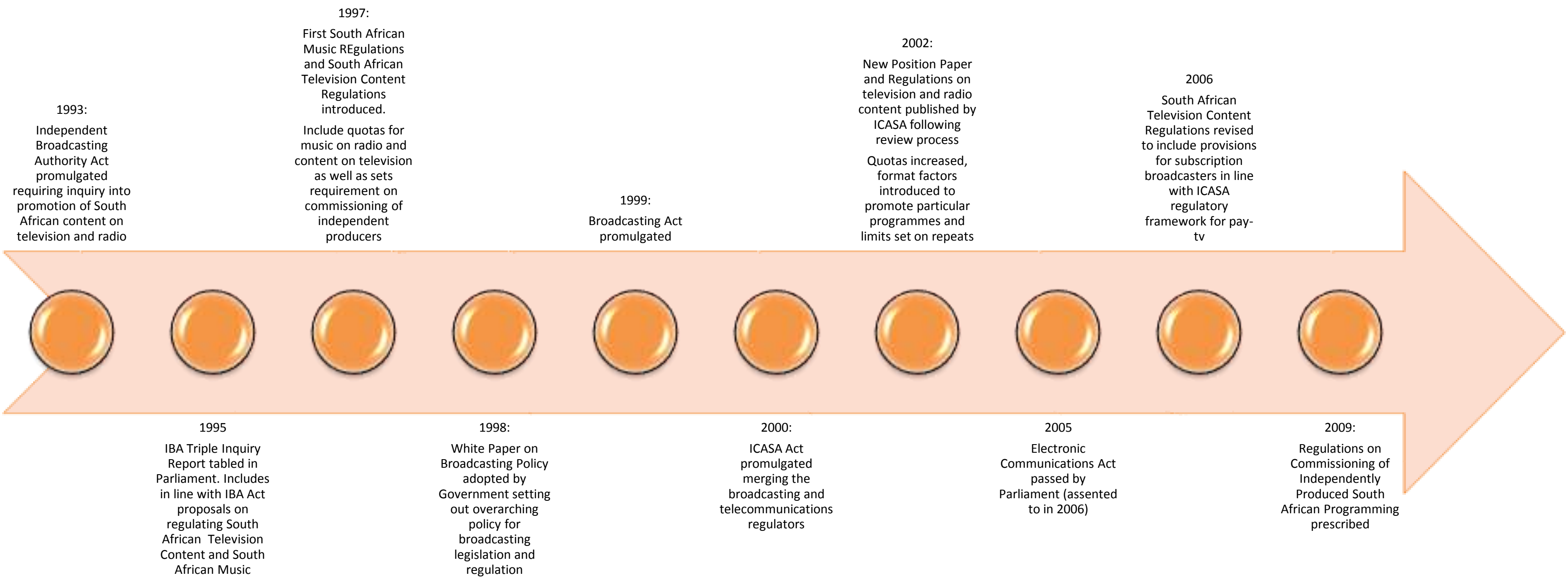
- Development and promotion of local culture by increasing local content in the media; and
- Encouragement of the use of indigenous languages in the mass media as vehicles of promoting local, national and regional inter-communication.

  Article 18 commits members states to "create (a) political and economic environment conducive to the growth of pluralistic media", while Article 20 enjoins members to take "necessary measures to ensure the freedom and independence of the media".

4.1.3 South African Policies

The timeline below provides a concise overview of the history of content regulation in South Africa. Note that this identifies the key milestones.

Figure 17: Broadcasting Timeline (source Pygma Consulting 2013)



a) The Triple Inquiry Report (1995)

ICASA's predecessor, the Independent Broadcasting Authority (IBA) submitted the Triple Inquiry into the Protection and Viability of public broadcasting, Cross Media Control of Broadcasting and South African Television Content and South African Music Production to Parliament in 1995. While the report was drafted by the regulator, recommendations were considered by Parliament which decided on which of these to approve and government implemented decisions such as selling of certain of the SABC radio stations in line with this.

The recommendations on South African content were later (1997) developed into the first South African content regulations. There were 38 submissions specifically on content.

b) The White Paper on Broadcasting Policy (1998)

The White Paper on Broadcasting Policy ("the White Paper") was adopted by Government in 1998. It is currently being reviewed by the Minister of Communications and any new stipulations related to Policy will inevitably have to be considered by ICASA in reviewing South African content regulations. ICASA can further make recommendations on related policy issues and amendments to legislation, if any, through this review process.

The 1998 White Paper set out Government's approach to broadcasting policy and outlined the different roles of Parliament, the Minister of Communications and the regulator. The White Paper further brought the SABC clearly under the remit of the regulator for the first time by requiring that ICASA monitor compliance with the public broadcaster's charter and that the regulator issue licence conditions for each SABC service.

In relation to South African content, the White Paper states specifically that the regulator should review its South African content regime and develop a strategy to "achieve a broadcasting system which is predominantly South

African in content" and determine a timetable to achieve this within 10 years.[52]

In its 2002 review of the previous regulations (see below), the regulator asked for submissions regarding this requirement and questions were raised by stakeholders about the interpretation of the word "predominant". The National Association of Broadcasters (NAB), for example, stated that the term applied to the broadcasting system as a whole and not necessarily therefore to individual broadcasters. In the final Position Paper on South African content, the Authority stated that:

> "*The Authority, as the national custodian of South African content, is committed to the ideal espoused in the White Paper on Broadcasting Policy that television and radio should be predominantly South African. The Authority does not wish, however, to put static numbers to this crucial concept, which can be realised in many ways, including percentages of airtime devoted to content, broadcasters' use of images and sounds to characterise and market themselves, and the development of South African talent and creativity. However, in the process of ensuring that content on television and radio does become predominantly South African, quotas will be set to benchmark progress and monitor compliance. It is clear from the hearings and the monitoring of licensees that broadcasting South African content is not regarded as a burden. Indeed, broadcasters see South African content as an opportunity to meet changing audience needs and to grow the South African industry, while contributing to the emerging democratic culture of the country.*
>
> "*What is also clear as a result of the public process is that not all categories of programming and all stations need to be regulated to ensure they become predominantly South African. The Authority believes that, in the light of the shortage of resources within the sector*

52 White Paper on Broadcasting, section 3.3.2

and within the Authority itself, the Authority should only regulate that which requires regulation."[53]

Government's White Paper also outlined the following content related policies:

- It reinforced the Triple Inquiry stipulation that all broadcasters should have South African content obligations – varying in relation to the type of service offered (public, private, community, free-to-air or subscription).
- The Paper (and subsequent legislation) divided the SABC into two divisions – public and public commercial. The public services provided by the SABC have specific obligations in terms of the White paper to provide comprehensive programming targeting all South African audiences, to support the arts, to produce their own programmes and commission content from outside companies and to reflect the country's cultural diversity. The public commercial wing has to comply with requirements for private broadcasters.
- The policy specifically states that private broadcasters must play a role in promoting South African content and should:
    - Air "predominantly" South African programming;
    - Broadcast "South African drama, documentaries and children's programmes that reflect South African themes, literature and historical events and that make significant use of South African writers, directors, musicians, actors and craftspeople"; and
    - Acquire appropriate amounts of their programming from the independent production industry.
    - Community broadcasters according to the White Paper should focus on covering "grassroots community issues" and reflect local culture/s.

53 ICASA, "South African Content on Television and Radio: Position Paper", 15 February 2002, Section 10: Increasing the Quota, page 19

The White Paper further provides for the multi-channel environment and digital migration (Chapter Seven). Among other things, it states that the objectives for regulation and policy in the multi-channel environment pertinent to South African content should be to:

- Prioritise South African content;
- Provide a diversity of types of programming aired;
- Delivery of services in all official languages;
- Ensure the roll-out of regionally relevant services;

It further notes that multi-channel distribution services can contribute to financing of local content production by the payment of licence fees and contributing to production funds.

In other related sections of the White Paper, government commits to establishing a "non-statutory Agency" to support production and encourage and promote local content. In March 2001 (in line with section 38 of the Broadcasting Act – see below) the then Minister of Communications appointed a Broadcasting Production Advisory group to advise on boosting the production of local content.

While the DOC has provided support for programming on community radio, these funds come from fiscal allocations and are not directly linked to licence fees. Broadcasters further can in terms of the ECA contribute a portion of their turnover to the Media Development and Diversity Agency (MDDA) which does provide financial support for content but only for community broadcasters. No production funds have been set up by the DOC and licensees are not required to make contributions to either the National Film and Video Foundation (which falls under the Department of Arts and Culture) or to production initiatives linked to the Department of Trade and Industry.

In June 2012 the DOC called for nominations for the South African Broadcasting Production Advisory Body. No appointments had been made at the time of finalising this review.

Note that in relation to the music industry, the White Paper stated that Parliament would be requested to undertake a review of the sound recording industry with the aim of stimulating growth in the sector. Parliament has not to date held such an inquiry. The DAC White Paper on Arts, Culture and Heritage (June 2013) includes strategies to address this sector.

Note that ICASA has, as highlighted above developed a range of Policy Position Papers related to South African content. These are summarised in section 6 below: Regulatory Analysis.

c) *Broadcasting Digital Migration Policy*

Cabinet approved the Broadcasting Digital Migration Policy in 2008 and amended this policy in 2012. Policy positions relevant to the review of South African content include:

- A requirement that ICASA review the South African content quotas as the existing framework is based on factors applying to a single channel analogue environment. (par 2.3.3)
- The aims outlined for the migration to DTT include the possibility of strengthening existing broadcasters and introducing new services to increase diversity of programming and services available to audiences. The Policy further highlights the need to address what it calls gaps in provincial content and in parliamentary and government information. (section 1)
- The Policy indicates that the migration to DTT should further facilitate the development of the creative industries. (section 1)
- An injunction that the regulator must take national objectives, such as those related to equitable use of all official languages and increasing access by people with disabilities, set in related policies and legislation when licensing new channels and services. The Policy states that the migration will "create opportunities for the development, use and wide dissemination of local content in all eleven official languages".

- A commitment to establishing Digital Content Generation Hubs (DCGHs) "aimed at generating content" for digital broadcasting, "contributing to the development of the Creative Industries as well as job creation". (par 2.5.8)

Note that the DOC published a Draft Local and Digital Content Development Strategy in 2009 for public comment. A final policy has yet to be published.

4.2 LEGISLATIVE ANALYSIS

4.2.1 Constitution

The Constitution of the Republic of South Africa is largely hailed by the international community as an ambitious and progressive piece of legislation. The Bill of Rights constitutes Chapter 2 of the Constitution and is described as the 'cornerstone of democracy in South Africa. It enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.' Any interpretation of the Bill of Rights:

- must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- must consider international law; and
- may consider foreign law.

The rights entrenched in the Bill of Rights are supreme and may only be limited under the provisions of section 36 (1). It is also important to note that the Bill of Rights does not deny the existence of any other rights or freedoms recognised or conferred by common law, customary law or legislation, to the extent that they are consistent with the Bill. As part of the project to assess the cultural, economic and social benefits brought about by the preservation of South African programming regulations, the Constitution is the logical starting point. ICASA is to be guided by the rights set out in the Constitution in the preparation of the local content regulatory framework. This document will only consider the relevant sections of the Constitution.

a) Language

One of the critical factors to be considered within the context of local content is language. Section 6 of the Constitution lists the official languages of South Africa and in subsection 2 emphasises that the state must take practical and positive measures to elevate the status and advance the use of indigenous languages. Additionally, subsection 5 provides for the establishment of a Pan South African Language Board to promote and create conditions for, the development and use of all official languages, the Khoi, Nama and San languages as well as sign language.

The issue of language is further addressed in sections 30 and 31 that state that everyone has the right to use the language and to participate in the cultural life of their choice.

b) Freedom of Expression

All the rights set out in the Constitution are coalesced to some extent. Accordingly, if one right is neglected or elevated at the expense of another, the overall effectiveness of the Bill of Rights is reduced. Therefore, in addition another important right protected by this Constitution is the right to freedom of expression (and more so in your preferred language) which includes :

a. freedom of the press and other media;
b. freedom to receive or impart information or ideas;
c. freedom of artistic creativity;

These rights are important for ICASA to consider as it means that it cannot in any way prescribe or restrict the exact content, to be aired by broadcasters. There are however limits to this freedom as they do not extend to material that acts as:

a. propaganda for war;

b. incitement of imminent violence; or
c. advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

c) Access to information and administrative justice

Everyone has the right of access to any information that is held by another person and that is required for the exercise or protection of any rights as well as the right to lawful, reasonable and procedurally fair administrative action. These provisions require ICASA to ensure that all documentation it holds either in the way of its local content regulations, research or compliance reports to be made available to the public.

In discharging its duties, ICASA must furthermore be cognisant of sections 15 and 31 which afford all persons the right to:

- freedom of conscience, religion, thought, belief and opinion,
- enjoy their culture, practise their religion and use their language; and
- form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

d) Limitation of Rights

One of the most critical provisions in the Constitution is section 36. It should be used with caution, but emphasizes essentially that no right is absolute, apart from the right to life. It provides as follows:

> *The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including*
>
> *a. the nature of the right;*
> *b. the importance of the purpose of the limitation;*
> *c. the nature and extent of the limitation;*
> *d. the relation between the limitation and its purpose; and*
> *e. less restrictive means to achieve the purpose*

e) *Chapter 9 Institutions*

While all public institutions are bound by the Constitution and have to "respect, protect, promote and fulfil" the rights set out in the Bill of Rights (section 7(2)), ICASA is indirectly, specifically mentioned in this supreme law of the country.

Chapter 9 of the Constitution deals with "state institutions supporting Constitutional democracy" and section 181 of this Chapter sets out the institutions which must be established to strengthen democracy. This section states that the Public Protector, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Commission for Gender Equality, the Auditor-General, and the Electoral Commission, are independent and subject only to the Constitution and the law.

Section 192 of Chapter 9 of the Constitution stipulate that "national legislation must establish an independent authority to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society". This section is seen to reinforce the right to freedom of expression (section 16).

4.2.2 ICASA Act

The ICASA Act, Act 13 of 2000 establishes ICASA to regulate broadcasting in the public interest and to ensure fairness and a diversity of views in broadcasting in terms of section 192 of the Constitution. ICASA is mandated to:

- Make regulations on any matter consistent with the objects of the ICASA Act "or that are incidental or necessary for the performance of the functions of the Act" (section 4 (3)(j));
- regulate licensees and ensure compliance with regulations and licence conditions;

- conduct inquiries in terms of section 4B;
- establish standing committees to assist in the effective exercise and performance of its powers and duties;
- establish a Complaints and Compliance committee to investigate matters referred to it, complaints received and allegations of non-compliance; and
- enforce the provisions contained in section 17H (offences and penalties).

Section 4 of the Act outlines the regulator's functions. In terms of this, ICASA must exercise the powers and perform the duties conferred on it in terms of legislation. The Authority is further empowered to make recommendations to the Minister on any policy matters (such as proposals that might arise from this review). Section 4(3)(b) requires the regulator to monitor the broadcasting sector to ensure compliance with the Act and underlying statutes.

4.2.3 Broadcasting Act

The Broadcasting Act, Act 4 of 1999, was promulgated to implement the policies determined through the White Paper process. It deals predominantly with the South African Broadcasting Corporation ("the SABC") and has been through a number of amendment processes, these occurred in 2002, 2004, 2005 and 2009.

Content related objects set out in the Broadcasting Act include to:

- "safeguard, enrich and strengthen the cultural.....fabric of South Africa" (Sec 2(b));
- Ensure plurality of news, views and information and to provide a wide range of entertainment and education programmes (Sec 2(d)).
- Cater for the programming needs of all South Africans including those of "children, women, the youth and the disabled" (Sec 2(e));

- Encourage capacity building within the broadcasting sector as a whole (thus including the independent production and music recording sectors) with a focus on historically disadvantaged groups (Sec 2(f));
- Encourage investment in the sector and fair competition (Sections 2(g) and (h)); and
- Encourage development of local programming content (Sec 2(r)).

Chapter IV of the Broadcasting Act addresses the public broadcasting service and charter of the Corporation. It provides that the SABC should encourage the development of South African expression by providing, in all South African official languages, a wide range of programming that reflects South African attitudes, opinions, ideas, values and artistic creativity and displays South African talent in education and entertainment programmes. It also requires the SABC to submit its local content policy to ICASA (section 6).

The Broadcasting Act makes a distinction between the SABC's public and commercial services division, and it provides a clear indication that the requirements on the public service division as it relates to a number of factors are stricter than those of the commercial division. To this end, there is a specific requirement to reflect both the unity and diverse cultural and multilingual nature of South Africa, make services available in all official languages and to include local content that is commissioned from the independent production sector. The public commercial services have to adhere to regulations and provisions for the private commercial sector.

As noted previously (in the section dealing with the White Paper), Chapter IX of the Broadcasting Act proceeds to establish an Advisory Body to the Minister to advise on how to encourage, facilitate and offer guidance and advice in respect of any scheme and to promote the following:

- the production of broadcast materials that meet the cultural needs of South Africans;

- the screening and airplay of South African content in television and radio respectively;
- awareness of local content in South African and foreign markets;
- the correction of imbalances in the local content production industry; and
- human resource development to provide skills and training of local content providers;
- It goes further to require the Advisory Body to consult with the National Film and Video Foundation and the broadcasting industry and make recommendations on the following issues to the Minister:
    - policy and strategies to give effect to the production and display of local content;
    - financing strategies to support the production and display of local content;
    - supply-side measures and initiatives to support the production of local content; and
    - policies to enhance the production of local content for the multi-channel and digital broadcasting environment.

The Minister must in terms of the Act consult with the Ministers of Arts and Culture, Trade and Industry and Finance before deciding on such strategies.

4.2.4 The ECA

The ECA came into effect in July 2006. The ECA was introduced to promote convergence in the broadcasting, broadcasting signal distribution and telecommunications sectors. The Broadcasting Act refers to the definition of "local content" that is contained in the ECA. The relevant definitions are contained in Section 61 (2), and read as follows:

> *"(a)'**local television content'** means a television programme, excluding transmission of sporting events and compilations thereof,*

advertisements, teletext and continuity announcements, which is produced –

- *(i) by a broadcasting service licensee;*
- *(ii) by a person who is a citizen of, and permanently resident in, the Republic;*
- *(iii) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;*
- *(iv) in a co-production in which persons referred to in subparagraphs (i), (ii) or (iii) have at least a fifty percent financial interest;*
- *(v) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently resident in, the Republic; or*
- *(vi) by persons referred to in subparagraphs (i), (ii), (iii) or (iv), in circumstances where the prescribed percentage of the production costs are incurred in the Republic.*

(b) ***'independent television production'*** *means a production of local television content –*

- *(i) by a person not directly or indirectly employed by any broadcasting service licensee; or*
- *(ii) by a person who is not controlled by or is not in control of any broadcasting service licensee; and*

(c) a musical work broadcast by a broadcasting service licensee qualifies as ***'South African music'*** *if such work complies with at least two of the following criteria, namely –*

- *(i) if the lyrics (if any) were written by a South African citizen;*
- *(ii) if the music was written by a South African citizen;*

(iii) if the music or lyrics was or were principally performed by musicians who are South African citizens;

(iv) if the musical work consists of a live performance which is –

(aa) recorded wholly in the Republic; or

(bb) Performed wholly in the Republic and broadcast live in the Republic.

The objects of the ECA include amongst others that ICASA must promote open, fair and non-discriminatory access to broadcasting services and ensure that broadcasting services are provided by persons or groups of persons from a diverse range of communities in the Republic. Additionally it states clearly that ICASA should ensure that broadcasting services, viewed collectively promote the provision and development of a diverse range of radio and television services on a national, regional and local level that cater for all language and cultural groups and provide entertainment, education and information. Broadcasting services should furthermore provide for regular news services, actuality programmes, coverage of political issues of public interest and matters of international, national, regional and local significance.

In as far as public broadcasting is concerned, ICASA is tasked to ensure that the needs of language, cultural and religious groups, regional and local communities in South Africa are met and that educational programmes are provided for.

Section 61(1) of the ECA states that the Authority may prescribe regulations

"*regarding the commissioning of independently produced South African programming*".

Section 61(3) of this Act stipulates that ICASA can consider a range of mechanisms to promote South African content on television, including quotas on the amount of time to be dedicated to such content and/or financial contributions to be expended on such programmes:

"(M)ay in respect of the television broadcasting service licence, impose and specify in that licence, such conditions as prescribed regarding local television content and independent television production, which, without derogating from the generality of the foregoing, may include any conditions requiring the broadcasting service licensee –

(a) to annually expend a specified sum of money, subject to reasonable yearly escalation or, alternatively, a specified minimum percentage of its gross revenue, on programmes which have local television content;

(b) to allocate a specified minimum percentage of its total broadcasting time to television programmes which have local television content;

(c) in the case where the broadcasting service licensee has a regional or local licence area, to allocate a specified minimum percentage of broadcasting time to local television programmes which have been produced in the relevant region or locality; and

(d) to allocate a specified minimum portion of the percentage referred to in paragraph (a); (b); or (c), whichever is applicable to a prescribed diversity of television programmes which are independent television productions."

In terms of section 61(4), ICASA may prescribe conditions requiring a radio licensee to broadcast a specified minimum percentage of South African music.

Section 61(5) of the ECA specifically provides that ICASA may differentiate between the categories of broadcasting licences, define the viewing and listening times, where applicable, indicate the various categories of television programmes and the period within which the broadcasting service licensee must comply.

It should be noted that the ECA repealed the IBA Act which had similar provisions relating to South African content. It does however contain transitional provision, including section 95 which provides that regulations issued in terms of any repealed Act, will remain in force until they are amended or repealed.

4.2.5 National Film and Video Foundation Act

The National Film and Video Foundation Act, ("NFVF Act") of 1997 established the Foundation to develop and promote the film and video industry in South Africa and to provide and encourage persons (especially from disadvantaged communities) to get involved in the sector. The Foundation is also tasked with encouraging the development and distribution of local film and video products.

The Foundation is amongst others required to render support (including financial support, advice and information) to the industry as well as:

- Conduct research into any field of the film and video industry;
- Establish, compile and maintain databases of persons, organisations, institutions, equipment etc.
- Promote liaison between individuals and institutions; and
- Make grants and grant loans.

The legislation mainly addresses the administrative functions of the NFVF. It should be noted that the NFVF website[54] contains an extensive list of documents including application forms, research, annual reports and guidelines related to the South African film and video industry.

Section 4(2)(g) of the NFVF Act instructs the Foundation to "liaise with" the broadcasting regulator (ICASA) to "encourage the use of local content programmes on television".

54 http://nfvf.co.za/documents

4.3 REGULATIONS AND POSITION PAPERS

4.3.1 South African Television Content Regulations

ICASA first promulgated television content regulations in 1997. These were reviewed in 2001 and new South African Music and Television Content Regulations and a related Position Paper were gazetted in 2002. The regulations became effective in 2003. These regulations were replaced by amended regulations in 2006 which included specific requirements regarding content on subscription television broadcasters in line with decisions taken by ICASA during the development of policies related to the sector.

The major changes introduced in the 2002 and 2006 regulations include:

- Increased quotas for South African content;
- Clearer definitions for different genres of programming; and
- Incentives for broadcasting more neglected genres.

It is interesting to note that although ICASA is entitled to issue regulations in terms of the ECA (section 4) on any matter as may be required in terms of the ECA or related legislation, the ECA specifically provides for content requirements to be included into broadcasting licences (section 61).

The television content regulations contain, in summary, the following requirements:

Table 9: Summary of local content requirements

Local Content Considerations	Public TV Licensees	Community TV licensees	Commercial TV Broadcasting Licensees (incl public commercial channels)	Subscription television Broadcasting Licensees
Minimum weekly average measured over a year	55% South African television Content spread reasonably evenly on each channel over performance period	55% South African television Content spread reasonably evenly on each channel over performance period	35% minimum weekly average South African television content on each channel over performance period	10% minimum weekly average (terrestrial/cable may broadcast on dedicated channel(s) or across its bouquet)

Local Content Considerations	**Public TV Licensees**	**Community TV licensees**	**Commercial TV Broadcasting Licensees (incl public commercial channels)**	**Subscription television Broadcasting Licensees**
Drama Programming	35% South African drama[55]	No specifications	20% South African drama	2% South African drama
Current Affairs	80% South African current affairs	No specifications	50% South African current affairs	
Documentary Programming	50% South African documentary programming	No specifications	30% South African documentary programming	
Informal knowledge building programming	50% South African informal knowledge building	No specifications	30% South African informal knowledge-building	
Educational programming	60% South African educational programming	No specifications		
Children programming[56]	55% South African children's programming	No specifications	25% South African children's programming	
General				Terrestrial/Cable may be directed to spend annually a specified sum of money or a specified minimum percentage of the licensees' gross revenue on South African television content Satellite television must

55 "South African Drama" means drama programming in which South Africans have exercised direction over the creative and administrative aspects of pre-production, production and post-production. The director/s of the programme and/or writer//s are South African; not less than 50% of leading actors appearing in the programme are South African;Not less than 75% of the major supporting cast are South African and not less than 50% of the crew are South African.

56 "Children's programming" means programming which is specifically produced for persons between the ages of 0 to 6 and 7 to 12 years, which is educational, made from their point of view, and which is broadcast at times of the day when persons in this age group are available in substantial numbers to watch.

Local Content Considerations	Public TV Licensees	Community TV licensees	Commercial TV Broadcasting Licensees (incl public commercial channels)	Subscription television Broadcasting Licensees
				ensure that a minimum of 10% of their channel acquisition budget is spent on channels with South African television content

The requirements apply to programmes broadcast between 05h00 and 23h00 (the South African Performance Period). Prime time is defined as the period between 18h00 and 22h00.

The regulations also require public, commercial, community and subscription television broadcasting licensees to ensure that a minimum of 40% of their South African television content programming consists of programmes which are independent television productions and that the terms of trade and commissioning procedures are "fair, transparent and non-discriminatory"

One of the key changes of approach introduced in the 2002 regulations was the introduction of incentives to encourage quality programming (and investment in more expensive genres), neglected genres such as arts programming, production (rather than dubbing) of programmes in official languages other than English and Afrikaans and commissioning of producers from outside the major centres.

Section 8 of the regulations set out formulas (format factors) related to these incentives to calculate how percentages to meet the content quotas can be claimed for the following:

- South African drama (with increased scores for one off dramas and serials rather than soap operas)
- African Language Drama
- Children's programming

- Arts Programming
- Diversity Commissioning (including sourcing programmes from historically disadvantaged independent production companies and/or producers from provinces other than Gauteng and the Western Cape)
- Documentary, children's and arts programmes in official languages other than English and Afrikaans

The regulations assign a format factor (score) to each category (for example, once off dramas are allocated a format factor of 4). The "score" for any of these categories is calculated by multiplying the format factor by the duration of the programme (hours weekly).

In terms of the regulations, 10 points are equal to 1% towards the South African content quota on a weekly basis.

The regulations further introduced limitations on how repeats of programmes qualify as South African content – thus giving more value to first release productions. According to the relevant Position Paper this was in recognition of the legislative need to encourage investment in the industry. Thus the first time a programme is repeated, it will only count 50% of the value of the first screening and further repeats (whether on the same channel or on a different one) will not count towards the content quotas. .

Section 9 of the regulations requires all licensees to keep and maintain logs, statistical forms and programme records in a format prescribed by ICASA for a period of 36 months. ICASA may review the regulations after a period of three years.

4.3.2 South African Music Content Regulations

The South African Music Content Regulations were issued in 2006 in terms of sections 53(3-5) read with section 78(1) of the Independent Broadcasting Authority Act. They apply to any category of sound broadcasting licensee which devotes 15% or more of its broadcasting time to the broadcasting of music. In summary the regulations require the following:

Table 10: Summary of South African music requirements

Public Sound Broadcasting Licensees	Commercial sound Broadcasting Licensees (including public commercial stations)	Community Sound Broadcasting Licensees	Subscription sound Broadcasting Licensees
Minimum of 40% of musical works in the performance period[57] must be South African music spread reasonably evenly over the broadcast period	Minimum of 25% of musical works in the performance period must be south African music spread reasonably evenly	Minimum of 40% of the musical works in the performance period consist of South African music spread reasonably evenly	Minimum of 10% of bouquets consist of channels made up of South African Music content

The regulations empower ICASA to vary the actual conditions imposed on a radio licensee "upon written application and good cause shown".

According to the Position Paper, ICASA will in such circumstances consider lowering the required percentage of South African music but will not grant any total exemptions. It further states that broadcasters requesting a relaxation of the quotas would be required to provide a list of format-specific South African music that is available as proof that the broadcaster has looked for music nationally. Additionally, the broadcaster would be required to present a plan for broadcasting more South African music in its format in the future; provide evidence that musicians are being encouraged to produce music in that specific format; and propose mechanisms to develop new South African talent in the format.

The South African music content regulations also contain format factor formulas to acknowledge contributions to the development and promotion of South African music through activities other than playing tracks.

These incentivise and reward:

- the broadcast of live music (2 points for every five minutes covered);
- interviews with South African musicians (2 points for an interview lasting five minutes or more); and

57 "Performance period" means the period of 126 hours in one week measured between the hours 05h00 and 23h00 each day.

- the promotion of new musicians (1 point for each track of a new musician played). New musicians are those whose debut albums have been on the market for six months or less.

Ten points will be worth 1% towards the South African content quota on a weekly basis.

Sound broadcasting licensees are similar to television broadcasters required to keep and maintain logs, statistical forms and programme records, but only for a period of 12 months from the date of last entry.

The regulations may be reviewed after a period of three years.

4.3.3 Regulations on the Commissioning of Independently Produced South African Programming

In terms of sections 4 and 61(1) of the Electronic Communications Act No 36 of 2005, read with section 4(3)(j) of the ICASA Act No 13 of 2000, ICASA published Regulations on the Commissioning of Independently Produced South African Programming.

The intention of these regulations is mainly to ensure that the commissioning of independently produced South African programming is conducted in a manner that is fair, transparent and non-discriminatory. They therefore require licensees to compile, maintain and submit to ICASA for approval a "Commissioning Protocol for Independently Produced South African Programming" and to submit annual reports to ICASA in order to monitor compliance with the regulations.

The broadcasters' commissioning related annual reports are required to include the following information:

- A list of the names of independent producers from whom programmes were commissioned;
- The number of programmes and episodes commissioned from independent producers;

- 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.

Annexure A of the regulations sets out the minimum requirements required for the Commissioning Protocol. This document is not prescriptive and sets out what issues the Protocols should cover rather than how these issues should be addressed.

4.3.4 Compliance Procedure Manual Regulations

On 15 December 2011, the Authority published the Compliance Procedure Manual Regulations to assist in proactively monitoring compliance by licensees. The Manual, among other things, sets templates for reporting by licensees on different regulatory requirements. The aim is to ensure clarity on reporting requirements and facilitate uniformity of reporting.

The Manual sets out templates for reports linked to a number of broadcasting related requirements (including licence conditions and regulations). However, it does not include formats for reporting on compliance with the South African television content regulations – and there is thus not a standardised format for reporting on local content requirements. This has been highlighted by stakeholders in a number of forums (for example, in submissions on the regulations themselves and in consultations on ICASA's review of all broadcasting related regulatory policies).

It was highlighted that it was difficult to develop a standard template for television licensees as each of their licence conditions differed. There is further no standard template included in the Manual for the annual reports that television broadcasters must submit in terms of the Regulations on

Commissioning – although the regulations themselves provide guidance on what should be included in such reports.

There are templates in the manual for radio broadcasters (community, commercial and public – forms 8, 9 and 10). These do require these licensees to report on the overall percentages of South African and foreign content, and where relevant on other programmes (i.e. diversity of news and in the case of community and public broadcasters summaries of general programming content other than news).

There are further specific forms that must be submitted on request for radio services to give detailed information on the percentages of local music aired, as well as on how they calculated format factor scores (for live music, new music and interviews with musicians).

4.3.5 Digital Migration Regulations (2012)

The 2012 Regulations deal with the migration of analogue terrestrial television broadcasters (both free-to-air and subscription) to a digital terrestrial television (DTT) platform.

The accompanying Position Paper sets out ICASA's reasons for determining that existing South African content requirements and licence conditions will apply to all existing broadcasters involved in the migration process pending a holistic review of local content in the multi-channel environment.[58] In the regulations themselves, the Authority notes that broadcasters can submit written applications to exempt particular channels from requirements due to "the nature of the programming provided, including channels which consist exclusively of sport or educational programming".

58 Digital Migration Position Paper, 2012, Paragraph 34.3

The Position Paper further indicates that ICASA will include in its review of local content requirements its legislative obligation to facilitate broadcasting in a diverse range of languages.[59]

The Digital Migration Regulations also stipulate that ICASA will establish a Digital Television Content Advisory Group (DTCAG) to promote the availability of content during the dual illumination period (regulation 14). The group will be a consultative forum and include representatives of broadcasters, the independent production sector and civil society.

As regards to radio, the Regulations state that a television licensee may include radio channels and data services as part of their offerings, subject to agreement with the radio channel and provided that such radio and/or data services do not take up more than 15% of the multiplex capacity allocated to the television service. The relevant regulation does not specify if these radio channels must be existing licensees and thus comply with regulations on local music content.

4.3.6 Position Papers and regulations related to specific broadcasting sectors

ICASA has further published a range of specific requirements for each type of broadcaster (i.e. subscription broadcasters, private free to air television broadcasters, community television and community radio services). These determinations set out additional requirements for each tier of broadcasting – and thus, for example, set out the minimum number of hours a private free to air television licensee must set aside for each genre of programming (e.g. children programmes, documentary programmes, news and drama). The related regulations further set limits, for example, on the amount of advertising which a television service can air each hour. The South African content regulations need to be considered alongside these.

59 Digital Migration Position Paper, 2012, Paragraph 36

As these determinations however set out minimum requirements, many of the actual licence conditions exceed these obligations, based on promises of performance made by the licensee in its application.

4.3.7 Advertising, Infomercials and Programme Sponsorship Regulations (1999)

These regulations are relevant to the review of South African content in so far as they set rules on issues such as sponsorship and product placement which could affect funding for South African content. In other jurisdictions some of the rules related to, for example, product placement, have been relaxed after taking into account the additional costs of meeting local content requirements in a multi-channel environment.

The regulations and accompanying Position Paper further deal with the need for broadcasters to maintain editorial independence and integrity – and thus, it could be argued, raise questions about what are currently termed Advertiser Funded Programmes which should be explored further in any review process.

It should be noted that ICASA began a process to review the existing regulations in 2009.The reasons document however stated that after considering submissions made about the regulator's jurisdiction in relation to regulation of the content of advertising, it "decided not to amend or repeal the current regulations".[60]

60 ICASA, 'Findings document on the review of the 1999 regulations relating to advertising, infomercials and programme sponsorships in terms of the Independent Broadcasting Authority Act No 153 of 1993', 18 December 2009, Paragraph 10.6

4.3.8 The Position Paper in relation to Internet Protocol Television (IPTV) and Video-on-Demand Services (2010)

While this is not a regulation, the Position Paper sets out the Authority's decisions on its approach to regulation of IPTV and VOD services. Key determinations made in the Position Paper are outlined below:

- The Authority do not have the power to regulate content services (rather than broadcasting services). However the Authority would consider making submissions to the Minister to amend the EC Act to include a definition for content services similar to that included in the UK Communications Act. (par 72.2). ICASA "would explore further whether policy recommendations to the Minister" would include proposals on amendments to legislation to allow it to impose specific content requirements on such services in appropriate circumstances.
- While IPTV fell within the existing legislative definition of broadcasting service, VOD did not and should be classified as an electronic communications service (ECSPublic and commercial IPTV services would thus require broadcasting service licences and VOD services ECS licences.
- The Position Paper concluded that the regulator would not "at the present time" impose content requirements on VOD services. It is important to note that during the consultation process broadcasters (in particular e.tv) had argued that the regulator could impose similar conditions to those applicable to broadcasters on VOD services – and that ICASA should do so in order to promote fair competition.

4.3.9 DTI Copyright Review

The Minister of Trade and Industry appointed a Copyright Review Commission ("CRC") Department of Trade and Industry (DTI) in 2010. The Commission was tasked with making recommendations to the Minister on concerns that had been raised regarding the distribution of royalties to musicians and composers of music. The "CRC" published its report in 2011 following a detailed examination of the workings of collecting societies in South Africa.

Among other things, the CRC explored concerns relating to payment by broadcasters of performance, sound recording and mechanical rights in terms of relevant legislation. While the Commission dealt with issues between broadcasters and collection agencies related to payment of needletime and other rights, these matters are not directly relevant to this Review. This report therefore focuses on recommendations made by the Commission which relate directly to the regulation of airing of South African music.

Key recommendations:

- The Commission report proposes amendments to the definitions for local music in the EC Act. The report states that the current definition, for example, would classify as local content a song where the lyrics were written by a foreign artist, the music (melody) co-written by a foreigner and a local artist but performed by the local artist. According to the Commission, however, a large portion of the royalties in such instance would go to foreign artists as the author and co-composer of the work. This the CRC states compromises the income of South African composers (as broadcasters can calculate this as local content) and therefore does not fulfil the intentions of broadcasting legislation (to develop the industry). The report further states that the current definition limits what classical music can qualify as South African music content.

  The CRC recommends that:

  - The definitions be amended to ensure that a song must have been written or composed by a South African citizen to qualify as local content.
  - That an exception be made for classical music allowing it to qualify as South African content if it is performed by South

African musicians and recorded in the country, even if the performance is not 'live' (the current definition includes only live recordings).

- The CRC further proposed that the quotas for music content be increased:
    - The Committee proposed that the minimum requirement for public radio be increased from 40% to 80% effective a year from the increase. The CRC noted that all but two of the public stations currently air more than 80% local music (and they state were doing so from 1996 and that some of the stations play over 90% South African music). SAFM was according to their review playing 71% local music and Thobela FM 78%.
    - The Committee suggested that the quota for community radio also be increased to 80% effective in a year.
    - The CRC recommended that the quota for private radio stations be increased from 25% to 50% over a five year period – with a 5% increase introduced every year. The review noted that only one of the current commercial licensees is exceeding 50% local content and others are playing below 30% currently. It argued however that the quotas negatively effect South African musicians and the music industry and should be increased to develop the sector.
    - The CRC also raised concerns about those stations exempted from the local content requirements (talk radio stations). The report notes that the two talk stations (Radio 702 and Cape Talk) are both airing under 5% South African music. They therefore questioned the value of the exemption.
- The CRC further stated that music quotas should be extended to television licensees as well. The Committee suggests that music quotas applying to music programmes should be similar to those set for local television content generally.

- The report states that ICASA should include in broadcaster's conditions/local content requirements that they must comply with needletime and copyright obligations. The Commission stated that broadcasters do not comply with these obligations routinely and that threatened loss of their licence for non-compliance would compel them to do so.
- The CRC further noted that it was not convinced that the regulator effectively monitored and enforced compliance with regulations. It cited the following as evidence of this concern:
    - There were significant discrepancies the Commission charged between the local content recorded in ICASA's records and the records provided by various stations.
    - ICASA further failed to provide 2010 assessment files for 12 radio stations (including both public, public commercial and commercial services) and ICASA could thus not confirm whether these licensees had fulfilled their licence requirements; and
    - ICASA did not provide any evidence of corrective action taken against broadcasters for failure to comply with the local content targets.

Lastly, the CRC recommends that an interdepartmental steering committee with ministerial representatives from the DTI, Department of Communications ("DOC") and Department of Arts and Culture ("DAC") be established to oversee the implementation of the recommendations of the report. It proposes that the ICASA CEO (among others) should have a standing invitation to such interdepartmental meetings.

4.4 ISSUES EMERGING FROM THE REGULATORY ANALYSIS

4.4.1 Ministerial ICT Policy Review process

The Minister of Communications has initiated a review of all ICT related policies and related legislation – including the White Paper on Broadcasting and the laws arising from this. This review will undoubtedly evaluate the current South African content regulations and approach. It is understood from statements from the Ministry that it is envisaged that this process will be completed by the end of the 2013/2014 financial year. There are two key issues related to this:

- ICASA needs to consider how, if at all, the Policy review impacts on its approach to the review of the South African content regulatory framework.
- It is presumed that the Authority will engage with the Ministerial process to ensure that the Department is informed of ICASA"s insights into regulation of the sector.

4.4.2 Definitions of South African Television and Music Content

ICASA needs to review previous positions on the Definitions of South African Television and Music Content .Other proposed amendments to definitions have subsequently also been suggested by related institutions and/or public commissions:

- The Copyright Review Commission appointed by the Minister of Trade and Industry made recommendations in its final report on amendments to the definitions of South African music in the EC Act to it said ensure the intended development of the sector (these are detailed in the relevant section below).
- The National Film and Video Foundation indicated in interviews that it has been reviewing the existing definitions of South African television content used by the Foundation itself, the Department of Trade and Industry and ICASA to streamline these in the interests of the sector. The process is not yet final, and the NFVF expressed a need to engage with ICASA on this issue.

4.4.3 Quotas and regulations

The DTI's Copyright Review Commission has in its final report recommended the following increases to the music quotas for radio:

- The quotas for public and community radio be increased to 80% effective in one year from the increase.
- The quotas for commercial radio to be increased to 50% to be implemented over five years, with a 5% increase imposed each year.
- Talk stations should also be required to adhere to quotas (no specific recommendation on the figures is included in the report).
- TV channels should also be required to have local music content quotas for music related programmes. These quotas should be similar to those set for other genres of programming.

In as far as the current regulations (2006) are concerned, concerns were raised around the time frames for compliance set in regulations and licence conditions. It was noted that in particular SABC was required to meet the requirements over a year and that this made it difficult to effectively monitor compliance. This issue needs to be explored in the review process as it is critical that any new approaches are practical to monitor and that reporting requirements for broadcasters are not unduly onerous.

The 2002 Position Paper indicated that ICASA would in future reviews of the music-related regulations consider whether or not it would be appropriate to have format specific quotas. Radio stations were asked to discuss and agree on clear format definitions to propose to ICASA. ICASA needs to assess progress related to this and what, if any action might need to be taken to take this further.

4.4.4 Monitoring and Compliance

As stated above, concerns were raised in interviews conducted about ICASA's capacity to monitor compliance with the regulations and therefore enforce requirements. Similar concerns were highlighted by the DTI appointed Copyright Review Commission and its final report stated that steps should be taken to ensure that the regulator fulfilled its obligations in this regard.

Another challenge is with ensuring compliance by community broadcasters – given the legislative requirements on class licensing processes. For example, the EC Act does not allow the regulator to consider non-compliance by class licensees with licence conditions or regulations when granting renewal of licences.

4.4.5 Other matters

- A number of interviewees emphasised the need for greater coordination between different entities that play a role in promotion of South African television and music content. The Copyright Review Commission also made specific recommendations in this regard in relation to further development of the music industry. ICASA itself highlighted this in its Position Paper on South African TV and music content and proposed establishing committees to address some of the issues. These forums however did not fulfil all the envisaged roles identified in the Position Paper.
- A number of interviewees raised concerns about intellectual property. It was suggested in these discussions that ICASA should consider whether or not it should amend any of its related regulations to ensure that they covered not only commissioning of content but also allow for securing licence rights to programmes. Additionally, it was submitted that ICASA has to be more active in highlighting intellectual property challenges in the broadcast space.
- The report notes that the Digital Migration Regulations do not specifically require that TV licensees only include licensed radio stations

in their bouquets and thus that services provided might not necessarily promote or air South African music.

- The report highlights the need for ICASA to consider whether or not the existing regulations on advertising, sponsorship and infomercials should be reviewed. It is noted that in some countries rules around for example product placement have been relaxed to open up funding opportunities for local content. It is further noted that the regulations stipulate a number of rules regarding editorial independence and that advertiser funded programmes (AFPs) might infringe on these.
- The DTI's CRC in its final report suggests that ICASA should include in its regulations and licence conditions a requirement that broadcasters adhere to copyright rules. It stated that repeated failure to comply with such rules should result in an operator's licence being removed.

5. COST BENEFIT ANALYSIS

This chapter provides an analysis of the perceived cost and benefits of the Authority's South African music and television content regulations introduced in 2003 and amended in 2006.[61] It further considers changes in the regulatory/broadcasting environment subsequent to promulgation of these regulations and provides an overview of the South African television music and television production industries.

The emphasis of the analysis is on the quantification of a variety of indicators associated with these provisions, including their impact on broadcasters, their impact on the amount of South African content aired and the cost thereof, and their impact on the music and independent television production industries. The report also provides an analysis of the current broadcasting market conditions.

5.1 COMPARATIVE INTERNATIONAL IMPACT ASSESSMENTS OF BROADCASTING REGULATIONS

A number of countries in which local content broadcasting regulations are in place were identified and, the specifics of these regulatory frameworks are benchmarked in more detail in section 7 of this report. This section does not attempt to replicate this analysis, or review the local content frameworks in the identified countries, but rather focuses on examples of methodological approaches used in impact studies conducted on local content requirements in three countries.

While it seems from desktop research conducted that not many such studies have been undertaken, comparable recent studies were found in Australia, the United Kingdom and New Zealand. Canada, from initial desk top

61 ICASA, South African Content Position Paper and Regulations, 15 February 2002, Government Gazette 28454, 31 January 2006, General Notice: 154 of 2006. ICASA South African Television Content Regulations, and Government Gazette 28453, 31 January 2006, General Notice: 154 of 2006. ICASA South African Music Content Regulations

research, considers the impact of its local content regime on the broadcasting sector in a more limited way on an annual basis as part of its yearly study of growth in the sector as a whole.

This section outlines the methodologies followed in these studies on the impact of local content requirements in order to benchmark these against the approach adopted for this study. This serves as a useful reference for the methodology followed in this cost benefit analysis and for approaches to determine the socio-economic impact of local content regulations in South African broadcasting.

5.1.1 Australia

Television broadcasting

In Australia, television content regulations are intended to "promote the role of commercial television broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the communities continued access to television programs produced under Australian creative control"[62] (a policy on cultural development and national identity). The existing South African content regulations were in part developed in consideration of the original Australian approach and it is thus of particular relevance.

While the Australian television content framework was changed in 2013, and, for example, the responsibility of setting certain of the quotas has moved from the regulator to government, the impact study considered was conducted under the previous regime. This included, for example, minimum requirements for the amount of local content that must be broadcast during the performance period, with increased proportions that must be shown on television during prime time.

62 Federal Register of Legislative Instruments, 2005, Broadcasting Services Standard 2005, in PwC, (2011). How do local content requirements impact Australian Productions? Review and analysis of broadcast sector minimum content requirements. (p.iii)

Local television content during prime time is viewed as especially important given that up to 75% of advertising revenue is collected during prime time viewing in Australia. Other regulations include genre specific quotas for children's programming, Australian drama and the number of advertisements that must be produced locally.

A 2011 PwC report models the economic impact of these minimum content requirements for Australian productions. The PwC study is somewhat different from this study on South African local content regulations as it focuses on forecasting the impact of potential changes to Australian content regulations, while this review assesses the impact and effectiveness of existing ICASA regulations. Nevertheless, the PwC report provides an interesting and relevant methodological comparison.

Commercial free-to-air broadcasters in Australia have been subject to content regulations for many years, rendering it difficult to compare change over time from before and after implementation of the regulations. In contrast, content regulations for subscription TV licensees in that country were imposed in 1999/2000 which allowed some inferences to be made from historical data.

Based on the assumption that commercial and subscription broadcasters are rational actors with the purpose of profit-maximisation, PwC constructed a model using publicly available data to forecast the effect of changes to the regulations. They forecast the initial aggregate impact of changes to local content regulations by determining the marginal cost per hour of local and foreign content. To estimate marginal cost, they divide total expenditure on an output deal with the total number of hours broadcast from that output deal. These costs are then compared across genres to assess their relative cost.

To estimate the economy-wide effects of proposed regulations, the varied impacts of three hypothetical regulatory scenarios are assessed with a Computable General Equilibrium (CGE) model. The scenarios include removing all minimum content regulations while government support remains unaltered, as well as variations on the minimum requirements.

The study on Australia's content regulations does not explicitly quantify the role and impact that these regulations play in encouraging an Australian cultural identity.

The difficulty with estimating the cultural contribution of local content is due to the fact that, apart from being a highly subjective exercise, this value is not reflected in the market price of the content. Contingent valuation is often used to estimate intangible values, such as the contribution of local content to cultural identity. Such a study however relies on a focused survey of audiences. While the Australian study does not endeavour to estimate the contribution of local content regulations to cultural identity, it provides a broad methodological framework for how such a study could be done (in its Appendix).

While interesting to note the methodology applied in the Australian study, this South African review has a somewhat different objective and consequently follows a different methodology. While the study on local content in Australia looks to the future (and is thus essentially a regulatory impact assessment), this study is more backward looking in nature, although it's objective is to make recommendations for the future based on this analysis. Broadcasting regulations in South Africa were introduced and adjusted after a review process within the past decade and this allows us to use historical data for our analysis.

Radio broadcasting

In 2003, the Music Council of Australia (MCA) published a study aimed at assessing the impact of Australian music requirements for radio.[63] The research considers the results of previous similar studies in Australia and uses the same indicators to assess the effects of increased quotas in France, along

63 Paul Mason, "Assessing the impact of Australian music requirements for radio", Music Council of Australia, October 2003

with the impact of the removal of regulatory requirements from commercial radio services in New Zealand.

Given the similar objectives, the methodologies outlined in the Australian study are particularly useful to this South African review. In summary it noted that:

- A 1992 study on the effects on the music industry of initial quotas of 2.5% for Australian music on commercial radio stations had considered whether or not the introduction of quotas had resulted in increased production of local music. It showed that the largest record company in the country at the time had quadrupled Australian music production (from 20 to 80 titles) the year that the quotas were introduced (1942) and continued to increase production thereafter. The 1992 research reportedly noted that, while the additional airplay resulting from the quotas had probably resulted in the increased production, a number of other factors could also have contributed to this, such as greater access to recording facilities and an increase in performance opportunities.
- Another 1992 study conducted by the then Australian Broadcasting Tribunal (ABT) as part of a general review of the regulatory approach to music content quotas compared the percentage of Australian releases that had received airplay to their share of the market. It assessed market share by determining the number of these releases that had sold sufficient quantities to make it on to the Top 100 charts. For example, the ABT research determined the percentage of Australian releases that had received airplay, the percentage of Australian releases that had "charted" and the correlation between the two. Although the study found that not all releases that had received airplay had made it on to the charts, all of those that had "charted" had been promoted on Australian commercial radio stations.

- The 2003 Music Council of Australia research also looks at the effects, if any, of the 1996 introduction in France of music quotas for radio services (40%) and the concomitant requirement that 50% of the French music aired must be made up of music released in the previous six months by artists who had sold no more than 100 000 CDs. [64] The study looked at the impact this had had on sales. It also looked specifically at the percentage share of new artists in total sales before and after the introduction of specific quotas for newly released music.
- Finally the 2003 review looks at the effects of de-regulation in New Zealand where in 1998 all local music quota requirements for radio stations were removed. It looks at the percentage of local music played on commercial radio in that country over a five year period and compares this with sale of local music in that country over the same period. The percentage share of total sales of New Zealand music within the country was then compared with the international average for sales. The study found that this was well below the global average – even if the international average was adjusted to address skewing by high sales in Japan and the USA.

One of the challenges in South Africa of using similar indicators to assess the effectiveness of quotas on radio stations as those described above, is the easy availability of similar data. For example, there is no top 20 or top 100 national music chart published in the country. Nevertheless, this study uses statistics that are available (such as royalties paid and market value of South African recorded music sales) to measure impact. The information will as far as possible be supplemented from further data gathered during the course of the review.

64 The quotas in France changed in 2001 to include additional options for commercial radio stations dependent on formats (40% quota of which 50% is new material, 50% local content of which 15% is new or 30% local content of which 75% is new)

5.1.2 United Kingdom

Another study on the impact of local television content regulations (done for Save Kids' TV), evaluates broadcasting requirements for children's programming in the UK by comparing it to that of a selection of other European countries, as well as Canada, the United States of America, and Australia. The study was initiated due to a substantial decline in the total time spent airing original children's programming on television services in the UK, and because only a small portion of what was shown was locally produced. The study attributes the decline in children's programming screened to the lower level of advertising revenue received during children's programming.

The methodology used in the study was to compare the regulatory requirements for children's programming in different countries. It looks at the number of hours spent airing children's programming in the UK, and the proportion that UK content contributes to that total. The study also compares spending on children's programming over time, and estimates spending relative to the size of the UK's child population. While the study does not explicitly value the social and cultural aspects of local content, it asserts that "*[c]hildren accept media with ease, and it can have a huge impact on their cultural, social and educational development. This is particularly true of indigenous media, which relates to their own worlds, their concerns and their futures*".[65]

The UK study concludes that the poor performance of children's programming in the UK can be ascribed to inadequate broadcasting regulation compared to that in force in other countries. No specific quotas on local children's content are in effect In the UK – though the regulator does proscribe requirements for original content. All other countries included in the study have some form of minimum requirements for the amount of time spent airing locally produced children's programming. While this report focuses on

65 Blumenau, J. (2011). Children's Media Regulations: A report into state provisions for the protection and promotion of home-grown children's media. (p.18)

broadcasting regulations as a whole (and not just on a single genre as is done in the UK study), it makes use of some of the same indicators to look at the impact of regulations over time.

5.1.3 New Zealand

A final noteworthy study assesses the impact of local content requirements for television broadcasters in New Zealand. The study draws from survey data collected by *NZ On Air*, a government broadcast funding agency that has been collecting data on the amount of local content broadcast by New Zealand's free-to-air channels since 1989. The report has been published annually since 2006 to comment on the local content broadcasts of the country's six nationwide channels.

The report looks at key trends in the proportion of local content that is screened per channel, as well as the number of hours per different genre broadcast on each channel. It specifically looks at local content screened during prime time and how this has changed over time. The study also reports on the proportion of broadcasting of 'first run' local content per channel within the performance period, and compares this with repeats of New Zealand content.

The report notes that most repeats are aired during less commercial spots (overnight or very early in the morning), though it highlights that the number of prime time repeats of high rating programmes has slowly risen in the past few years. It ascribes this increase and a concomitant decrease in first run content to a difficult economic environment.

Repeats of local content made up 36% of local content hours in New Zealand in 2012 compared to 28% in 2011 while first run local content decreased by 5.6% over the same period. The review notes that educational content (Maori language learning programmes) and programming targeting pre-schoolers was intentionally repeated to maximise the educational value of these.

This South African study follows a very similar methodology to the analysis conducted by NZ On Air, though the legislative definitions of content in the two countries differs. The New Zealand study defines local content as "*material that is made in New Zealand by New Zealanders and which reflects New Zealand identity and culture. Thus programmes that are made in New Zealand with no New Zealand flavour are not counted.*"[66] In contrast, this study uses the definition of South African music and television content in section 61 of the Electronic Communications Act which does not require programming to have a South African flavour.

The New Zealand study estimates local content per broadcaster, while this review aggregates the information per licence type of broadcaster. The aim of this study is to identify trends in the broadcasting industry as a whole, rather than to compare compliance by and between different broadcasters. In contrast to the report done on local content in New Zealand, this review considers local content broadcasts during the entire performance period in line with the approach adopted in the regulations.

The South African regulations do not have specific requirements for prime time broadcasts but do require that "such South African television content is spread reasonably evenly throughout the said performance period and prime time" (Regulation 3.1 and 3.2 of the SA Television Content Regulations, 2006). Licence terms and conditions for free-to-air television services do however set out a range of specific requirements for prime time.

Based on the brief overview of the comparable studies mentioned above, – for the purpose and scope of this report – the methodology applied in this study is comparable to that applied in similar studies in other countries to obtain verifiable and statistically reliable data and information.

66 NZ On Air. (2012). Local Content: New Zealand Television. (p.54)

5.2 COSTS AND BENEFITS OF SOUTH AFRICAN MUSIC REGULATIONS

This section of the report provides an overview of the market for radio broadcasters in South Africa and examines some of the trends in this sector subsequent to the changes in South African music regulations that came into effect in 2003. The various costs and benefits associated with South African music requirements are considered as well as changes in these indicators over time.

The relevant content requirements are summarised in Table 11**Error! Reference source not found.** below:

Table 11: South African music content regulations (2006)

Public Sound Broadcasting Licensees	**Commercial sound Broadcasting Licensees (including public commercial stations)**	**Community Sound Broadcasting Licensees**	**Subscription sound Broadcasting Licensees**
Minimum of 40% of musical works in the performance period[67] must be South African music spread reasonably evenly over the broadcast period	Minimum of 25% of musical works in the performance period must be south African music spread reasonably evenly	Minimum of 40% of the musical works in the performance period consist of South African music spread reasonably evenly	Minimum of 10% of bouquets consist of channels made up of South African Music content

5.2.1 Expected costs and benefits of local content regulations

Considering the objectives of SA music content regulations for radio and the manner in which they are applied to different classes of radio licensees, one would *a priori* expect a number of benefits to arise from such regulatory intervention. Most prominent would be the extent to which South African music is broadcast by South African radio broadcasters (and the change over time). Related to this would be the extent to which South African music by new artists is aired, the number of live South African music events that are

67 "Performance period" means the period of 126 hours in one week measured between the hours 05h00 and 23h00 each day.

aired and the extent to which interviews with South African artists are aired as the regulations specifically incentivise these.

Other benefits that may arise from South African music content regulations and specifically related to radio broadcasters could be the effect that the broadcast of local music has on the underlying financial performance and employment figures of a particular radio station. However, this would depend on how South African music requirements affect the cost structure of radio stations. In this regard we look specifically at the comparative cost of broadcasting local content as well as trends in advertising income, although the latter cannot always be directly related to South African music broadcasts.

In addition to the various costs and benefits mentioned above, this section of the report also considers the growth in overall listener numbers over time and identifies the most popular radio stations accordingly (though noting that listenership figures are not directly comparable given the varying footprints of stations). It also examines the impact of a changing technological environment on radio broadcasting.[68] The following section briefly explains the methodology used to assess these impacts.

5.2.2 Quantifying the costs and benefits for radio

This section of the report looks more specifically at the costs and benefits associated with South African music content regulations between 2007 and 2012. The focus is specifically on those aspects that can be quantified and directly related to the imposition of local content regulations.

While in many instances it is impossible to directly attribute changes in the financial or other status of radio broadcasters to SA music content regulations (other factors such as demographic changes and economic growth could

68 It should be noted that employment is not considered in the context of radio broadcasters, as it would be difficult to directly relate job creation in the broadcasting industry to content regulations. It is further difficult to differentiate staff that are primarily involved with local content from other staff members. Employment creation brought about by the content regulations has more relevance within the context of music production.

also impact these indicators), it is possible to establish the extent to which both the expected and desired outcomes of the regulations have been achieved to date. This relates specifically to, for example, the relative contribution of South African music to total broadcast time, the promotion of new South African artists and the extent to which interviews and live music events are broadcast.

a) Percentage SA music aired

The SABC annual report for the year ending March 2013 indicates that all public stations exceeded the minimum quotas for South African music required to be broadcast within the stipulated broadcast period ("the performance period"). The regulations require that all public stations broadcast an average of 40% local music, with Lotus FM as an exception which only has to broadcast 20% local music given its formats.[69]

The figures recorded in the SABC annual report for 2011/2012 have been captured in table 12,[70] along with the percentage of South African music that stations reported in response to the survey. The table also includes ICASA findings recorded in the Authority's compliance reports for each station for 2011/2012. The ICASA reports have been used to strengthen the review, but it should be noted that the ICASA findings are based on monitoring by the regulator for a relatively limited period of the year, which presumably accounts for the difference between ICASA and broadcaster reported findings.

69 SABC. (2013). Annual Report. p.34

70 Note that the survey result figures reflect information provided by the broadcasters in response to the questionnaires sent to them. Where possible the researchers have compared the reported findings to other sources of information (such as audited financial statements) to confirm the credibility of the results.

Table 12: Percentage SA music broadcast, 2011/2012

	Min. requirement	SABC Ann. Report	Self-reported Survey results	ICASA Compliance Report findings
Public commercial broadcasters				
5FM	25%	33%	33%	About 29%
Good Hope FM	25%	38%	31%	Complies
Metro FM	25%	42%		About 30%
Public Broadcasters				
Tru FM	40%	52%		About 80%
Ikwekwezi FM	40%	74%		About 68%
Lesedi FM	40%	73%		About 65%
Ligwalagwala FM	40%	63%		About 80%
Lotus FM	40%	22%		About 20%
Motsweding FM	40%	71%	70%	About 83%
Munghana Lonene FM	40%	78%	67%	About 45%
Phalaphala FM	40%	66%	65%	"complies with minimum requirements"
Radio 2000	40%	44%	64%	About 58%
RSG	40%	56%	92%	About 90%
SAFM	40%	67%	70%	About 60%
Thobela FM	40%	68%		About 65%
Ukhozi FM	40%	67%	64%	At least 80%
Umhlobo Wenene	40%	79%	70%	65%
X-K FM	40%	54%	94%	About 65%

Source: SABC Annual Report 2011/2012; Radio Broadcaster Survey, ICASA Annual Compliance Reports

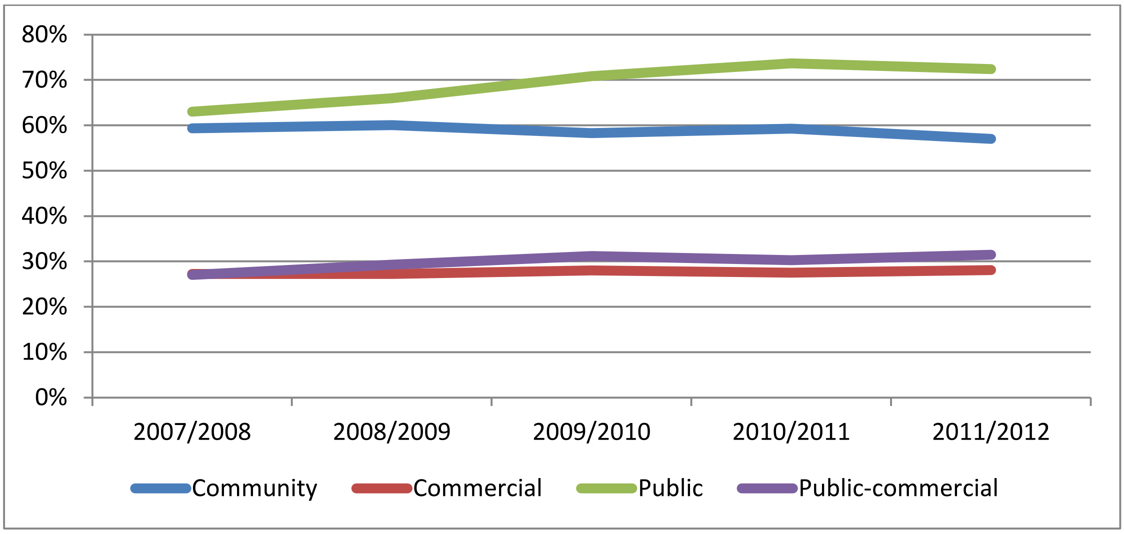
Figure 18 below illustrates the change in the proportion of SA music aired between 2007/2008 and 2011/2012 according to broadcaster responses to the questionnaires (i.e. self-reported figures). As noted previously, the SA music content regulations set higher local content requirements for community and public broadcasters than for commercial services (including public commercial stations).

Based on the information provided by radio stations in response to the survey, public stations appear to broadcast the largest percentage of local music, followed by community broadcasters, public commercial broadcasters, and then commercial services. According to the responses gathered via the Radio Broadcaster Survey, community broadcasters aired more than the required minimum 40% SA music content, but did not record much change in the proportion of local music aired since the adjustment of the regulations in 2006.

In contrast, the amount of local music broadcast by public broadcasters appears to have increased during the five year observation period (63%-72%). The increase that specifically occurred in 2010/2011 can be associated with SABC's policy to increase the proportion of the South African music broadcast during the period of the 2010 FIFA Soccer World Cup.

The proportion of local content aired by commercial broadcasters also seems to have increased slightly from an average of 27%-28%, as did the SA music aired by public commercial broadcasters (27%-31%). It should however be noted that, although commercial broadcasters might air a lower proportion of local content relative to all their music broadcasts, they are generally more music focused and might actually air more local content in absolute numbers than public broadcasters. An analysis of a limited number of the broadcasters' logs below confirms this.

Figure 18: Average proportion of broadcast airtime allocated to local content (South African music) per station, 2007/2008 – 2011/2012[71]



Source: Radio Broadcaster Survey

b) *Analysis of quotas in terms of tracks played*

In considering whether or not ICASA should increase the current minimum quotas for South African music on radio, and/or change the framework, it is also important to understand the effects of quotas in terms of the number of tracks played on different services (commercial, public and community). Public service stations, for example, are licenced as full-spectrum services and therefore have obligations to air drama, children's, current affairs and other spoken word programmes. Thus, the percentage of music to spoken word aired on these services is less than their commercial counterparts (there is more spoken word programming).

In contrast, commercial stations generally (including public commercial services), air more music than talk programming.[72] The actual percentage of music to talk programming varies depending on a licensee's format. The licence conditions for private commercial stations set the agreed breakdown

71 Note on sample size (n) of different services for which data was provided in this regard: Community services 38; public services 11; public commercial services 3; commercial services 6. These estimates exclude the two commercial talk radio stations (567 Cape Talk and Talk Radio 702), as well as Lotus FM which is subject to different minimum requirements (SABC Annual Report 2013).

72 Radio 702 and Cape Talk are licenced as talk radio stations and therefore are exceptions to this.

in each service's licence conditions, though this is not specified for public commercial services.

The researchers analysed log sheets submitted by radio licensees to ICASA to assess what impact the music to talk provisions have on the actual number of South African tracks aired. This analysis tested whether primarily music focused commercial services in fact aired more local music tracks than their public counterparts – despite the fact that they have lower quota requirements.

Log sheets submitted by licensees to ICASA for the second quarter of 2013 (April-June 2013) were considered, and the number of South African music tracks played by a sample of stations in the month of June 2013 were compared. Table 13 below illustrates the findings.

Note that, although it is not the subject of this review, it appears from an initial assessment of log sheets that public service radio stations do not all air the same amount of talk to music programming, despite having similar licence requirements in relation to programming genres such as drama, current affairs, educational programming etc. Some of these stations air considerably more music than others. SABC stations also do not all use a standardised format in their quarterly reports and thus, for example, while 5fm reports on the number of South African and international tracks played, Metro FM and Good Hope FM do not provide this breakdown and thus could not be included in this comparison.

Table 13: Proportion of South African music played compared to the number of tracks played

Name of station	Category of licence	Average % SA music played June 2013	Number of SA tracks played June 2013
5fm	Public commercial	33%	1941
Ikwekwezi	Public	69.6%	2277
RSG	Public	94%	1062
Lesedi FM	Public	72%	2556
Ukhozi FM	Public	62%	1244
TruFM[73]	Public	71%	6341
Ofm	Commercial	37%	2432

Source: Own analysis of SABC log sheet submitted to ICASA

As can be seen from the above, those commercial stations that did provide information in their log sheets on the number of tracks played in June 2013 (5fm and Ofm), aired more than or close to the number of South African music tracks played by their public counterparts, despite airing a total lower percentage of local music during that month. TruFM is the one exception as it airs more music per day than other public service stations and records in its March-June 2013 quarterly report to the Authority that over 70% of the music broadcast was local.

c) *New South African music aired*

A further aspect to consider in the context of local content regulation is the extent to which the music format factors introduced in the 2003 regulations have achieved their objective of promoting the development of SA music by incentivising the airing of new musicians (defined as a "musician whose debut album has been on the market for six months or less"[74]). On the broadcast side, the demand that the regulations create for new SA content could result in the production of more music by new artists and a greater variety of artists receiving exposure on radio. This could in turn result in music

73 TruFM was selected as, although it is licenced as a public service, it does not have all the same obligations in relation to spoken word programming as other SABC full spectrum radio stations. It is expected therefore that it airs more music than others.

74 ICASA South African Music Content Regulations

sales by a broader range of musicians. For audiences, the expected benefit of a greater proportion of new SA music could be increased diversity in the music they are exposed to.

According to the information submitted by stations that completed the Radio Broadcaster Survey, the proportion of music from new musicians played by community and public stations increased between 2006/2007 and 2011/2012. In contrast, the proportion of music from new musicians appears to have remained constant for commercial and public commercial stations.

This may in part be due to the fact that commercial services have tighter formats detailed in their licence conditions, whereas community and public stations have to appeal to a broad audience (young and old) and to all interests. In an interview with one of the commercial radio stations, for example, the station manager indicated that as they are licenced as a "adult contemporary golden oldies" station, their format does not allow them to focus on new music but rather tracks that listeners "know and love".[75]

In an interview with one of the community broadcasters, it was noted that older members of the audience prefer older tracks, whereas a younger audience has a larger preference for new music.[76] As the majority of community stations (like public services) have to appeal to a broad audience and are not therefore format driven, they have more flexibility in the range of music broadcast.

It is noteworthy that public and community stations that participated in the survey reported a marked increase in the percentage of new artists aired over the 2010/2011 financial year. This could perhaps be attributed to an increased focus on South African music during the 2010 Soccer World Cup.

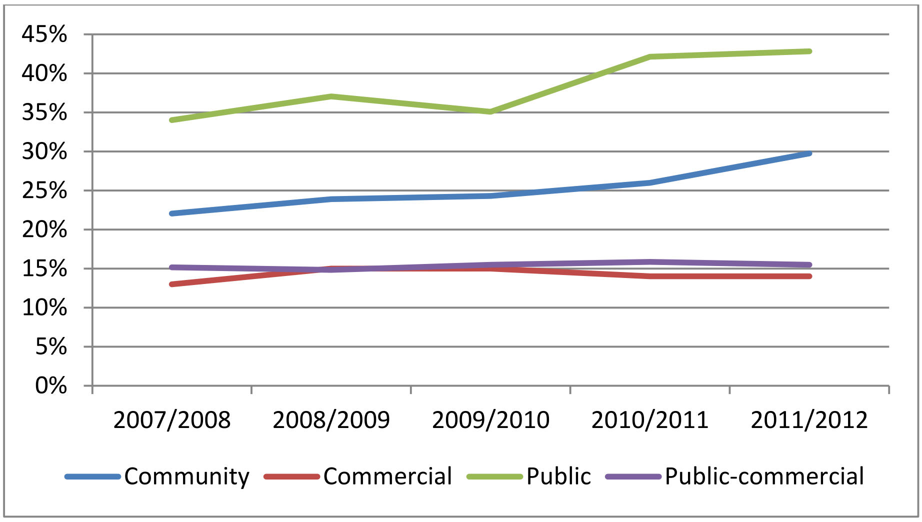
It should be highlighted that, according to the ICASA compliance reports, several commercial radio licensees have specific individual licence

75 Interview, Jacaranda FM, 11 October 2013

76 Interview, Radio Atlantis, 11 October 2013

requirements based on promises of performance requiring them to promote and/or air new musicians from their coverage area. Monitoring by ICASA found that all of these complied with such requirements (this includes Capricorn, Algoa FM, East Cape Radio, Jacaranda, M-Power and Y-fm).

Figure 19: Average proportion of music by new artists aired as proportion of total South African music, 2007/2008 – 2011/2012[77]



Source: Radio Broadcaster Survey

d) *Live SA music events aired*

The Radio Broadcaster Survey also requested information on the percentage of South African music broadcast time allocated to live music events. The SA music content regulations for radio incentivise the airing of such events for five minutes or more (live broadcasts for less than five minutes do not count in terms of the regulations).

Self-reported trends on the percentage of live South African music events aired are shown in Figure 20. The data that public stations reported in response to the Radio Broadcaster Survey, however, showed many significant variances between individual stations in terms of live music aired and are not

77 Sample size (n) of different services for which data was provided in this regard: Community services 33; public services 10; public commercial services 3; commercial services 5. These estimates exclude the two commercial talk radio stations (567 Cape Talk and Talk Radio 702), as well as Lotus FM which is subject to different content requirements.

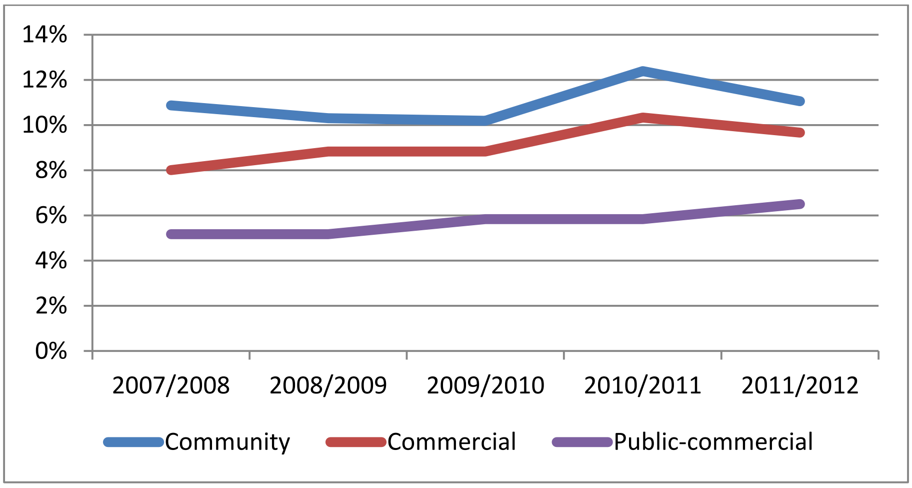
illustrated in the figure: Whereas one public station reported that it aired less than 1% of live music, another station (XK FM) reported that it aired up to 80% live music events. The large proportion of live local music aired by XK FM is attributed to the fact that music from the area and for the population that they target is not recorded by recording companies. The station itself records some of the local music that they air.[78]

Radio 2000 and Ukhozi FM are the only two public radio stations that reported an increase in the proportion of live music aired. Radio 2000 reported that it aired no live music events from 2007/2008 to 2009/2010, and up to 78% live music in the final two years of the study period), whereas Ukhozi FM indicated that the amount of live SA music it aired increased from 0% at the beginning of the survey period, to 4% in 2011/2012.

Commercial and public commercial radio stations on average aired a slightly higher proportion of live music events in 2011/2012 than at the beginning of the survey period. It should be highlighted that according to ICASA compliance report, several of the commercial radio licensees must promote live music events. This does not necessarily mean that they should *air* them, and the one licensee that has a specific requirement relating to airing of such concerts (Highveld) has (according to the monitoring reports) had challenges in recent years due to recording rights related issues.

78 Interview notes, SABC, 14 October 2013.

Figure 20: Average proportion of live events as percentage of South African music aired during the broadcast period, 2007/2008 – 2011/2012[79]



Source: Radio Broadcaster Survey

e) *Impact of sound broadcasting regulations on cultural identity*

Language can be used as a proxy for South Africans' cultural identity. Four of the top five stations in South Africa (illustrated in Figure 6) are SABC African Language Stations (ALS): Ukhozi FM, (the radio station with the largest audience) broadcasts in isiZulu, while Metro FM broadcasts in English, Umhlobo Wenene in isiXhosa, Lesedi FM in Sesotho, and Motsweding FM in Setswana.

These African language stations air a high proportion of 'traditional' music and music in the language of broadcast. While it is not possible without extensive audience research to link their popularity to their focus on South African music, it is interesting to note that all of these stations – including Metro FM – air significantly more local music than is required by ICASA regulations.

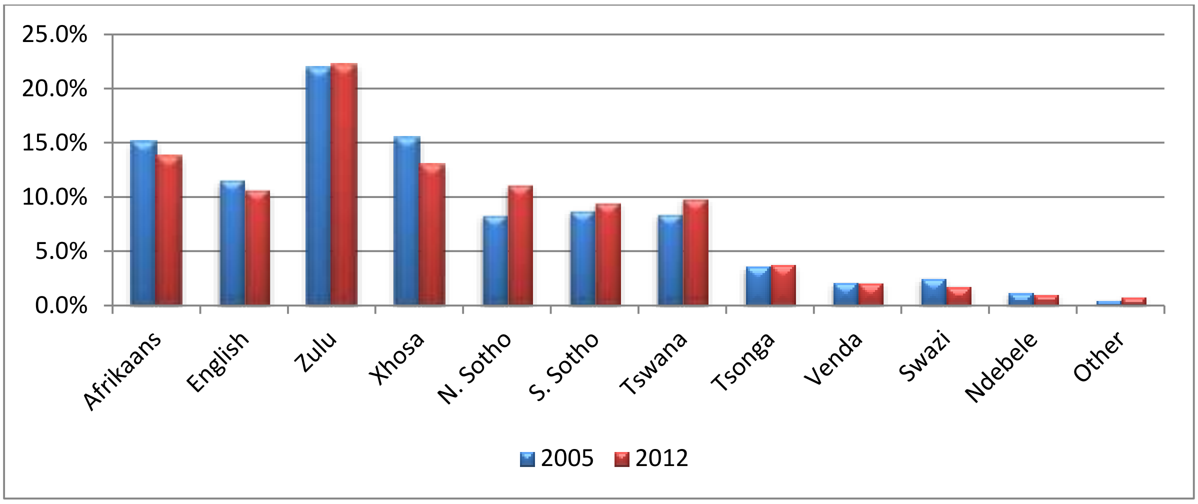
Public radio stations specifically broadcast in South Africa's eleven official languages and even in some languages of minority language speakers. Examples of stations that cater for minority groups include X-K FM which

79 Sample size (n) of different services for which data was provided in this regard: Community services 31; public services 7; public commercial services 3; commercial services 6. These estimates exclude the two commercial talk radio stations (567 Cape Talk and Talk Radio 702)

broadcasts in Xintali and Khwedam, and Lotus FM which broadcasts predominantly in English but with daily programming in Urdu, Tamil, Gujirathi and Hindi.[80]

Figure 21 compares the proportion of listeners per home language between 2005 and 2012. It shows that while the proportion of Afrikaans, English, and isiXhosa, siSwati and isiNdebele listeners declined slightly over the period, the proportion of isiZulu, Northern Sotho, Southern Sotho, Setswana and Xitsonga listeners increased.

Figure 21: Proportion of listeners per home language to total radio, 2005 and 2012



Source: AMPS 2005 RA, AMPS 2012 B

5.2.3 Financial Analysis

This section of the report considers the possible financial impact of South African music content regulations on South African radio broadcasters over time. Much of the analysis relies on the results of the Radio Broadcaster Survey, although the researchers also make use of other data sources where appropriate.

Given the focus of this study, this report focuses specifically on the extent to which local music content regulations could have impacted on both the revenue and costs of radio broadcasters between 2007/2008 and 2011/2012.

80 SABC Annual Report 2011-2012.

As such, this particular section of the report is not intended to be an exhaustive financial analysis of radio broadcasting and the companies that operate within the industry. Rather, the section attempts to ascertain the manner in which particular financial indicators could have been influenced by local content regulations over the past number of years.

On the revenue side the study focuses particularly on the effect on advertising revenue, while on the cost side the relative expenditure on South African music content compared to the cost of other music broadcasts is of specific importance.

The analysis commences by evaluating the average revenue figures of different categories of broadcasters as well as the extent to which advertising revenue contributed to total revenue between 2007/2008 and 2011/2012, as reported by radio stations who participated in the Radio Broadcaster Survey.

The composition of expenditure on advertising within the radio broadcasting industry is also analysed in more detail. Following the analysis of reported revenue composition and growth, the cost of radio broadcasting is considered. In this regard the focus is both on the composition of broadcasting costs over time and the extent to which these components have grown relative to each other.

It is important to note that the majority of figures analysed in this section are based on information provided by broadcasters that participated in the survey. Where possible, the data submitted in the Radio Broadcaster Survey has been checked against the audited financial statements of the broadcasters. Audited financial statements were however not available for all broadcasters for all the necessary years.

a) Revenue analysis

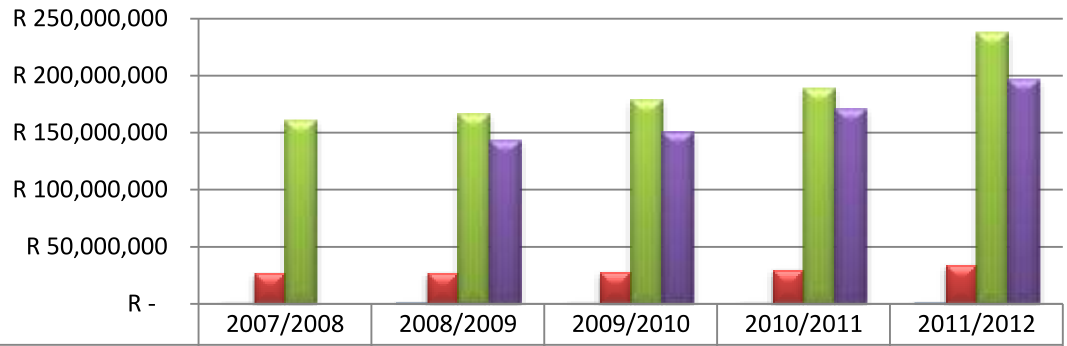
Radio broadcasters that participated in the survey indicated that they are predominantly dependent on revenue from advertisers. Advertisers, in turn, expect that the product advertising during radio broadcasts reaches both the number and type of listeners that would contribute meaningfully to sales of their product range. South African music content requirements could impact on advertising revenue by affecting the extent to which such content attracts listeners, or not.

Figure 22 illustrates average operating revenue per station between 2007/2008 and 2011/2012. So as to properly identify the trend, it only includes stations who reported on operating revenue for each of the five years.[81] This information is based on responses to the Radio Broadcaster Survey and thus reflects revenue from those that participated in the survey rather than average revenue across the entire radio broadcasting universe. However, the researchers expect that the results are generally representative of trends within the industry.

According to the information reported by stations in the Radio Broadcaster Survey, commercial and public commercial radio stations on average generate much higher revenue than public stations, while community radio broadcasters reportedly only generate around 1% of the revenue of their commercial counterparts. It is interesting to note that public commercial stations, despite larger audiences and coverage areas (5fm and Metro FM cover all major cities), reportedly on average generate somewhat lower revenue than their private commercial counterparts. In this regard it should however be noted that there is large variation in the operational revenue of private commercial stations.

81 In the case of public commercial broadcasters, revenue information as only available for four years.

Figure 22: Average operating revenue per station participating in the survey, 2007/2008 to 2011/2012[82]



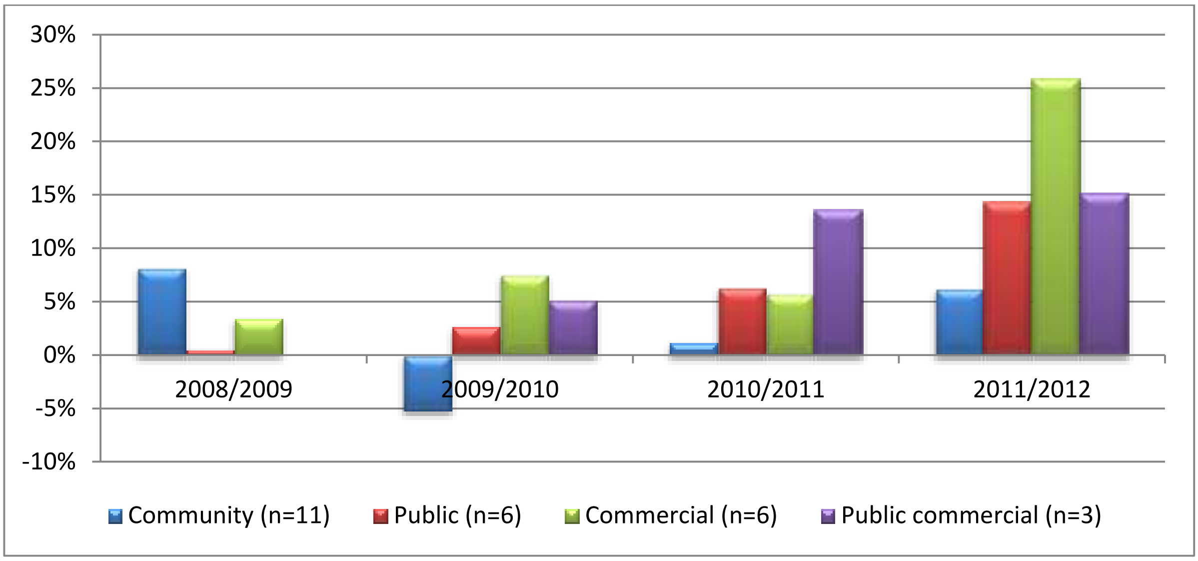
	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Community (n=11)	R 2,035,585	R 2,201,942	R 2,088,016	R 2,113,131	R 2,244,376
Public (n=6)	R 27,773,584	R 27,937,842	R 28,695,967	R 30,504,900	R 34,872,191
Commercial (n=6)	R 160,504,287	R 166,082,211	R 178,589,006	R 188,864,700	R 237,651,405
Public commercial (n=3)		R 143,116,396	R 150,488,696	R 170,889,169	R 196,727,305

Source: Radio Broadcaster Survey

Besides considering the level of operational revenue of different types of broadcasters, it is important to assess the growth of revenue over the survey period to assess if and how the local content requirements might have affected revenue. Apart from community stations that indicated a depression in operating revenue in 2009/2010, all of the broadcaster licence categories on average reported positive annual growth in operating revenue (as illustrated in Figure 23). In 2011/2012 in particular, all four categories of broadcasters reported higher annual growth than in the preceding four years.

82 This analysis includes talk radio.

Figure 23: Growth in average operating revenue reported per radio broadcaster, 2008/2009 – 2011/2012[83]



Source: Radio Broadcaster Survey

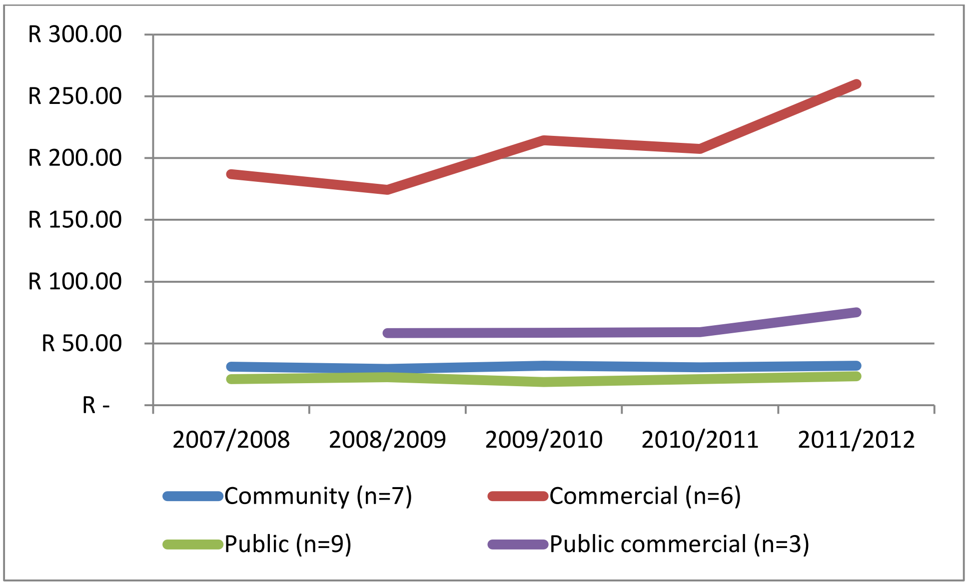
Another aspect to consider in assessing the impact of local music regulations on broadcasting revenue is the change in revenue and profit per listener for different categories of radio broadcaster over time. These indicators, derived from the Radio Broadcaster Survey, are shown in Figure 24 and Figure 25. These figures indicate that average revenue per listener for commercial, public commercial and community broadcasters that participated in the survey showed positive (nominal) growth for the period under review. In contrast, public stations included in the analysis on average do not appear to have experienced an increase in operating revenue per listener. While it is impossible to relate these results directly to the impact of local content regulations, it is worth noting that none of the broadcaster categories experienced a decline in operating revenue.

It is of secondary importance to consider the varying levels of revenue between broadcasters. The higher revenue per listener for community broadcasters presumably results from their smaller audiences. Similarly, while commercial broadcasters on average generate higher overall revenue than public commercial broadcasters, revenue per listener comparatively

83 This analysis includes talk radio.

appears much higher, presumably in part at least to their relatively smaller audience. It should be noted in this regard that revenue per listener is also affected by other factors such as the premium advertisers are prepared to place on a listener and rate cards of individual broadcasters. Certain advertisers might, for example, be prepared to pay more for listeners from the upper LSM bracket than others.

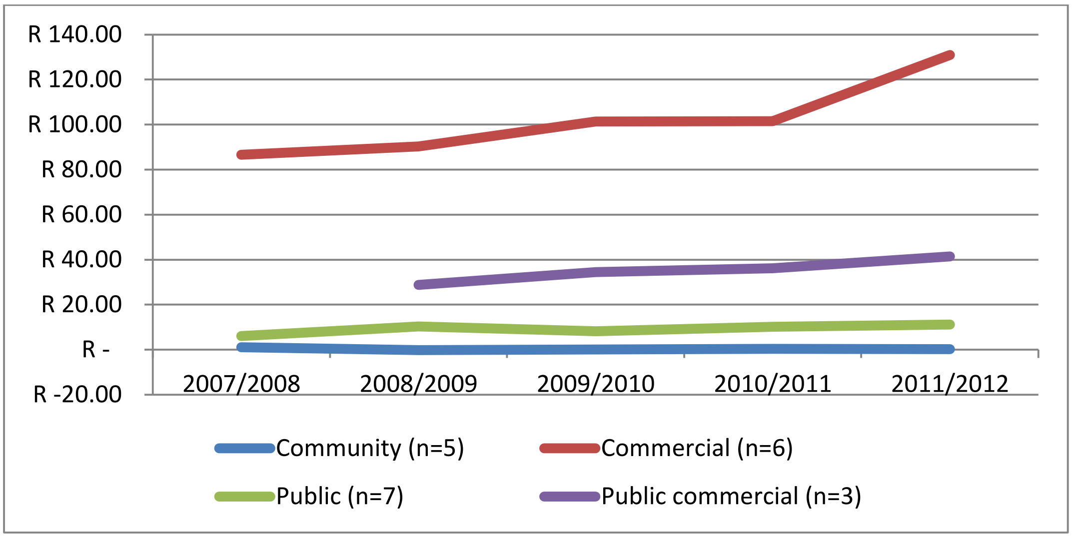
Figure 24: Nominal operating revenue per listener for radio broadcasters, 2007/2008 – 2011/2012



Source: Radio Broadcaster Survey

Average profit per listener for different categories of broadcasting licences (calculated by subtracting operational expenditure from operation revenue, and dividing this by the average number of listeners) appears to have increased for commercial, public commercial and public broadcasters, but has remained constant for the small number of community broadcasters included in the profitability analysis. Similar to the findings for operating revenue, on average, none of the broadcasting licence categories have experienced a decline in profit per listener over the study period.

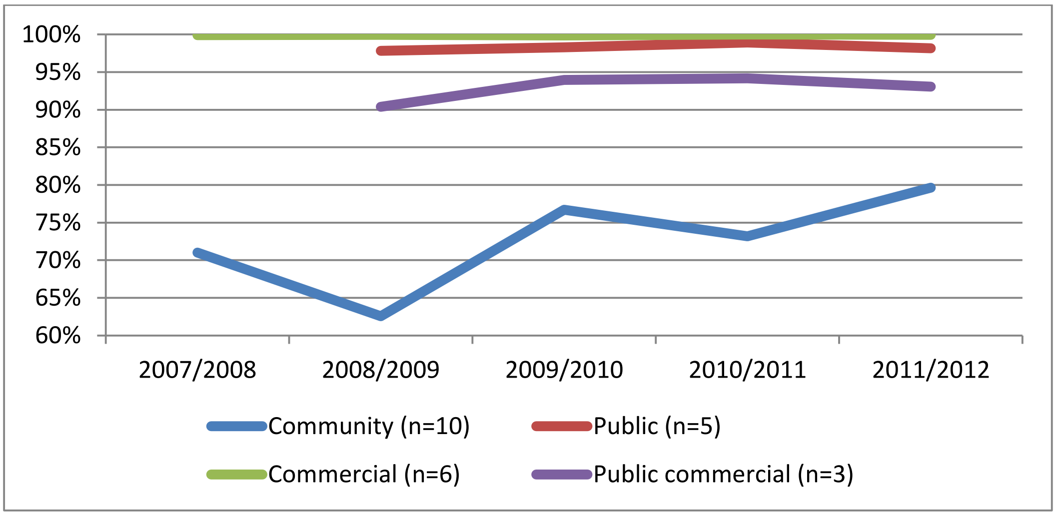
Figure 25: Nominal profit per listener for radio broadcasters, 2007/2008 – 2011/2012



Source: Radio Broadcaster Survey

What these figures do not show is the large increase in the number of subscribers to Pay-TV (subscription television) in recent years. In its latest South African Entertainment and Media Outlook (2012-2016), PwC reflects that the number of subscriber households more than doubled between 2007 and 2011 (from 1.8 million in 2007 to 3.7 million in 2011), and projects that the number will continue to grow.

Figure 26: Revenue from advertising and sponsorships as a proportion of total revenue, 2007/2008 – 2011/2012



Source: Radio Broadcaster Survey

Although the SABC public broadcasting division receives funds from government and licence fees, it still generates over three quarters of its income from advertising and sponsorship revenue. Commercial and public commercial radio stations, in contrast, are expected to rely entirely on commercial revenue to remain operational. The results from the Radio Broadcaster Survey indicated that community radio stations have increased their share of above-the-line radio adspend.[84]

Given that we know that many community stations have typically relied on volunteers and have not had revenue to pay their staff, these findings might also suggest that these stations are receiving more income through attracting advertising, rather than revenue from advertising substituting other sources of income.

According to Nielsen Media Research, radio broadcasting's share of above the line expenditure on advertising has increased slightly since 2002 from a 14% share to a 14.7% share in 2011/2012. Between 2006 and 2010, radio broadcasting's share of advertising revenue was comparatively lower at around 12%/13%. Trends in above the line expenditure for radio broadcasting are shown in Table 14.

Table 14: Above the line expenditure on advertising in South Africa, 2000 to 2012 (Rand millions)

	Expenditure on advertising on Radio (Rand millions)	% of total expenditure on advertising	Total expenditure on advertising (Rand millions)
2000	1 224.6	14.6	8 383.5
2001	1 205.8	14.0	8 627.7
2002	1 415.9	14.0	10 078.1
2003	1 708.2	14.2	12 005.0
2004	1 950.9	13.2	14 796.5
2005	2 799.0	15.7	17 838.7
2006	2 645.9	13.2	20 102.1
2007	2 964.7	12.7	23 388.6

84 From the survey we could not ascertain what other sources of funding, in addition to advertising revenue, community broadcasters had relied on historically.

	Expenditure on advertising on Radio (Rand millions)	% of total expenditure on advertising	Total expenditure on advertising (Rand millions)
2008	3 344.8	13.6	24 575.0
2009	3 041.0	12.4	24 433.2
2010	3 687.8	12.8	28 778.3
2011	4 478.5	14.0	32 047.2
2012 (Aug 2011-Jul 2012)	4 934.5	14.7	33 643.7

Source: Nielsen Media Research cited in OMD "South Africa Media Facts", 2013

Furthermore, the community stations included in the Radio Broadcaster Survey analysis reportedly experienced the fastest growth in revenue from advertising and sponsorship revenue. This echoes the finding in Figure 26 that this source of revenue has begun to play an increasingly important role for community broadcasters.

In its South African Media Outlook: 2012-2016, PwC predicts that expenditure on radio advertising will increase from R3.24bn in 2011 to R4.57bn in 2016, with a Compound Annual Growth Rate (CAGR) of 7.1%.[85] This suggests that, despite the introduction of new media, the radio broadcasting sector will continue to be viable into the future.

c) Cost of broadcasting South African Music

The previous sections of the financial analysis reported trends in the revenue generated by radio broadcasters. From the data available it does not appear as if the application of South African music content regulations by South African broadcasters has had a negative impact on revenue received from advertising and sponsorship – the predominant source of income for stations. This is to be expected given the relatively static radio listenership figures for all categories of broadcasters other than community licensees.

85 PwC South African Entertainment and Media outlook: 2012-2016, Chapter 5: Radio, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter5.pdf. Note that PwC's figures for advertising spend on radio differ from those cited of OMD (OMD 2011 R4,48bn and PwC 2011 R3,24bn).

In this section of the report, the possible impact that South Africa's local music content regulations have had on the cost of acquiring music for radio stations is evaluated. In this regard, the average expenditure per radio broadcaster on all music and on SA music content is considered.

The cost of broadcasting recorded local music primarily consists of the music rights that need to be paid to organisations such as SAMRO. Jacaranda FM (who airs live local music every Friday evening) reported[86] that there are a variety of costs involved in airing live local music concerts, including venue fees, engineers and artists. Their live music broadcasts on Friday evenings on average costs them approximately R6 000 per event.

In terms of identifying trends in the cost of airing music, it must be noted that not all radio respondents answered all of the questions presented in the Radio Broadcaster Survey in relation to the cost of music. Only 3 community broadcasters, 1 public broadcaster and 1 public commercial broadcaster were able to provide meaningful data on the necessary indicators for this costing analysis over the entire survey period.

The researchers therefore limit the analysis to trends within the commercial broadcasting sector, as these cost trends are expected to be representative of the cost of local content within the industry.

86 Interview, Jacaranda FM, 11 October 2013

Table 15 reports on the average expenditure on all music and average expenditure on South African music respectively. Unfortunately the sample of community, public and public commercial broadcasters that provided information on the cost of local content and the cost of all content over the survey period was insufficient to draw any meaningful conclusions.

Table 15: Average expenditure on music acquired by commercial broadcasters, 2007/2008 – 2011/2012

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
All music	R5 378 716	R5 408 993	R6 112 245	R6 323 402	R6 535 442
SA music	R1 366 710	R1 397 769	R1 601 819	R1 411 756	R1 686 484
% of SA music to all music	25%	26%	26%	22%	26%

Source: Radio Broadcaster Survey

Commercial broadcasters that responded with the necessary data stated that expenditure on South African music content remained at around 25%. In the broad, they suggest that the cost of local content for radio broadcasters has remained proportional to international content between 2007/2008 and 2011/2012. Also, if one considers that commercial broadcasters spent on average around 25% of their broadcasting budget on local content that accounts for roughly 30% of their broadcast time, it appears that local content for radio broadcasting could be proportionally less expensive compared to other content.

5.2.4 Conclusions

Total radio listenership in South Africa is currently around 92% of the adult population according to the most recent estimates from AMPS. In this regard the aggregate radio listenership has remained relatively stable since 2002, with the 2005 SAARF AMPS presentation recording a past seven day listenership of 91.8% in 2002. However, there has been a significant increase in listenership for community radio stations since 2005.

The presentation for AMPS 2005 RA indicates that community radio station listenership accounted in total for 16.2% of the adult population in 2005. This increased to 25.2% of the adult population in the June 2013 AMPS. This is due to the increase in the number of community stations licensed over the period given the relative ease of registering a class licence.

The most popular radio stations remain SABC radio broadcasters such as Ukhozi FM, Metro FM and Umhlobo Wenene FM. The average percentage of broadcast time allocated to local content music by different classes of radio broadcasters remained constant or increased between 2007/2008 and 2011/2012.

According to the Radio Broadcaster Survey:

- Community broadcasters allocate around 60% of their airtime to South African music, while commercial broadcasters on average devote just less than 30% of their airtime to South African music.
- Public broadcasters increased their proportional allocation to South African music from 63% to 72% between 2007/2008 and 2011/2012. A review of log sheets and quarterly reports submitted by broadcasters to ICASA, however, indicates that although commercial stations are airing a smaller proportion of South African content in relation to international music overall than public or community services, most of them air more music each day than their counterparts. The number of South African music tracks aired by these broadcasters over one month therefore does not necessarily differ substantially from the number aired by public services.
- Both community and public broadcasters increased their proportion of new and original South African music aired by around 10% over the period, while commercial and public commercial broadcasters' allocation remained proportionally the same.
- Public commercial and commercial broadcasters appear to have increased their proportion of live musicians aired.

Without extensive audience research, it is not possible to assess the impact of South African music regulations on cultural identity, but it can be noted that the most popular stations all exceed SA content requirements – and all, with the exception of Metro FM – air 'traditional' music as well as music in languages other than English.

The analysis further finds that operational revenues of radio broadcasters are driven almost exclusively by advertising and sponsorship income. The percentage of South African advertising expenditure currently accruing to radio broadcasters is almost 15% of all advertising expenditure (above the line). Profit per listener appears to have increased in the case of commercial, public and public commercial services. Community broadcasters on average mostly fluctuated around the breakeven point between 2007/2008 and 2011/2012.

Commercial broadcasters that responded with the necessary data stated that expenditure on South African music content remained at around 25%. In the broad, they suggest that the cost of local content for radio broadcasters has remained proportional to international content between 2007/2008 and 2011/2012.

5.3 IMPACT ON THE SOUTH AFRICAN MUSIC INDUSTRY

This section of the report looks at trends in South Africa's music production industry to establish the possible effects of the South African music regulatory requirements on the industry. Of primary importance is whether the South African music production sector has been stimulated in recent years and to what extent this can be related to the impact of South African music quotas set for radio licensees. Given the large number of individual musicians and range of music present in the South African market, this study focuses on aggregate data from recording companies, music rights organizations and aggregate studies of the industry.

This includes analysis of general data on music sales in South Africa, as well as a more detailed look at the extent to which local music content regulations have contributed to the growth (if any) of music production and sales in the country.

5.3.1 Indicators of music sales and related initiatives

According to the Recording Industry Association of Japan (RIAJ) 2013 Yearbook (one of the few publicly available resources providing information on global music sales), South Africa's share of the global music market has fallen drastically in recent years.

South Africa, for example, in 2012 dropped off the list of top 20 global music sales markets, when in 2010 it ranked 13th. Between 2008 and 2011 the value of its recorded music sales dropped by more than 50% (from R1 671.5 million in 2008 to R741.6 million in 2011). The value of music sales however in countries such as India and Brazil increased over the period (with, for example, Brazil experiencing an 8.9% increase in the value of sales between 2011 and 2012 and India showing a 21.6% increase over the same period).

A separate study would need to be conducted to identify what factors may have contributed towards the drop in recorded music sales in South Africa and/or the rise in countries such as India and Brazil. Such a study would need to consider a range of issues, including, for example, governmental programmes supporting the music and recording industries.

It however is clear that broadcasting music content quotas have not played a role in the growth in recorded music sales in these two countries. India (like the US) has a massive domestic music market[87] and therefore has not deemed it necessary to introduce content regulation for radio or television.[88] While it is unclear from documentation studied whether or not Brazil has imposed any local music quotas,[89] this is not cited in any research as a reason for growth in the industry. Many factors other than content regulations might affect music sales – including, for example, access to broadband.

87 This is driven in part by the film industry in the country as many movies in India include and promote music from the country

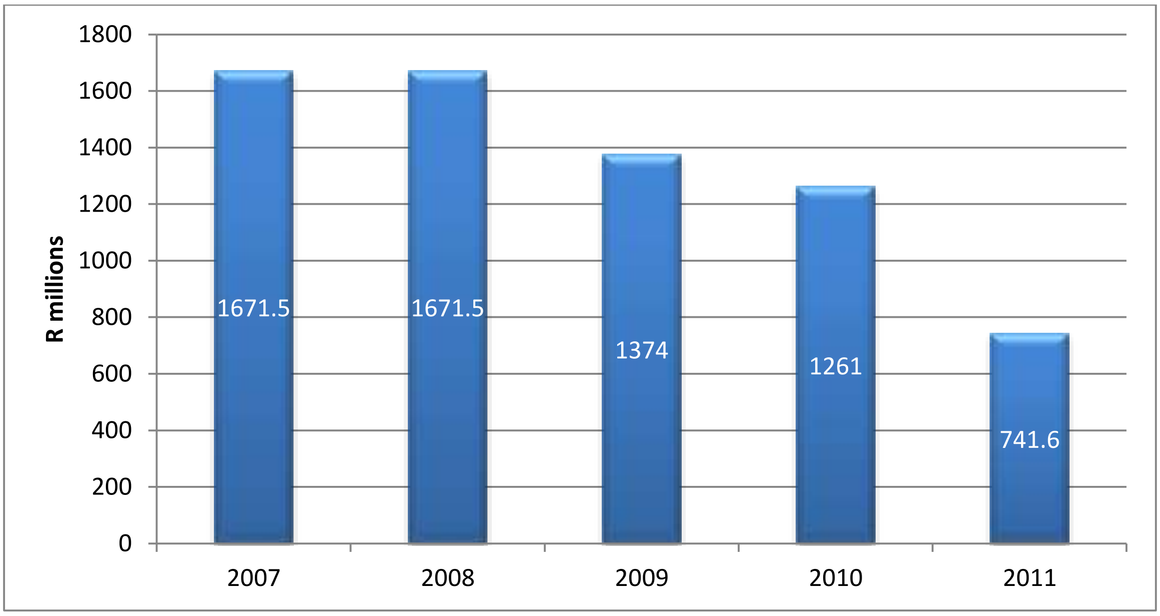
88 Lynn Gailey, Music Council of Australia, "Music and the media: Government regulation in Australia and Abroad", March 20 2012

89 A 2006 UNESCO study on musical diversity around the world, for example, indicated that it is not known if Brazil has any legislative or regulatory quotas for domestic music on broadcasting services (see Richard Letts, 'The Protection and Promotion of Musical Diversity: A study for UNESCO by the International Music Council', June 2006)

PwC, for example, notes three trends that have contributed to the growth in music sales in India, namely (1) listeners having easier access to music through new mediums such as mobile apps, internet radio and social sharing; (2) the promotion of music across the country with the help of social media, and (3) taking efforts to curb music piracy[90]. It should also be noted that with a population size of 1,200 million[91], India has a much larger domestic market for local music than South Africa. In Brazil, as in India, the fast growth of the music industry can also in part be ascribed to the increase in new digital services (for example subscription and ad-supported streaming services).[92]

In contrast to India and Brazil, South Africa is still heavily reliant on physical music sales (see Figure 28). The following figure on South African global music sales extracted from RIAJ reports (which are based on IFPI data) illustrates the drop in value of recorded music sales over this period.

Figure 27: Value of South Africa recorded music sales



Source: Recording Industry Association of Japan, Yearbook (2008-2013)

The RIAJ also provides a breakdown of the total recorded music sales. In 2011, 93% of the revenue in South Africa came from physical sales (i.e. CD's

90 PwC. (2012). India Entertainment and Media Outlook 2012.

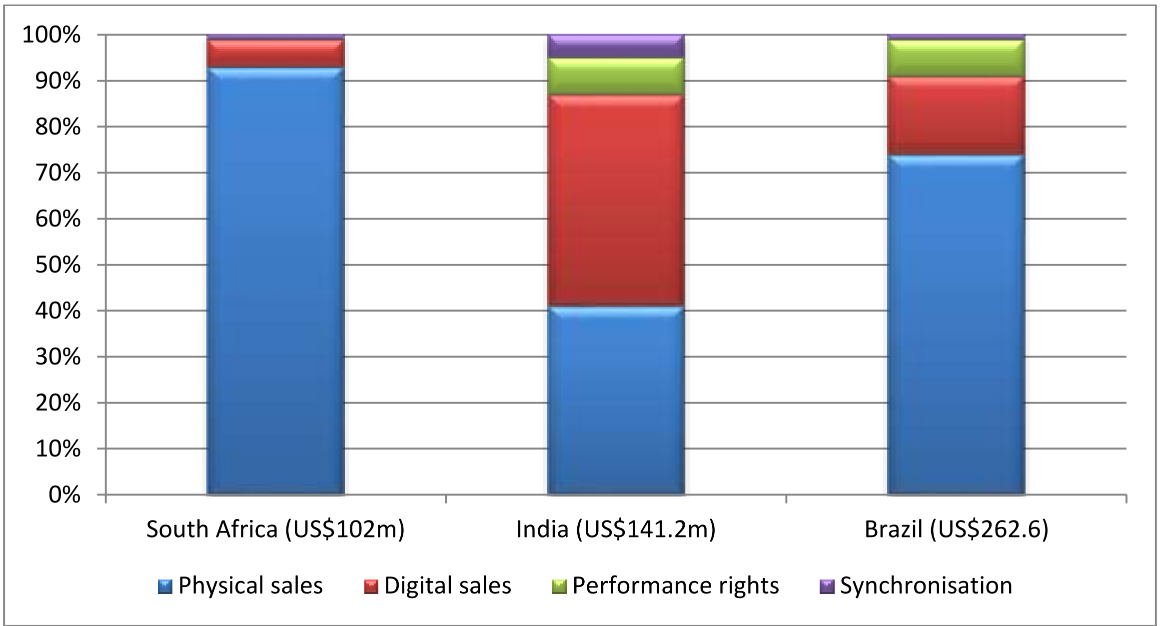
91 The World Bank. (2013). Total population.

92 Cooksen, R. (2013). Digital streaming boosts music industry. *The Financial Times.*

etc.) with 6% generated by digital sales. The relatively low proportion of digital sales in South Africa is probably due to current high broadband costs. While digital sales are currently low in South Africa, with the expected reduction in broadband costs, digital music sites (including subscription streaming sites) are expected to become an increased source of competition as the cost of internet access for South Africans decreases. Income from performance rights was clearly insignificant as it is recorded as contributing 0% towards the revenue.

It is useful to compare this market split with countries such as Brazil and India (China only featured in the top 20 list in 2012) to get an idea of what is driving revenue increases in those countries. Whereas South Africa and Brazil generate the largest proportion of recorded music sales value from physical sales, digital sales account for the largest share of recorded music sales in India. However, digital sales in Brazil are also starting to account for a larger proportion of the value of recorded music sales. These estimates are shown in the figure below.

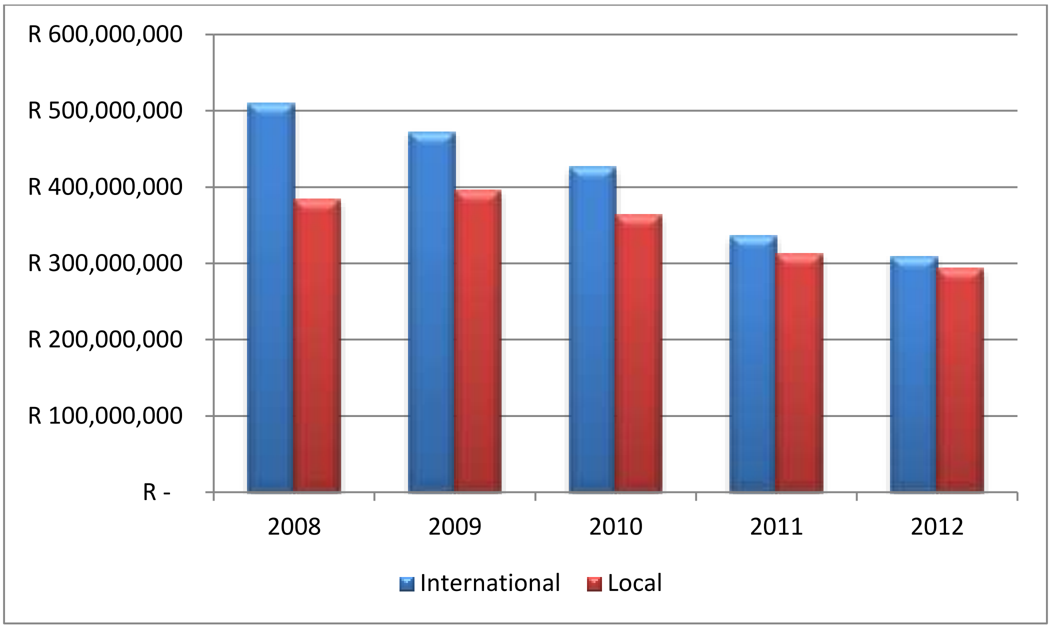
Figure 28: 2011 market split of value of recorded market sales in South Africa, India and Brazil (total value of sales in US$m)



Source: Recording Industry Association of Japan (RIAJ) 2013 Yearbook

According to industry sales statistics provided by the Recording Industry of South Africa (RISA) on the value of total recorded music sales (excluding digital), sales of international as well as local music has declined. This trend is illustrated in Figure 29. These estimates show that international music sales experienced a negative compound annual growth rate (CAGR) of -11.8%, whereas local music sales experienced a negative CAGR of -6.5%. While the sale of both types of music declined, sales of international content declined at a faster rate than local music sales.[93]

Figure 29: Industry sale statistics, excluding digital



Source: Recording Industry of South Africa

a) Popularity of alternative ways of listening to music

The 2013 AMPS presentation shows an increase in online radio listenership and listenership via cell phones – with 29, 5% of cell phone users stating that they used their phones to listen to the radio and 5, 9% listening via the internet.[94] According to the AMPS figures, 15, 3% of South Africans with access to the internet reported that they downloaded music. In addition AMPS reports that

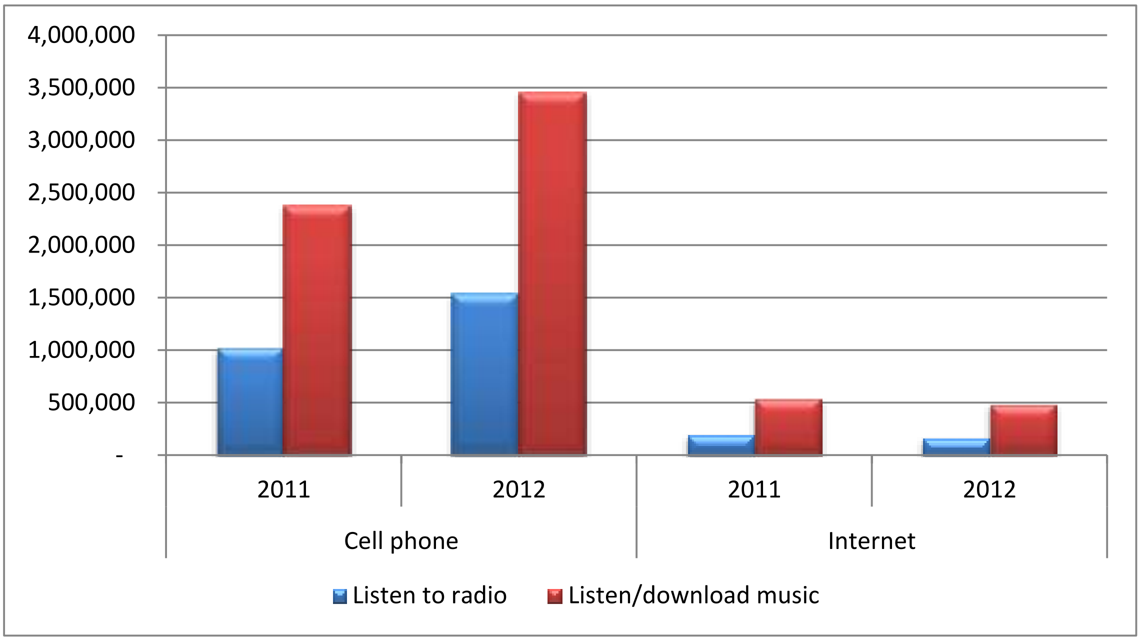
93 Recording Industry of South Africa. (2013) Industry Sale Statistics.

94 http://www.saarf.co.za/AMPS/presentations-amps.asp

twenty three percent of cell-phone users said they downloaded or listened to music on their cell-phones.

Furthermore, while there has been an increase in the number of radio listeners via cell phones (as illustrated in Figure 30), relatively more cell phone users currently make use of their cell phones to listen to or download music from the internet than to listen to radio.

Figure 30: Use of cell-phones and the internet for music and radio related activities



Source: AMPS 2011b, 2013

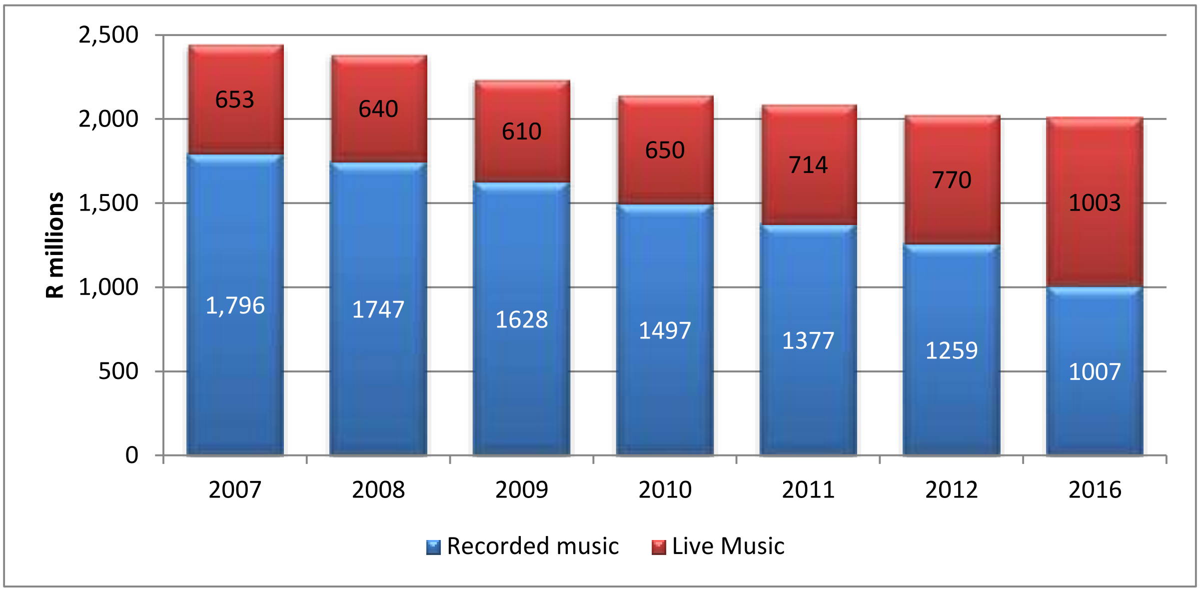
AMPS does not provide information on listenership of online only radio stations (such as Ja.FM and 2OceansVibe) and does not indicate whether or not respondents are listening to such stations or terrestrial stations on their cell phones or on the internet.

PwC however predicts a significant increase in listenership of internet radio in the future – both of licenced radios that are streamed online as well as internet services provided by non-licensees:

"*New technology is releasing Internet radio from the computer, allowing it to become more portable and thereby reaching more people. Wi-Fi radios will* *enable consumers who are unwilling to pay for satellite radio, but who want more than the limited selection on terrestrial radio, to access Internet stations".*[95]

The live music concerts and events market is also projected by PwC to continue to increase though this it ascribes to more international rather than South African tours. PwC projects live music revenue rising at a 7% compound annual rate to R1bn in 2016 from R714m in 2011.[96]

Figure 31: Revenue contribution of live and recorded music in South Africa, 2007 to 2016 (projected)



Source: Based on PwC report: Entertainment and Media Outlook: 2012-2016

b) South African music contribution

The preceding section considered studies on aggregate trends in music production and sales in South Africa. While it is useful to have an understanding of trends in the broader music production sector, the contribution of South African music to total sales is of primary importance for the current project. Unfortunately the researchers do not at this time have the requisite data on the value of South African music sales (physical and digital)

95 PwC South African Entertainment and Media Outlook: 2012-2016, Chapter 5: Radio, page 117, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter5.pdf

96 Ibid.

relative to total music sales over time available as such information is not publicly available.[97]Licence fee and royalty data from the South African Music Rights Organisation (SAMRO)[98] has been sourced that indicates the percentage contribution of South African music to total fees gathered.

Table 16: Value of licence fees and royalties as well as percentage attributed to South African music, 2007/2008 to 2010/2011

Financial Year	Value of licence fees and royalties (Rand millions)	Percentage attributed to South African music
2007/2008	246.76	32.85%
2008/2009	262.92	30.93%
2009/2010	293.03	33.20%
2010/2011	304.71	38.19%

Source: SAMRO

Table 16 provides details on licence fee and royalty income between 2007/2008 and 2010/2011. Of primary importance for this analysis is the contribution of South African music to total licence fee and royalty income. According to SAMRO, this has increased from 32% to 38% of all royalties and licence fees over the period. While it is difficult to separate the effect of the broadcasting content regulations from the impact that other market dynamics have had on these trends, it does suggest that South Africa has a growing music industry with increasing domestic demand for locally produced music.

The most important individual contributors to licence fee and royalty income have typically been public television and radio and to a lesser extent, commercial television and radio. This is evident from the data in Table 17. While licence fees and royalty income from public television as a proportion

97 The researchers has approached Recording Industry Association (RIA) and AIRCO for this information. However they were not able to provide this information. They were however not able to provide the information for free.

98 Composers and music publishers assign their rights to SAMRO for purposes of licensing and in return SAMRO remits the royalties to them after collecting the licence fees from users of copyright works and deducting administration costs. SAMRO provides the same service to composers and music publishers from foreign territories through a system of bilateral agreements for reciprocal representation with similar organisations throughout the world (including SADC countries).

of total revenue has decreased, it is still much higher than for commercial television. In contrast, public and commercial radio contributes similar proportions of overall licence fees and royalty income.

While general licensing was shown to be the largest contributor in 2011, this category includes a broad variety of different sources of income such as shopping malls and restaurants. Nevertheless, it is important to note the increasing importance of general licensing in terms of licence fees and royalty income over the period. Between 2006 and 2011 the relative contribution of general licensees increased from 21.7% to 31%.

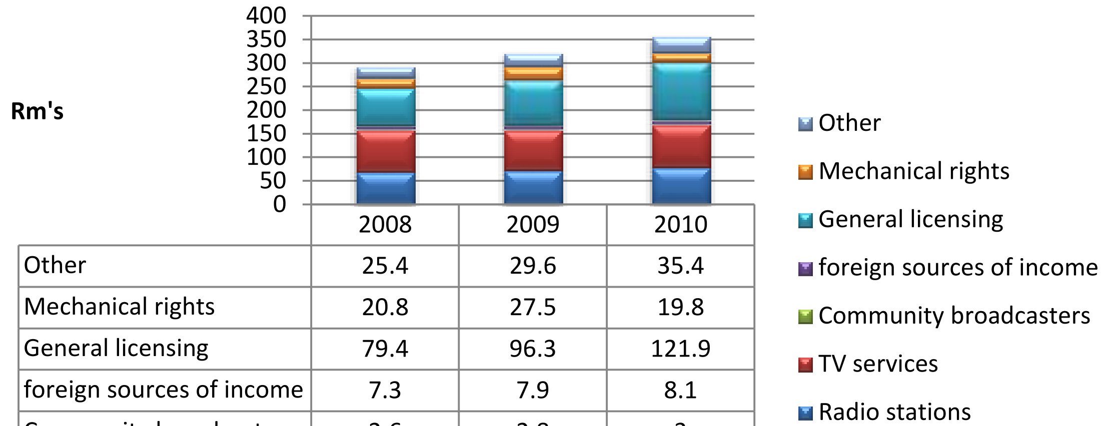
Table 17: Licence fees and royalty income as percentage of total revenue

	2006	2007	2008	2009	2010	2011
Public TV	24.2	22	21	18	17	20.8
General Licensing	21.7	23	23	26	28	31
Public Radio	14.4	13	12	12	12	12.5
Commercial Radio	13.2	14	14	14	14	14.7
Commercial TV	12.8	14	13	13	13	15.5
Reprographic Reproduction	9.1	9	8	9	9	0
Affiliated Societies	2.3	1	3	3	2	2.1
Other Licences	1	1	1	0	0	0
Cinema	0.9	1	1	2	2	1.4
Community Radio	0.8	2	1	1	1	1.1
Community TV	0	0	0	0	0	0
New Media	0	0	0	0	1	0
Mechanical Rights	0	0	3	2	1	0.5

Source: SAMRO

According to the DTI CRC Report, the total amount of royalties collected by collection societies in South Africa (including performance, sound recording and mechanical rights) in 2010 was R357.9 million - up from R293.7m in 2009. Collections from radio and television services combined make up the bulk of this (48.3% of the total collected in 2010).

Figure 32: Total royalties from music



	2008	2009	2010
Other	25.4	29.6	35.4
Mechanical rights	20.8	27.5	19.8
General licensing	79.4	96.3	121.9
foreign sources of income	7.3	7.9	8.1
Community broadcasters	2.6	2.8	3
TV services	89.6	86.1	90.9
Radio stations	68.5	72.2	78.8

Source: Copyright Review Commission Report

According to the CRC report, this amounts to 0.0128% of South Africa's total GDP (compared to about 0.04% in the UK and France).

The report indicates that figures on royalties paid to foreign distributors are significantly understated in South Africa. SAMRO figures cited in the report indicate that 43% of royalties collected were distributed to foreign collection agencies in 2009. However, the Commission notes that royalties recorded as distributed to publishers (32.1%) included funds paid to local offices of multi-national publishing companies (such as EMI and Sony) for foreign artists they represent. SAMRO confirmed this to the Commission, but was not able to provide a breakdown of the split between foreign and local publishers.

The SAMRO figures indicate that local artists and composers received a share of 24.1% of the royalties collected. South African publishers would in addition receive an (unknown) share of the money paid to publishers.

The export market for South African music is, according to SAMRO figures provided to the Commission, still extremely low – with less than 3% of the total royalty revenues being collected outside the country.

DTI's IPAP Strategy 2013-2016 meanwhile focuses, among other things, on interventions necessary to boost the local music industry. It states that South Africa has strong competitive capability in the music production and music industry sectors that have "*the potential to make a significant contribution to economic growth and employment*". It notes that the industry is labour-intensive, has many economic multipliers and the potential to generate considerably more employment than it currently does. The document describes the industry as innovative, with many small and medium sized entrepreneurs.

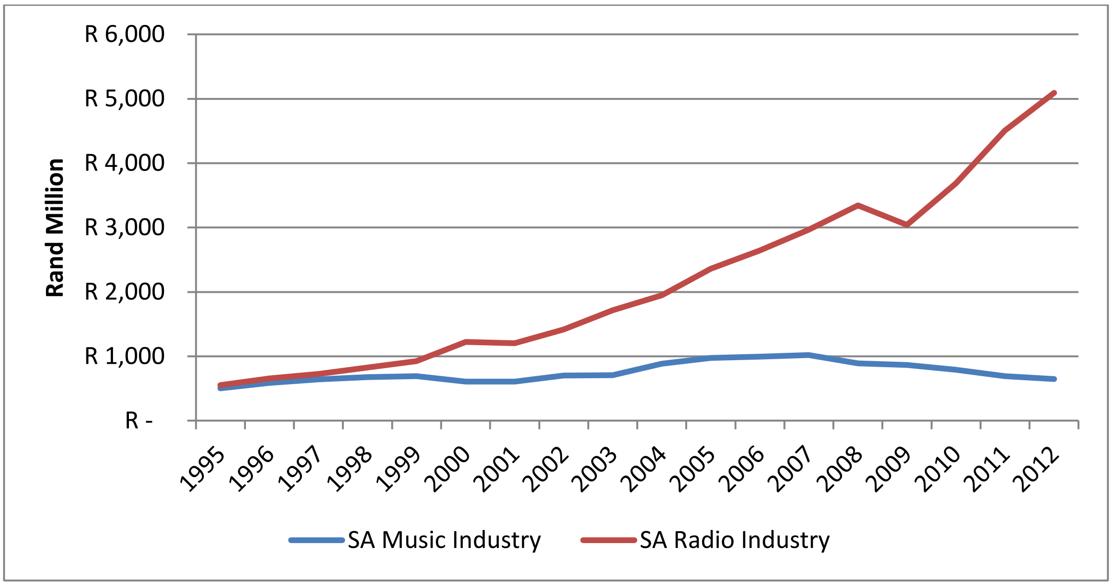
One of the key constraints identified in the strategy is significant competition from imported music products and services – especially from the US and UK. It further highlights the need to increase technical, recording and performing industry skills. In line with this, IPAP states that the DTI will be developing a music strategy as a base for "*the exploration and enhancement of the music industry's economic potential*".[99] The strategy is expected to be finalised during the 2013/2014 financial year.

c) *Advertising revenue generated by the music industry*

Advertising revenue generated by South Africa's radio industry has clearly outperformed the SA Music industry (as illustrated in Figure 33). The increase in advertising revenue attracted by radio broadcasters is evidence of larger listener numbers, which attracts advertisers to these platforms.

99 DTI IPAP Strategy (see note 9), page 114-115

Figure 33: Advertising revenue in the radio industry over the past two decades



Source: Recording Industry of South Africa

d) Analysis of popular recording companies

Another aspect to consider in the context of South African music is the relative importance of different recording companies to radio broadcasters. By creating a demand for South African music, local content regulations would be expected to stimulate the upstream market for music production in which recording companies play an important role. A greater demand for South African music would thus likely lead to increased opportunities for local recording companies – and therefore growth in the local recording industry. The interviews with the broadcasters and music industry representatives all confirmed that respondents saw a causal link between the regulations and the popularity of particular genres of South African music, and most argued for the retention of the local content regulations.

"However, over the five year period covered by this study, international recording companies were still the dominant sources of music content by radio stations." As noted in the 1998 White Paper on Broadcasting, while music content quotas are one factor in boosting the South African music sector, this needs to be matched by governmental interventions in the recording industry.[100] The proposal in this policy document that Parliament hold an investigation into this has not however been implemented, though it is expected that the strategies being developed by the Departments of Arts and Culture and Trade and Industry (see sections 3.6.1 and 5.3.1 will address this area

Table 18 lists the top five sources of music content reported by stations that participated in the Radio Broadcaster Survey. The table ranks the recording companies according to the number of times that they were included in the responses by radio stations as their top five sources of music content. While the top five recording companies remain constant (although their positions vary), the range of sources from which stations reported they sourced music increased in 2010/2011 and 2011/2012. The five most prominent recording companies cited by radio broadcasters between 2007/2008 and 2011/2012 were EMI, Sony, Universal, Gallo Music and Select Music.

These companies are all predominantly international recording companies, although they also have a South African music component to their business. Music sales are dominated by the big four multi-national recording companies, which are Sony (29.1%), Universal (28.3%), Gallo (17.1%) and EMI (17.1%). These companies released 56.6% of musical products/repertoire internationally, and 52.9% of local repertoire sales.[101] The presence of these multinational recording companies in South Africa provides a network through which local music can potentially be sold in international markets. However considerable barriers to entry into foreign markets still exist and, as was seen earlier in this section, exports of South African music are still low compared to other developing economies included in the reference countries.

100 Department of Communications, 'White Paper on Broadcasting Policy', Section 3.5.4: Inquiry into Local Content, 4 June 1998

101 Department of Labour. (2011). Labour Market Review: An investigation into the nature of the employment relationships in the South African Creative Industry. Available at: http://www.labour.gov.za/downloads/documents/annual-reports/labour-market-review-report/2011/Labour%20Market%20Review_2012.pdf

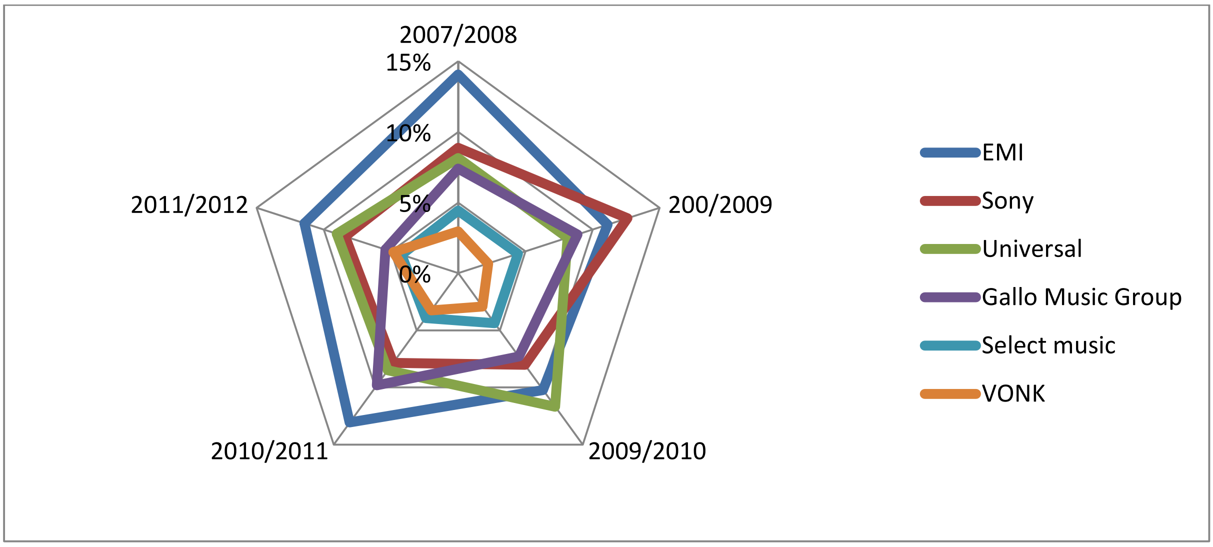
The only recording company that focuses exclusively on South African music that was listed as one of the top five sources of music content by survey respondents was Vonk, though this company only made it into the overall top five music sources in 2011/2012.

Table 18: Top five recording companies listed by radio broadcasters as sources for music

Ranking	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
1	EMI	Sony	Universal	EMI	EMI
2	Sony	EMI	EMI	Gallo Music Group	Universal
3	Universal	Gallo Music Group	Sony	Universal	Sony
4	Gallo Music Group	Universal	Gallo Music Group	Sony	Gallo Music Group
5	Select Music	Select Music	Select Music	Select Music	VONK
Total number of recording companies	**55**	**54**	**55**	**58**	**60**

Source: Radio Broadcaster Survey

Figure 34: Proportion of record companies that were listed in the top five relative to the total



Source: Radio Broadcaster Survey

e) *Relative popularity of South African music*

According to the earlier mentioned PwC report[102], South African music featured strongly in the top 10 South African downloads but not in the top 10 physical music sales of 2011 (local artists are marked in brown).

Table 17: Top 10 downloads

Rank	Title	Artist/Act
1	Lento	Professor
2	Loliwe	Zahara
3	Sizohlangana Ku Facebook	DJ Cleo
4	I Wanna Love You (featuring Nothende)	Lulo Cafe
5	Lengoma (featuring DJ Sbu)	Zahara
6	Waka Waka (This Time for Africa)	Shakira
7	Clap Your Hands (featuring Xolani Sithole)	Zakes Bantwini
8	What's My Name	Rihanna
9	Alone (Dance Mix)	Liquideep
10	Someone Like You	Adele

Source: PwC

Table 18: Top 10 physical music sales of 2011

Rank	Title (release date)	Artist/Act
1	21 (2010)	Adele
2	Loliwe (2011)	Zahara
3	Now 59 (2011)	Various artists[103]
4	Now 58 (2011)	Various artists
5	Now 57 (2011)	Various artists
6	Christmas Album (2011)	Michael Bublé
7	Rugby is Groot (2011)	Various artists
8	Crazy Normal (2011)[104]	Trevor Noah
9	Wees Lig (2011)	Juanita du Plessis
10	Nothing But the Beat (2011)	David Guetta

Source: PwC

102 PwC South African Entertainment and Media Outlook: 2012-2016, Chapter 6: Music, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter6.pdf

103 Although this is a South African series it is a mix of popular music including international artists and therefore is not recorded as local

104 Note that this is not a music recording, although PwC includes it in their list of top 10 physical music sales of 2011. Even if this record is removed from the list, the trend that physical music sales are dominated by international records remains.

5.3.2 Conclusions

The research indicates that there has been a significant drop in total revenue from recorded music sales, driven by the drop in physical music sales and the absence of a concomitant rise in digital sales.

Data obtained from SAMRO indicates that the contribution of South African music to total licence fee and royalty income has meanwhile increased from 32% to 38% of all royalties and licence fees between 2007/2008 and 2010/2011. These results suggest that there is an increased demand for local content by broadcasters and consumers alike. In spite of poor international demand for South African music (as reflected by the small export market), the industry is growing.

The commercial radio sector's share of all royalties and licence fees increased by 1.5% from 2006-2011 while community radio's share increased by 0.3% over this period. The share of total licence fee and royalty income paid by public radio stations however decreased by close to 2%, but does not necessarily imply an absolute decrease.

The most important individual contributors to licence fee and royalty income according to SAMRO has typically been broadcasters (including radio and television services with public broadcasters accounting for the bulk of this), although general licensing income (including income from restaurants, shopping malls, etc.) has become increasingly important in recent years.

5.4 COSTS AND BENEFITS OF SOUTH AFRICAN TELEVISION CONTENT REGULATIONS

This section considers the socio-economic costs and benefits of the existing South African Television Content Regulations on television broadcasters.

A number of indicators are used as proxies to identify if and how television broadcasting regulations have stimulated production of South African television programmes, and have ensured that audiences have access to a diverse range of local programming. This includes data on the average proportion of local content that was screened by public, commercial and subscription broadcasters, including a breakdown by programming genre. In addition, the study looks at the ten most popular television productions aired by commercial and public broadcasters, and uses this as a proxy to determine the popularity of South African content productions relative to foreign productions

Note that there is little information on these aspects currently available in relation to community television broadcasters; considering that (apart from the grandfathered Trinity Broadcasting Network) the first temporary community television broadcasting licences were only issued in 2007.

Financial indicators included in the costing analysis allow insight into the share of spending on South African content. It also provides a comparison of the share of spending on South African content in relation to the total expenditure for content acquisition.

Revenue from advertising and sponsorships during South African programming per Rand spent on acquiring South African productions provide a high level overview of the cost-effectiveness of local productions. This must be considered in relation to the higher audiences that certain types of local content attract: South African television channels generally commission productions from independent producers and thus pay all the costs rather than procure only certain rights to programmes as they do with international content.

Given that the existing South African television content regulatory framework is based on differing requirements for public, commercial and community free-to-air and subscription broadcasters (as applicable), the researchers also assess the increase in advertising spend (adspend) and subscription spending over time to understand key sources of revenue for public, commercial and subscription broadcasters.

5.4.1 South African Television Content Regulations

As with the content regulations for radio broadcasting, there are different content requirements for different types of television licensees. Key changes that occurred in 2002 and 2006 regulations included increased quotas for SA content, clearer definitions of genres, the introduction of incentives to encourage the broadcasting of more neglected or more expensive genres, and regulations for multi-channel subscription broadcasting service licensees.

In addition to the minimum SA content requirements broadly set out in the table below, terrestrial/cable subscription broadcasters may be directed to annually spend a specified sum or a minimum percentage of their gross revenue on SA television content, as summarised in Table 19.

Table 19: ICASA South African Television Content Requirements for free-to-air Television broadcasters

Requirements	Public TV licensees	Community TV licensees	Commercial TV licensees (incl. public commercial channels)
Min. weekly avg. over performance period measured over a year	55%	55%	35%
Drama	35%	No content requirements	20%
Current affairs	80%		50%
Doc. Programming	50%		30%
Informal knowledge building	50%		30%
Educational	60%		
Children's programming	55%		25%

Source: ICASA South African Television Content Regulations (2006)

Table 20: ICASA South African Television Content Requirements Subscription broadcasting

Requirements	Terrestrial subscription broadcaster	Satellite subscription broadcaster
General	At least 10% weekly average measured over a year during performance period must be SA Content	At least 10% of the channel acquisition budget must be spent on channels with South African content that are compiled and uplinked from South Africa
Drama	At least 2% of its SA content must consist of South African drama programming	-

Source: ICASA South African Television Content Regulations (2006)

The regulations also require that 40% of the SA television content broadcast by television services must consist of programmes that are classified as 'independent television productions', defined as a production (i) by a person not directly or indirectly employed by any broadcasting service licensee; or (ii) by a person who is not controlled by or is not in control of any broadcasting service licensees. Broadcasters can consequently not restrict their broadcasts to content that is internally produced.[105]

As indicated in this report the key objectives of the content regulations are to stimulate production in South Africa's television production sector, and to promote and protect national and provincial identity and South African culture. Imposing a minimum limit to the proportion of local content that broadcasters are required to broadcast creates a demand for local productions and ensures audiences have access to a diverse range of South African content.

105 Note that e.tv has higher quotas set out in its licence conditions than those required by the regulations. This includes quotas for independent production. Its licence conditions are based on promises of performance that it made in its application for a licence.

By specifying these limits for different genres, the regulations aim to ensure channels air a diverse range of South African programming, thus stimulating the production industry while ensuring that audience needs are met.

5.4.2 Quantifying the cost and benefits for television

This section examines whether the broadcasting regulations have achieved the aim of promoting South African content on air. Among other indicators, the study looks at the change in the proportion of local content aired, the relative cost of local content, and key sources of revenue for television broadcasters.

a) Proportion of local content screened

To identify the quantity of South African content screened, this report considers the proportion of local content aired during the performance period and prime time, and compares this with the minimum content requirements set out in the broadcasting regulations. The table below illustrates the average proportion of local content that free-to-air broadcasters reportedly screened from 2007/2008 to 2011/2012 as indicated in their responses to the Television Broadcaster Survey.[106] Based on their response to survey, public and public commercial broadcasters on average appear to have experienced a slight dip in local content screened in 2010/2011. The proportion of local content screened by commercial broadcasters appears to have remained relatively constant, while class licensees on average increased the proportion of local content screened, driven by the introduction of 1KZN in 2009.

From the self-reported proportions of local content screened (as summarised in the table below), it appears that over the survey period all categories of broadcasters complied with the regulations, and in many instances

106 These percentages are based on information provided by broadcasters and have not been confirmed from ICASA compliance reports or other independent assessments. The self-reported proportion of local content screened during prime time has however been checked against the SABC Annual report and the reported figures closely corresponds with the estimates provided in the report.

exceeded the requirements. The fact that many broadcasters exceed the minimum requirements suggests that programme selections are not only determined by the regulations, but that there is a demand by the South African audience for programming that they can identify with. e.tv emphasised this finding by stating that "*It is a commercial rather than regulatory imperative now for broadcasters to screen South African content. Our new satellite platform therefore includes an eKasi channel which is predominantly South African despite no regulatory requirements linked to this. We therefore also exceed our quotas on our analogue television service.*"[107] In a similar context, M-Net noted that "*producing local content is still more expensive than licensing foreign content, but the audience demand is so strong that now the bigger challenge is to meet audience demands (language, genres etc.)*"[108]

Table 21: Average self-reported proportion of local content screened, 2007/2008-2011/2012

PERFORMANCE PERIOD	Min. requirements	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Public	*55%*	75%	75%	72%	67%	68%
Public commercial	*35%*	47%	47%	41%	36%	38%
Commercial	*35%*		48%	50%	48%	47%
Subscription: terrestrial	*10%*	10%	16%	18%	14%	14%
Community /Class	*55%*	63%	63%	65%	65%	66%
Subscription: Satellite	Subscription satellite broadcasters are subject to a different set of regulations where at least 10% of the channel acquisition budget must be spent on channels with South African content that are compiled and uplinked from South Africa.					
PRIME TIME		**2007/2008**	**2008/2009**	**2009/2010**	**2010/2011**	**2011/2012**
Public		81%	81%	80%	79%	78%
Public commercial		47%	45%	41%	40%	37%
Commercial		n/a	22%	22%	22%	22%
Community/Class		57%	57%	64%	64%	64%

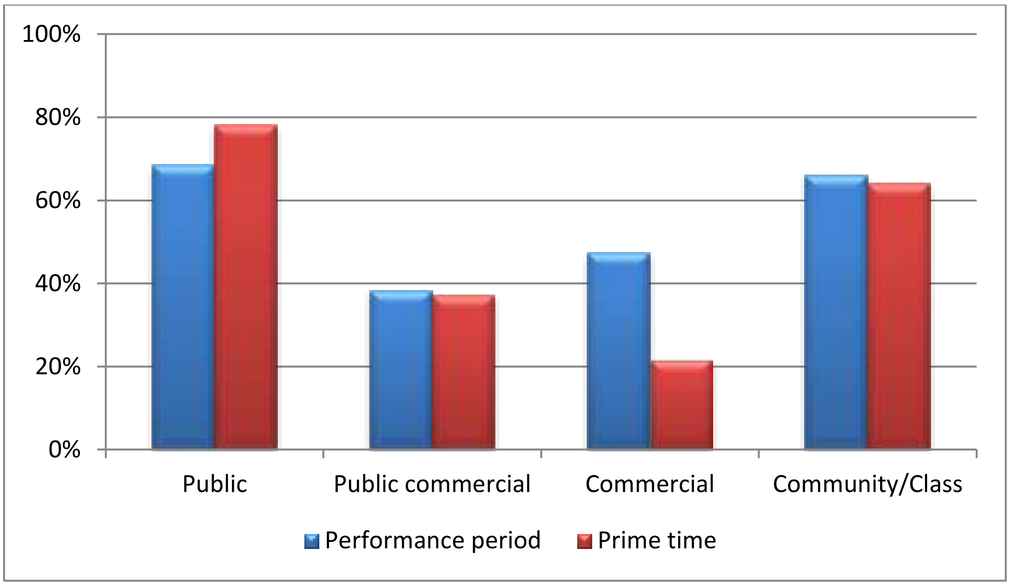
Source: Television Broadcaster Survey

107 Interview with e.tv. 18 October 2013.

108 Interview with M-Net. 14 October 2013.

Figure 35 compares the average proportion of local content screened during the performance period with the proportion screened during prime time, as reported in the Television Broadcaster Survey. It illustrates that, with the exception of public broadcasters, broadcasters screen a higher proportion of local content when measured across the entire performance period than during prime time. During interviews broadcasters noted that they try as far as possible to screen local content during prime time as this is the best way to recoup expenditure on such content.

Figure 35: Average proportion of local content screened during the performance period and prime time, 2011/2012

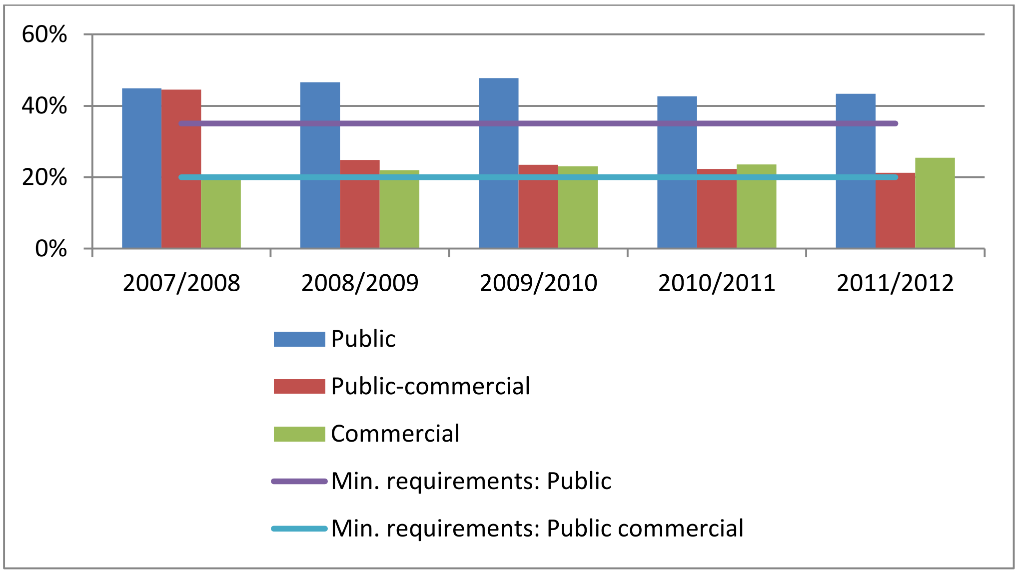


Source: Television Broadcaster Survey

The figures below illustrate the extent to which free-to-air television services (excluding community TV channels) have, based on their responses to the Television Broadcaster Survey, screened local content within specified genres. This allows the researchers to identify genres where local production might not have been sufficiently encouraged by the minimum content requirements and instances where licensees reportedly exceed the regulatory quotas. Community TV licensees are not required in terms of the regulations to meet minimum quotas for different genres and are not included in the analysis. In the interview with e.tv, it was noted that it is more difficult to screen some genres in a manner that is profitable than others. E.tv, for instance, noted that they screen their entire children's block at a loss, but retain the local content as the content regulations require them to do so.[109] This implies that locally produced children's programming would drop in the absence of genre regulations for this type of content.

In each instance, it appears that broadcasters have complied and in many cases exceeded the minimum requirements for broadcasting different genres. Note that e.tv's licence conditions in many instances exceed the regulatory requirements, based on their promises of performance during a competitive licensing process.

Figure 36: Broadcasters Compliance with minimum Drama requirements



109 Interview with e.tv. 18 October 2013.

Figure 37: Broadcasters Compliance with minimum Current Affairs programming

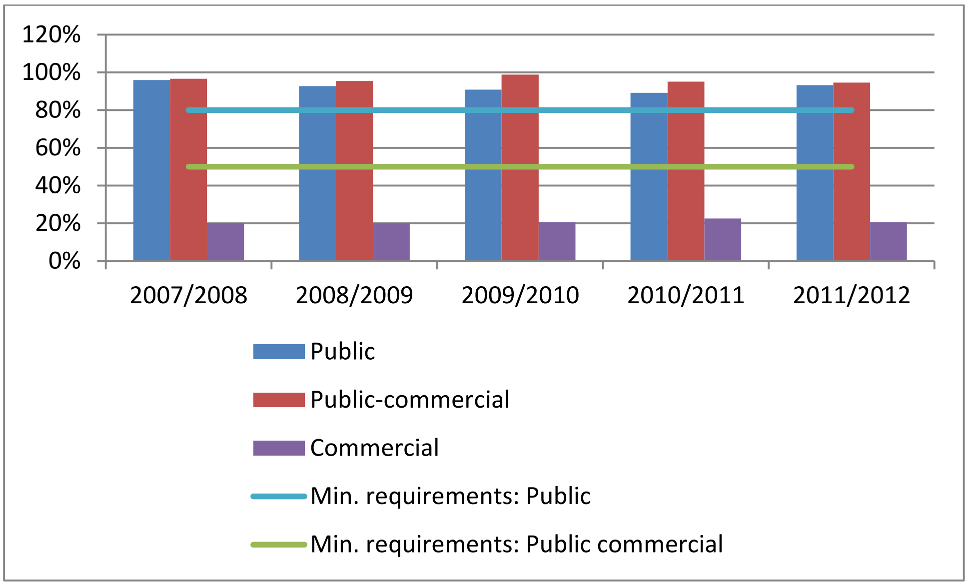


Figure 38: Broadcasters Compliance with minimum Documentary requirements

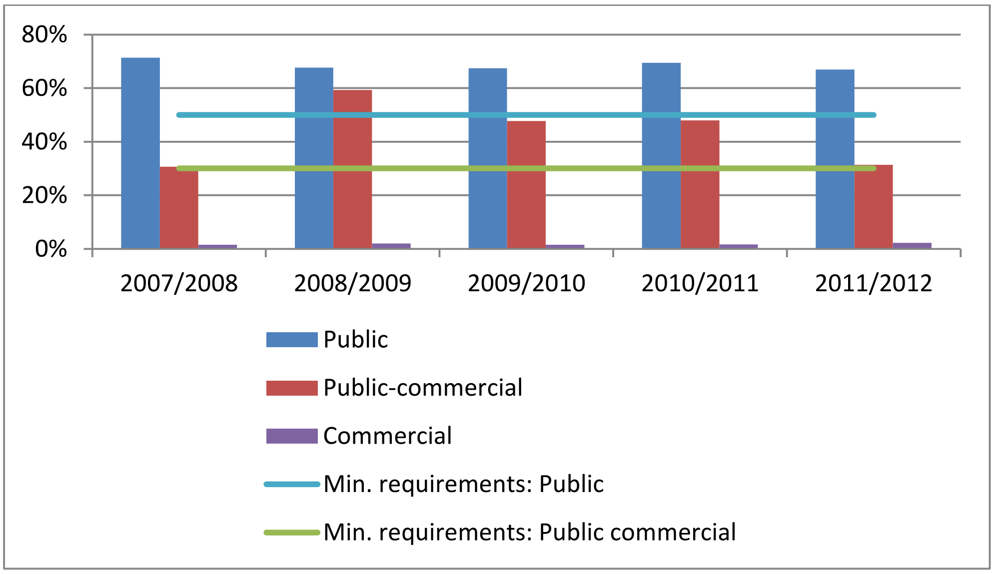


Figure 39: Broadcasters Compliance with minimum Informal knowledge building programming requirements

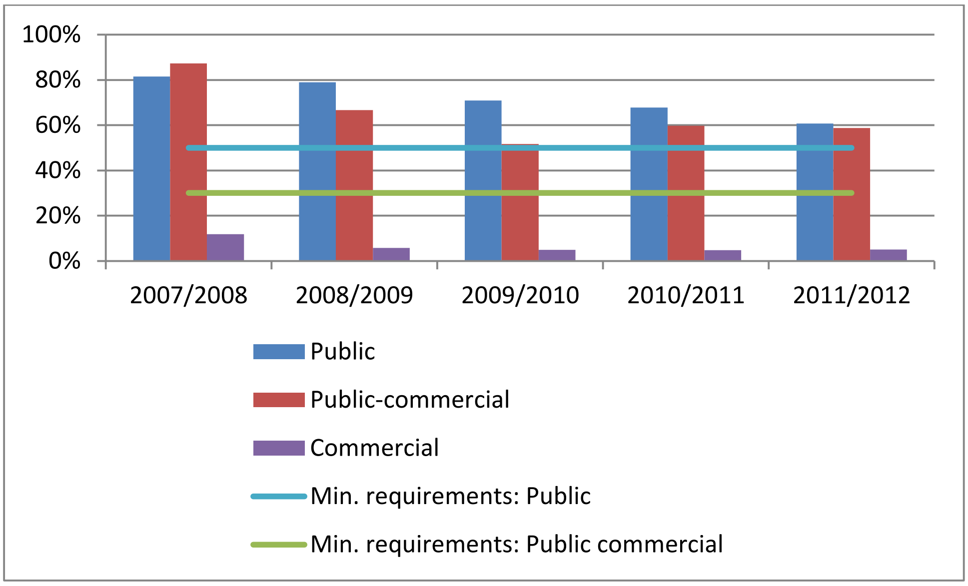


Figure 40: Broadcasters Compliance with minimum Educational programming requirements

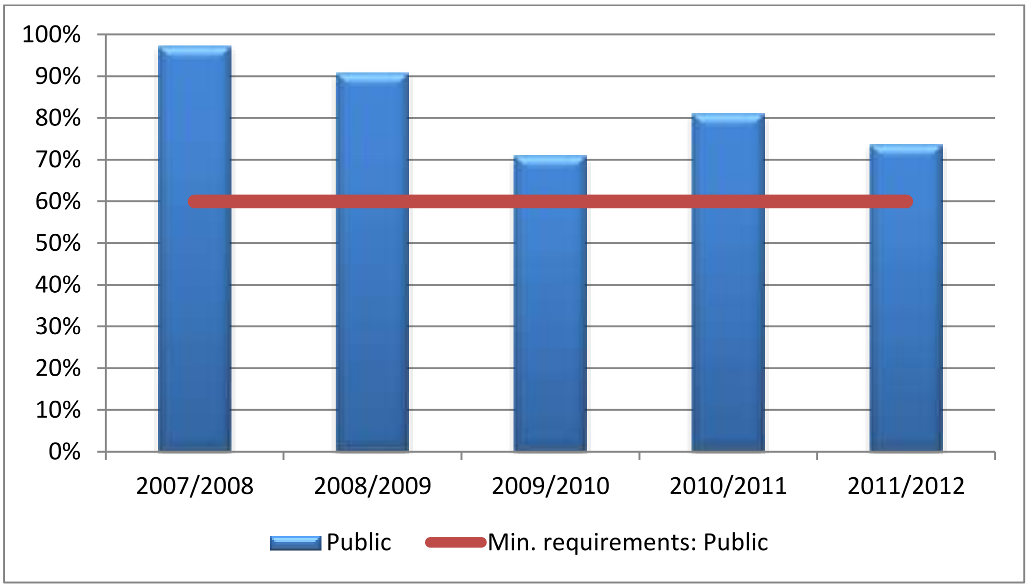
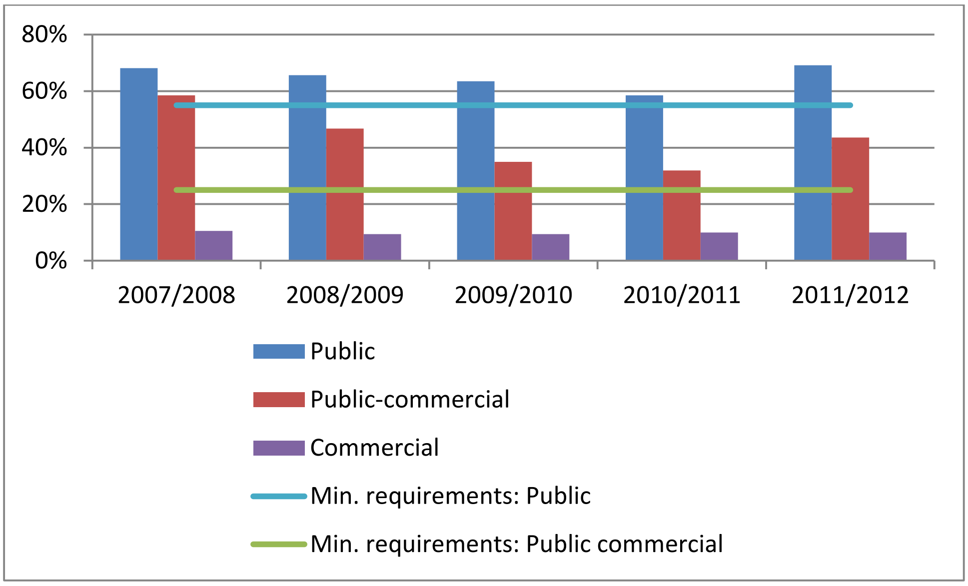


Figure 41: Broadcasters Compliance with minimum Children's Programming requirements



Source Figure 36 to 41: Television Broadcaster Survey

b) Most popular television shows and movies screened

By considering the most popular television shows and movies that were screened by free-to-air broadcasters, it is possible to assess the relative popularity of South African productions and the extent to which cultural identity is promoted through South African programming. As can be seen from the tables below, locally produced multi-lingual drama productions are particularly popular. A good example is the local soap opera, Generations, which has had the largest audiences since it first went on air in 1994. Based on SAARF TAMS data, it had close to 7.5 million viewers from 18-24 March 2013.[110]

Table 22 below lists the top 10 shows (excluding sporting events[111], movies, news, and the lotto draw) that were broadcast on free-to-air public and commercial channels from 2007/2008 to 2011/2012 (as reported by broadcasters in their responses to the Television Broadcaster Survey). Titles in

110 Broadcasters often voice concerns over the accuracy of TAMS data, but we do not believe that it will affect the overall findings of this study.

111 Such as local and international soccer matches.

brown are foreign content productions, with the total proportion of local content of the top ten programmes listed in the final row. Unless otherwise indicated, the productions are in English.

In 2007/2008, the two foreign productions that ranked in the top ten programmes were professional wrestling broadcasts (which although classified as sport, have dedicated timeslots and are thus included in the analysis). In 2010/2011, the only foreign production in the top ten was the FIFA Kick-Off Celebration Concert. The composition of the top ten programmes appears to have remained relatively stable since 2007/2008, with drama content clearly dominating.

The majority of the top ten programmes that were broadcast from 2007/2008 to 2011/2012 were in languages other than English or Afrikaans. In 2011/2012 specifically, the top three programmes were multi-lingual, followed by programming in isiZulu, Tshivenda, Sepedi and Sesotho.

Table 22: Top 10 programmes screened

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
1	Generations (Multi-Lingual, Drama)	Generations (Multi-Lingual, Drama)	Generations (Multi-Lingual, Drama)	Generations (Multi-Lingual, Drama)	Generations (Multi-Lingual, Drama)
2	Sarafina (Drama)	Tshisa (Isixhosa, Drama)	Montana (Multi-Lingual, Drama)	Society (Multi-Lingual, Drama)	Soul City (Multi-Lingual, Drama)
3	Family Bonds (Multi-Lingual, Drama)	Shakespear: Death Of A Queen (Sepedi, Drama)	Society (Multi-Lingual, Drama)	Fifa Kick Off Celebration Concert (Documentary)	Zone 14 (Multi-Lingual, Drama)
4	International Smackdown (Sport)	Soul City (Multi-Lingual, Drama)	15th SAMA Awards (Current affairs)	Rhythm City (10% African Languages, Drama)	Intsika (Isizulu, Drama)
5	Zone 14 (Multi-Lingual, Drama)	Generations 15 Year Birthday Special (Multi-Lingual, Drama)	Family Bonds (Multi-Lingual, Drama)	Ekasi: Our Stories My Four Room (Multi-Lingual, Drama)	Skeem Saam (Sepedi, Drama)
6	International	Generations 15	Rhythm City (10%	State Of The	Rhythm City (10%

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
	Raw (Sport)	Year Down Memory Lane (Multi-Lingual, Drama)	African Languages, Drama)	Nation Address 2011 (Current Affairs)	African Languages, Drama)
7	Soul City (Multi-Lingual, Drama)	Mirror Mirror (Multi-Lingual, Drama)	Zone 14 (Multi-Lingual, Drama)	Ga Re Dumele (Sesotho, Drama)	Muvhango (Tshivenda, Drama)
8	SAMA Awards 2007 (Current Affairs)	Shakespear - Ugugu No Andile (Isizulu, Drama)	Ga Re Dumele (Sesotho, Drama)	Lesilo Rula (Sesotho, Drama)	Lesilo Rula (Sesotho, Drama)
9	Divers Down (Isixhosa, Drama)	Zone 14 (Multi-Lingual, Drama)	Stokvel (Sesotho, Drama)	Muvhango (Tshivenda, Drama)	Home Sweet Home (Sesotho, Drama)
10	Muvhango (Tshivenda, Drama)	Ubizo: The Calling (Multi-Lingual, Drama)	Moferefere Lenyalong (Sesotho, Drama)	Stokvel (Sesotho, Drama)	Ga Re Dumele (Sesotho, Drama)
	80% local	100% local	100% local	90% local	100% local

Source: Television Broadcaster Survey

As an alternative comparison, Table 23 lists the top ten shows (excluding news) for a single week in 2013, all of which are South African productions. It includes many of the same shows as those captured in the Television Broadcaster Survey, but it should be noted that Table 23 lists the top ten shows for only one week, whereas Table 22 lists the top ten shows throughout the year. As also reflected in the market analysis provided earlier, SABC 1 draws the most viewers, with the top 5 shows being broadcast on this channel. Drama and soap opera formats continue to dominate the viewer ratings – particularly those including languages other than English and Afrikaans. In fact, the majority of the top ten shows during this week in March are either in African languages or multi-lingual.

Table 23: The top ten shows (excluding news) for 18-24 March 2013

	Title	Channel	Viewers ('000)	Genre	Language	Produced by	Premiered
1	Generations	SABC 1	7 499	Soap	Multi-lingual	Mfundi Vundla	1994
2	Zone 14	SABC 1	5 464	Drama	Multi-lingual	The Bomb	2005

	Title	Channel	Viewers ('000)	Genre	Language	Produced by	Premiered
						Shelter	
3	Intersexions	SABC 1	5 357	Educational drama		Produced by Quizzical Pictures in partnership with US funder John Hopkins Health and Education in South Africa.	2010
4	Skeem Saam	SABC 1	5 050	Educational drama	Sepedi	Produced by PEU Communication Solutions with support from the Gauteng Film Commission and SABC Education.	2011; second series: 2013.
5	Tempy Pushas	SABC 1	4 071	Drama	Multi-lingual	Endemol	February 2013
6	Muvhango	SABC 2	3 375	Soap	Tshivenda	Word of Mouth Productions	1997
7	Scandal!	e.tv	3 260	Soap	Multi-lingual	Ochre Media	2005
8	Rhythm City	e.tv	3 116	Soap	10% African languages	Quizzical Pictures	2007
9	My Perfect Family	SABC 1	2 877	Sitcom	Multi-lingual	Burnt Onion Productions	2011; second season: 2013
10	eKasi	e.tv	2 816	Drama anthology series	Multi-lingual	Created by Vusi Twala; produced by various	2009; Fourth season: 2012.

	Title	Channel	Viewers ('000)	Genre	Language	Produced by	Premiered
						production companies for e.tv.	

Source: SAARF TAMS

The table below lists the top ten movies that were screened by free-to-air television broadcasters from 2007/2008 to 2011/2012. Movies that were screened by more than one channel and which made it into the top 10 twice (*Tsotsi* in 2007/2008 and *Mr Bones 2: Back from the past* in 2011/2012) were only included in the position when they logged the largest number of viewers.

Of the top ten films that were screened from 2007/2008 to 2011/2012, the majority were foreign English films. It is however difficult to reach any final conclusions on this without more information on the times that South African and international movies were broadcast (prime time or out of prime time) and how many South African films comparative to international films were shown over the entire year.

Table 24: Top 10 movies screened 2007/2008 – 2011/2012

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
1	**Tsotsi**	*3 Ninjas Kick Back*	*The Marine*	*Rush Hour 3*	*Rush Hour 3*
2	*Anacondas: The Hunt For The Blood Orchid*	*Double Team*	*Anacondas: The Hunt For The Blood Orchid*	*The Tuxedo*	*Little Man*
3	*Anaconda*	*The Rundown*	*Anaconda*	*3 Ninjas*	*The Marine*
4	*In Hell*	*Kung Fu Hustle*	*3 Ninjas*	*Kung Fu Hustle*	**Mr Bones 2: Back From The Past**
5	*Like Mike*	*Double Impact*	*Like Mike*	*Garfield: 2*	*Dr Dolittle*
6	*The Fast And The Furious*	*Millenium Menace*	*Spider Man*	*3 Ninjas High Noon Mega Mountain*	*The Medallion*
7	*Home Alone*	*3 Ninjas*	*Like Mike 2: Streetball*	*Are We There Yet*	*Spider-Man*
8	*The Medallion*	*XXX: The Next*	*Spiderman 3*	**Mr Bones 2: Back**	*Spiderman 3*

		Level		**From The Past**	
9	*Street Fighter*	**There's A Zulu On My Stoep**	*The Adventures Of Sharkboy And The Lavagirl*	**Mama Jack**	*Anacondas: The Hunt For The Blood Orchid*
10	**Sarafina**	**Oh Schucks Here Comes Untag**	*Enter The Dragon*	*Two Brothers*	*Mr Bean's Holiday*
	20% local	20% local	None local	20% local	10% local

Source: Television Broadcaster Survey

Table 25 below lists the top ten shows per channel according to TAMS information. The fact that more South African content makes this list on SABC 1 and SABC 2 could reflect the fact that they are required in terms of the local content regulations and their licence conditions to air more South African programming including local programmes in languages other than English. Final conclusions on different audiences' preferences however could only be made if extensive audience research was conducted.

Table 25 Top 10 shows per channel

	SABC 1	SABC 2	SABC 3	e.tv	M-Net
1	**Generations**	**Muvhango**	**Isidingo (local multilingual soap)**	Anacondas Trail of Blood (International made for TV movie)	**Carte Blanche (Local curent affairs)**
2	**Zone 14**	**Ga Re Dumele (Setswana sitcom)**	Days of our lives (Foreign soap)	**Scandal**	Blue Bloods (International police drama series)
3	**Intersexions**	**Mponeng (Comedy)**	MacGyver (International series)	**Rhythm City**	Grey's anatomy (International drama series)
4	**Skeem Saam**	**Bophele ke Semphekgo (Drama series)**	The secret life of primates (International documentary)	**eKasi**	Sherlock Holmes: Game of Shadows (International movie)
5	**Tempy Pushas**	**7de Laan (Afrikaans soap)**	**English News**	Bloodsport (International movie)	Chicago Fire (International drama series)
6	**Soccer: CAR vs SA**	**Tlharantlhope**	**Noah's Ark (Local drama)**	Spiderman 2 (International	Revenge (International thriller

	SABC 1	SABC 2	SABC 3	e.tv	M-Net
				movie)	series)
7	**Zulu News**	**Speak Out (Current affairs/consumer rights series)**	Numb3rs (American drama series)	**e.tv News**	The Good Wife (International drama series)
8	**Xhosa News**	**Afrikaans News**	**Top Billing (Local magazine programme)**	I shouldn't be alive (International reality show)	American idol (International reality show)
9	**My perfect family**	**Fokus (Afrikaans current affairs)**	The Amazing Race (International reality show)	Modern Family (International sitcom)	Masterchef Australia (International reality show)
10	**Turn it out (local dance reality) viewers)**	**Motswako (Talk show)**	3 Talk (Local talk show)	Fear Factor (International reality show)	Dallas (International soap)

Source: TVSA Primetime Viewing Figures 18-24 March 2013112

In response to questions on the most popular content in the Television Broadcasting Survey, DStv provided a list of the channels that they air that are compiled and uplinked in South Africa (see list below).

The broadcaster purchases 44 South African compiled channels from a variety of suppliers. According to the information provided for the survey, DStv's sister company M-Net (Electronic Media Ltd) produces 26 of these channels (i.e. more than 50%).

112 http://www.tvsa.co.za/default.asp?blogname=tv_ratings

Table 26: Local television channels offered by Multichoice[113]

	Channel Supplier	Channel	Primary Language
1	1KZN Community Television	1 KZN	English
2	African Business Channel (Pty) Ltd	HOME Channel	English
3	African Business News (Pty) Ltd	CNBC Africa	English
4	Bay Community Television	Bay TV	English
5	e.tv (Pty) Ltd	eNews Channel	English
6	Electronic Media Ltd	Africa Magic Entertainment SA	English
7		Big Brother Africa	English
8		Big Brother Africa Extra	English
9		Channel O	English
10		Idols Extra	English
11		KykNET	Afrikaans
12		KykNET & Kie	Afrikaans
13		KykNET Musiek	Afrikaans
14		Magic World	English
15		MK	Afrikaans
16		M-Net (SD & HD)	English
17		M-Net Action	English
18		M-Net Action+	English
19		M-Net Comedy (SD & HD)	English
20		M-Net Drama & Romance (SD & HD)	English
21		M-Net Family (SD & HD)	English
22		M-Net Movies Zone	English
23		M-Net Premiere (DS & HD)	English
24		M-Net Series Reality	English
25		M-Net Series Showcase (SD & HD)	English
26		M-Net Series Zone	English
27		M-Net Showcase (SD & HD)	English
28		M-Net Stars	English
29		Mzansi Magic	English
30		Mzansi Music	English
31		Mzansi Wethu	English
32		Vuzu	English
33	Islamic TV Foundation	iTV Networks	English
34	Mindset Network Inc	Mindset Learn	English
35	Ochre Media (Pty) Ltd	Saffron TV	English, Hindi & Tamil
36	One Gospel Television (Pty) Ltd	One Gospel	English
37	Rhema Ministries Ancillary Services	Rhema TV	English

113 Note that these are listed alphabetically as DStv did not indicate relative popularity of the channels).

	Channel Supplier	Channel	Primary Language
38	Soweto Community Television	Soweto TV	English
39	Telemedia (Pty) Ltd	Parliamentary Service	English
40	The African Business Channel	Business Day TV	English
41		Ignition	English
42	Trinity Broadcasting Networks (USA)	Trinity Broadcast Network	English
43	Tshwane Community Television	Tshwane TV	English
44	Urban Brew	Dumisa	English

Source: Multichoice (2013)

While the data provided by DStv does not allow the researchers to gauge the popularity of the service's local channels relative to the other channels in their bouquets, the table below indicates some of the larger channels in the DStv bouquets.

Table 27: Popular DStv channels, 2011/2012 (past 7 days) [114]

Channel	Number of viewers ('000)	Description	Packaged in	Primary language
M-Net Action	3 563	Channel dedicated to action movies and adventure	South Africa	English
Africa Magic	3 492	Entertainment channel showcasing the work of African filmmakers.	South Africa	English
Supersport 4	3 100	Additional channel featuring overflow live sporting events, especially for soccer games.	South Africa	English
Supersport 3	3 085	Channel covers sporting events, with a focus on soccer.	South Africa	English
National Geographic	3 042	Provides documentaries from around the world about wildlife, adventure and exploration, natural phenomena and world cultures.	United Kingdom	English

Source: OMD (2013); DStv (2013)

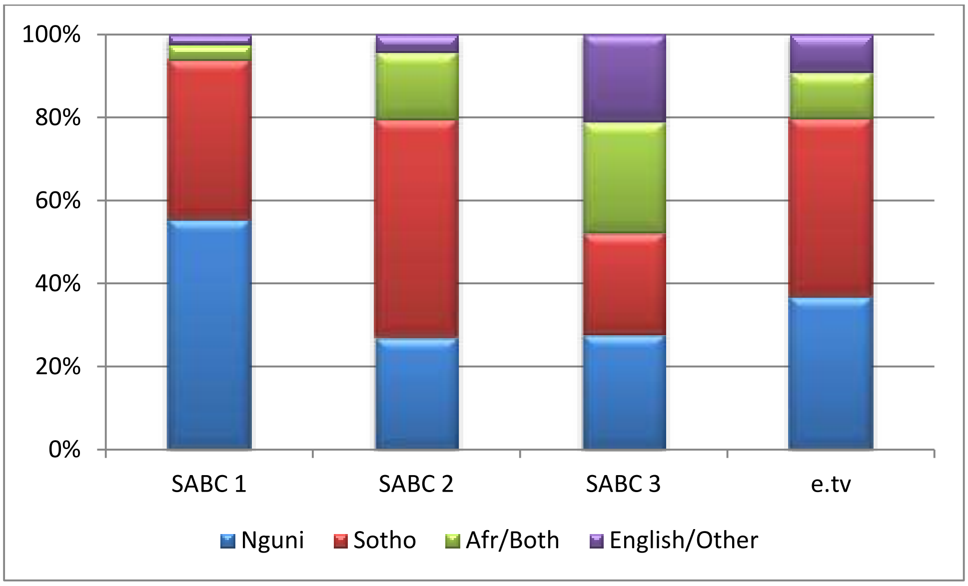
114 OMD, "Future of Media Blueprint 2013: South Africa & SADC Media Facts", http://www.omd.co.za/media_facts/FOM029_Blueprint_OMD_mediafacts2013.pdf

c) *Analysis of content by language*

According to the SABC, SABC 1's target audience is speakers of Nguni languages, while SABC 2's is Afrikaans and seSotho speakers. SABC 3 broadcasts in English with some Afrikaans drama.[115] These different target audiences are illustrated in Figure 42, indicating the composition of audiences according to language for the top 10 programmes broadcast by each of the free-to-air broadcasters.

The results suggest that in the case of the public broadcasters, licence conditions specifying their language of broadcast together with the local content regulations have ensured the availability of content that specifically attracts an audience which predominantly consists of speakers whose home language is not English.

Figure 42: Average proportion of audience by language of top 10 programmes, 2012



Source: SABC data (2012) Profiles of top 10 programmes

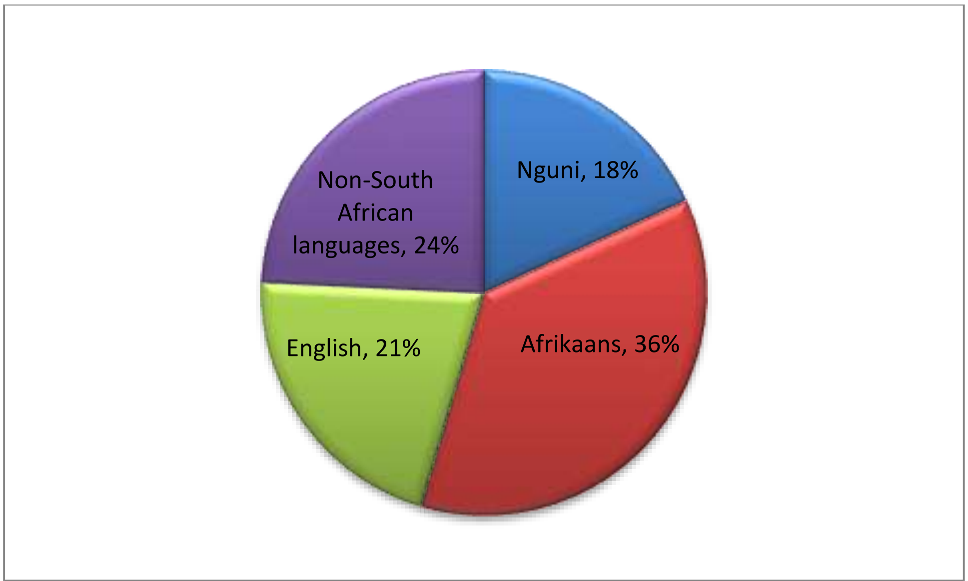
A key difference between programming by the subscription broadcaster and free-to-air broadcasters is that, whereas the majority of the top ten shows on free-to-air broadcasters are multilingual, popular channels on DStv mostly use

115 SABC. (2012). Why media: Snapshot of the SA Media Landscape presentation.

English as the primary language. It should be remembered that DStv broadcasts both in and outside of South Africa and therefore focuses on English programming as a common language, but also includes a number of dedicated Afrikaans channels in their bouquets.

M-net provided data on the proportion of spending directed toward the production of programming for audiences of different languages. The split is illustrated in Figure 43 below, and indicates that their investment in the production of local content is not limited to content directed at an English speaking audience.

Figure 43: Proportion of contracted cost for producing programming by audience language, 2012



Source: M-Net memorandum to Television Broadcaster Survey (2013)

5.4.3 Financial analysis[116]

The financial analysis considers various cost and revenue indicators associated with broadcasting local content. It compares the cost of local content with the proportion of local content screened, and investigates the cost of producing different genres of content. It further looks at the relative cost of local and international content, and the associated advertising

116 Note that the researchers did not in all instances have access to audited financial statements to verify the information reported in the Television Broadcaster Survey.

revenue. It finally investigates some trends related to the commissioning of content. The analysis includes data for public, public commercial and subscription terrestrial broadcasters. E.tv reported that, due to the confidential nature of the information, they are not able to provide this data.

a) The relative cost-effectiveness of providing local content

Comparing the reported proportion of broadcast time allocated to local content, to the recorded percentage of the associated local content acquisition costs allows insight into the relative cost of local content. This comparison, as reported in the Television Broadcaster Survey, is illustrated in Figure 44 to Figure 46.

Figure 44: Public broadcasters: Average percentage of broadcast time allocated to local content relative to percentage of content acquisition costs

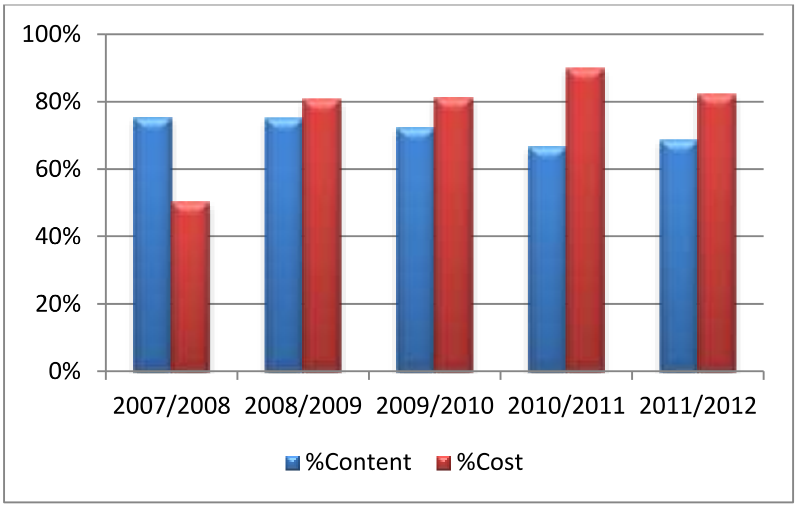


Figure 45: Public commercial: Average percentage of broadcast time allocated to local content relative to percentage of content acquisition costs

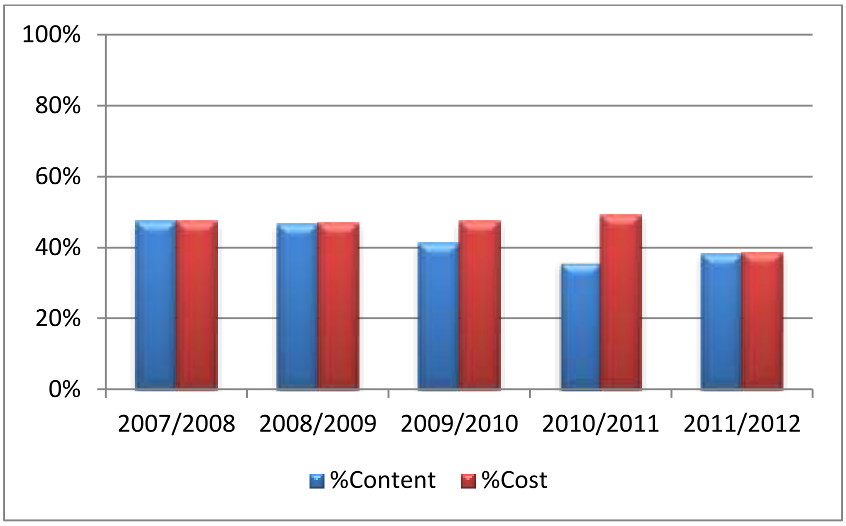
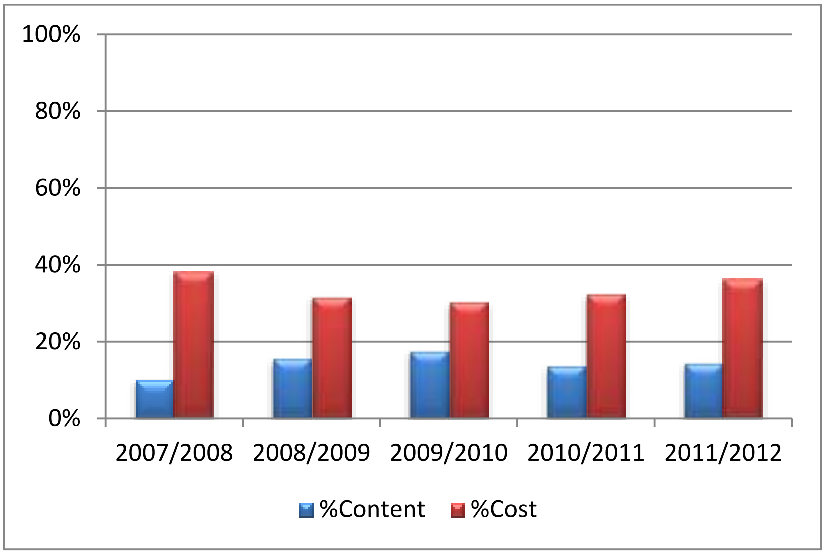


Figure 46: Subscription terrestrial: Average percentage of broadcast time allocated to local content relative to percentage of content acquisition costs



Source: Television Broadcaster Survey

In line with the higher minimum content requirements for *public* broadcasters (55%), these broadcasters direct a larger proportion of spending to South African content than public commercial broadcasters and terrestrial subscription broadcasters. For public broadcasters, the percentage of broadcast time allocated to local content exceeded the reported proportion of content acquiring costs associated with such broadcasts in 2007/2008.

However, from 2008/2009 onward the reported proportional cost associated with acquiring local content exceeded local content's contribution to total broadcast time to an increasing extent. This seems to indicate that, for public broadcasters, the cost of purchasing local content relative to other content increased between 2007/2008 and 2011/2012.

For the public commercial broadcaster (SABC 3), the reported relative cost of acquiring local content appears to be somewhat more favourable than for the public broadcasters. Based on the results reported in the Television Broadcaster Survey, it was relatively more expensive in 2009/2010 and 2010/2011 to fill broadcast time with local content compared to other content, in 2011/2012 the cost of local content was proportional to the amount of local content screened.

For the subscription analogue terrestrial broadcaster (M-Net main channel), the proportional cost of local content exceeded the proportion of local content screened. The difference narrowed in 2009/2010, but increased again in 2010/2011 and 2011/2012. Given the small proportion of local content screened by this broadcaster, such content appears to be relatively expensive. These differences could, however, be a function of the different types of genres screened, as, for example, local drama costs more per minute than say South African documentary programming. This issue is elaborated on further in the following section.

b) The relative cost of producing different genres

There are clear variations in the cost of producing different genres of content. Table 28 lists the cost per minute of different genres as stated in the SABC Producer Guide: The Art of Pitching (2005), as well as the cost per minute of a small sample of productions included in the SABC Nov 2008 Brief Book.

In each instance it is clear that drama content is the most expensive genre to produce. However, as is illustrated in Table 22 and Table 23, Drama content is among the genres that draw the largest audiences, suggesting that broadcasters can recoup the costs through advertising. Children's content, in contrast, is among the least expensive content to produce. From interviews with broadcasters, however, the researchers learned that in spite of its low cost children's content is often not cost-effective due to the poor advertising revenue it attracts.[117]

Table 28: Cost per minute of producing different genres of content[118]

Genre	Cost per minute (SABC Producer Guide, 2005)	Cost per minute (SABC Nov 2008 Brief Book, Incepted RFPs)	e.tv (TV Broadcaster Survey, avg. 2007/8-2011/12)
Talk shows	R 400		
Magazine programmes	R 1 000 – R 2 000		
Documentaries	R 2 500 – R4 000		R 4340
Soap operas & Sitcoms	R 4 500 – R 6 000		
Drama	R 8 000 – R 15 000	R 12 000	R 6000
Foreign programming	$ 100 (± R 1 000)		
Religion		R 5 450	
Educational/informal knowledge building		R 2 860	R 2480
Children's programming		R 1 986	R 852
Current affairs			R 1960

The results tabled above were emphasised through an interview with Quizzical Pictures, which noted that, despite the high cost of producing drama content, this genre is getting the most attention and gaining prominence due to audience preferences. Cheaper to produce, reality shows are also gaining prominence they said due to increased audience demand.

The interviewee stated that genres that are less lucrative but important from a cultural perspective (such as documentaries or children's programming) suffer as they do either do not draw similarly large audiences, or do not

117 Interview with e.tv. 18 October 2013.

118 An independent producer also provided figures in the regard, stating that they typically produce drama content at R11 500/min, sitcoms at R10 000/minute and children's programming from R1500-2800/minute. It further noted that private channels such as DStv and e.tv has traditionally paid less for content than the SABC. (Interview Notes. Quizzical Pictures. 9 October 2013)

attract the same levels of advertising and sponsorship revenue. Quizzical Pictures stated that this limits the focus by broadcasters on such key public interest programmes as even the public broadcaster is largely dependent on advertising and sponsorship revenue for its survival.[119]

c) The relative cost-effectiveness of local versus international content

The most common form of acquiring South African content is to commission content rather than to acquire rights to content (rights are bought through licensing agreements for foreign and local programmes), although there is an emerging trend by some broadcasters to share rights. It is consequently expected that South African productions will cost more than international content (as also suggested by the results presented in the previous section).

However, to make a proper comparison, it should be noted that long term investment in local content is not the same as paying a once off licence fee for the right to broadcast a foreign production. Broadcasters who commission South African content can potentially recoup some of the costs for such content by repeating the programmes and/or selling the rights for this content to others. International content is further typically sold to numerous buyers, allowing the content to be sold at a lower price and as such generating revenue for producers (or the holders of the rights).

It should further be noted that, while the current regulatory regime does not limit the number of repeats that a broadcaster may air, it does state that the first repeat will only count 50% of the original broadcast in terms of contributing to the minimum broadcasting requirements. In addition, further repeats cannot be counted toward meeting the quotas. SABC noted the limitation that the regulations place on recouping the cost of local content productions, specifically within the context of drama programming: "*Dramas in particular are very costly and the regulations should recognise that we*

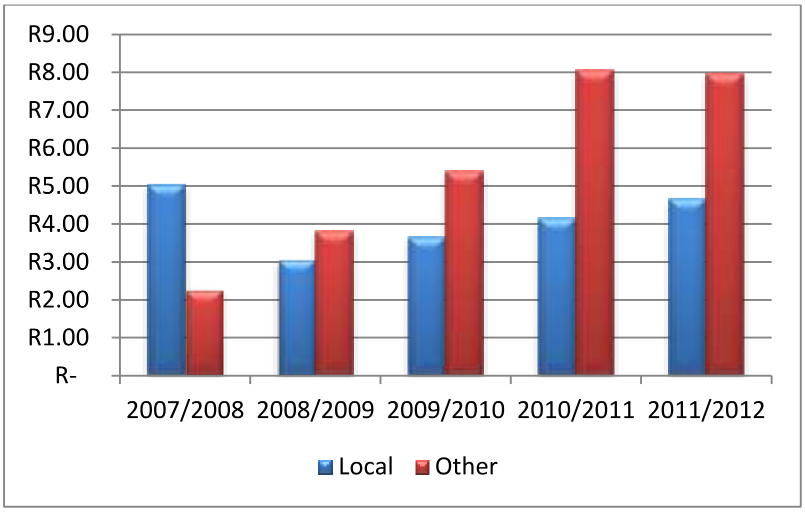
119 Interview Notes. Quizzical Pictures. 9 October 2013.

need to sweat assets and allow for more repeats of drama to be credited as local content."[120]

Figure 47 investigates the relative cost of local and international content for public broadcasters.[121] It illustrates the advertising revenue received during local content broadcasts for every Rand spent on acquiring local content. Since subscription broadcasters follow a different financial model, those broadcasters are not comparable in this context.

For both SABC 1 and SABC 2, revenue from advertising and sponsorships received during international content broadcasts per Rand spent on international broadcasts, outweighed the same indicator for local content from 2008/2009 onwards. This suggests a higher cost-effectiveness for international content, but can most likely be ascribed to the relatively low cost of international content.

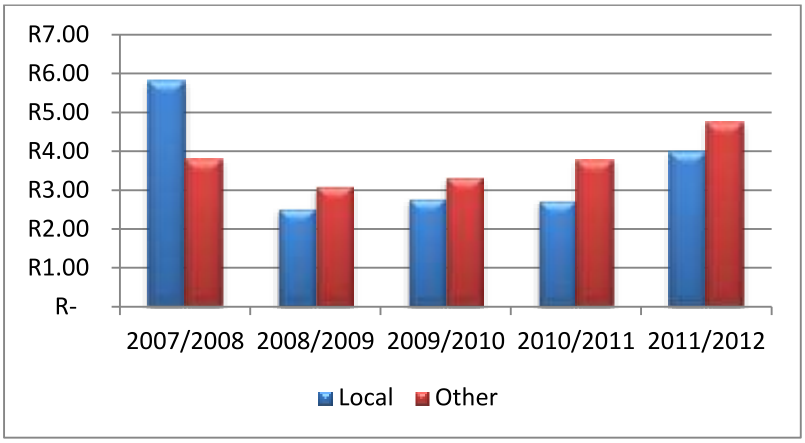
Figure 47: SABC 1: Advertising revenue from local and international content divided by cost of acquiring local and international content respectively



120 Interview with SABC. 16 October 2013.

121 Unfortunately due to data discrepancy issues the public commercial broadcaster could not be included in the analysis of advertising revenue.

Figure 48: SABC 2: Advertising revenue from local and international content divided by cost of acquiring local and international content respectively



Source: Television Broadcaster Survey

The above figures on the cost-effectiveness of local and international content is put in perspective in Figure 49 and Figure 50 below. While international content appears to be more cost-effective than local content (as illustrated above), it should be noted that income from these sources of content only accounts for a small proportion of total revenue received from advertising and sponsorships. For SABC 1 and SABC 2, revenue from advertising and sponsorships received during local content broadcasts accounted for 73% and 69% respectively of total revenue received from advertising and sponsorships.[122]

Comparing these proportions to the annual percentage of local content broadcast by public broadcasters allows further insight into the revenue contribution of local content. These comparisons are illustrated in Figure 49 and Figure 50. In both instances it appears that the proportion of content acquisition costs directed towards local content has increased, without a concommitant increase in the proportion of local content screened or an increase in advertising revenue received from local content.

In terms of advertising revenue, it appears that for SABC 1, the proportion of local content screened attracted on average a comparable proportion of

122 As reported in the Television Broadcaster Survey, these proportions remained constant over the entire survey period.

revenue from advertising and sponsorships received during these broadcasts. SABC 2, during the last two years of the analysis, appears to have attracted disproportionately more advertising revenue during local content broadcasts than the proportion of local content that was broadcast.

Figure 49: Proportion of local content screened compared to advertising revenue and the cost of acquiring local content for SABC 1

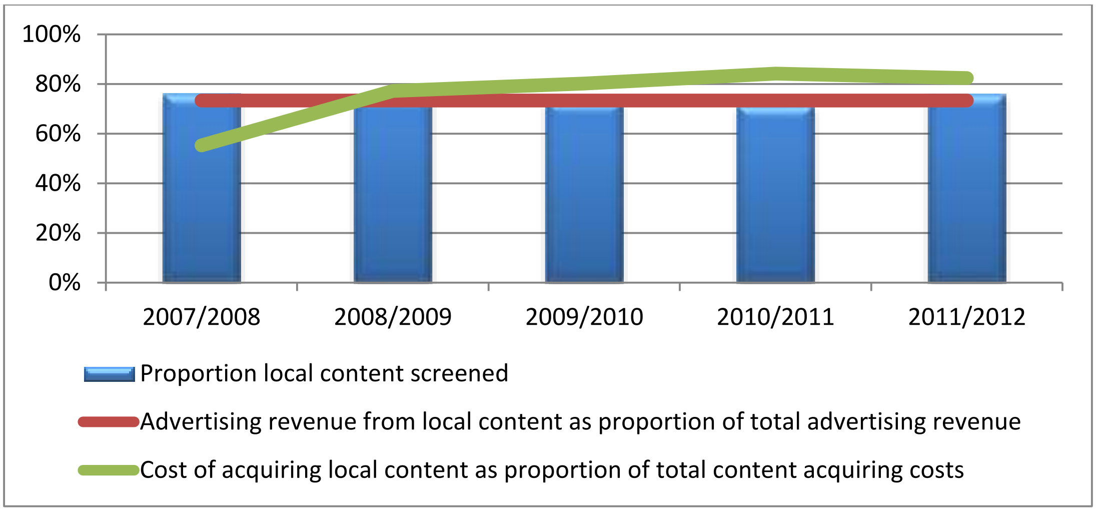
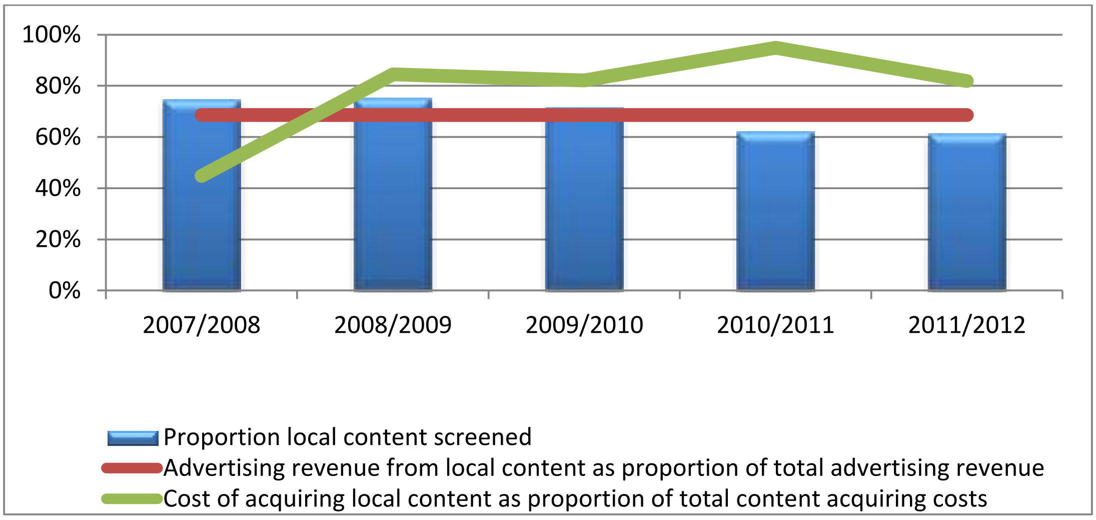


Figure 50: Proportion of local content screened compared to advertising revenue and the cost of acquiring local content for SABC 2



Source: Television Broadcaster Survey

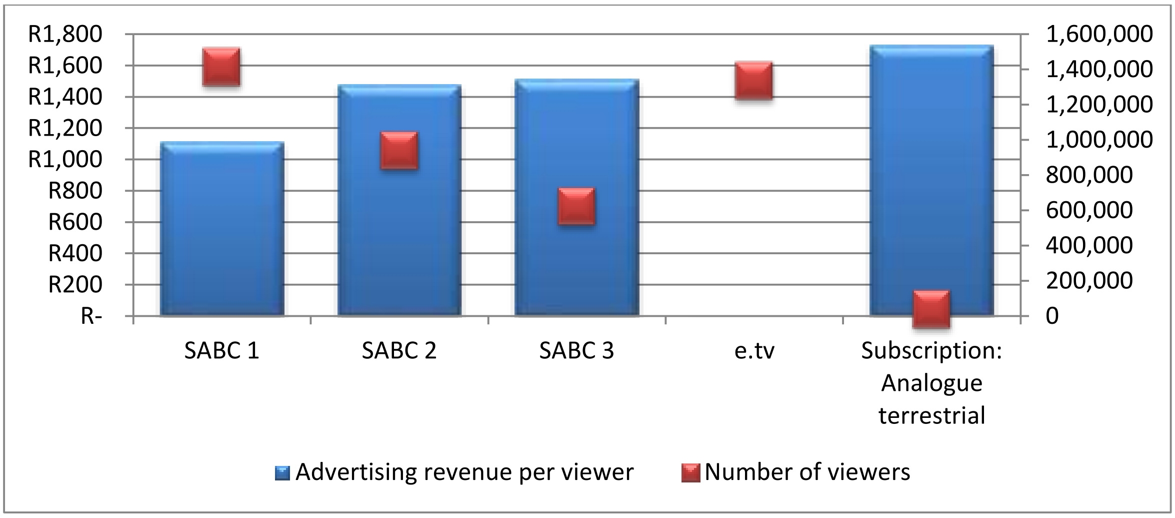
d) Advertising revenue from local content broadcasts

This section further interrogates the issue of advertising revenue, raised in the previous section. In the first instance, the researchers estimate the advertising revenue received during all broadcasts per the average number of viewers during all broadcasts. The comparison is made for public (SABC 1 and SABC 2), public commercial (SABC 3) and subscription terrestrial (M-Net) television broadcasters given data availability.

It should however be noted that, in this regard, subscription broadcasters are not directly comparable to free-to-air broadcasters as they follow a different financial model given that, in addition to advertising revenue, they generate their primary source of income through subscription fees. The researchers had insufficient data to include class licensees in the analysis, but given that they often rely on unsolicited content (e.g. TBN), as well as other sources of income such as grants, donations and placement fees (e.g. Cape TV (CTV)) these broadcasters would also not be directly comparable.

The results show that broadcasters whose audiences consist of viewers within higher LSM groups (and whose 'average' viewer is consequently more affluent) predictably tend to generate a higher advertising revenue per viewer (as illustrated below). In absolute terms, however, and based on the results reported in the Television Broadcasters Survey, public broadcasters receive a higher overall revenue from advertising and sponsorships, presumably driven by their larger audiences.

Figure 51: Average revenue per viewer from advertising and sponsorship from all broadcasts, by type of broadcaster, 2011/2012



Source: Television Broadcaster Survey

A brief analysis is also presented to establish the extent to which advertising revenue generated by local and international content is a function of the LSM-groups that are reached by the different types of programming. Table 29 list the top ten programmes per (actual) audience by LSM grouping for the two public broadcasters and the public commercial broadcaster. It emphasises the fact that local content appears to have become a commercial imperative for broadcasters, as was noted earlier in this section.

The results show that for the two public broadcasters, each of the top ten programmes screened in 2012 were locally produced. For SABC 2 specifically (whose targets audience include members from higher LSM groups than SABC 1), audience members within LSM 5-7 and LSM 8-10 have an equal preference for local content, althought their preferred genre of programming varies: Whereas progamming for LSM 5-7 viewers is directed at SeSotho speakers, content for LSM 8-10 audiences tends to be directed predominantly at Afrikaans speakers.

Information from SABC 3, which broadcasts a lower proportion of local content, seems to indicate that higher LSM groups have a marginally higher preference for international content: Two of the ten programmes most preferred by LSM 5-7 viewers were internationally produced, while four of the ten programmes preferred by LSM 7-10 audiences were internationally produced.

Table 29: SABC 1 top 10 programming for viewers in LSM 5-8

Rank	Programming	Local/International
1	Generations	Local
2	Intersexions	Local
3	Zone 14	Local
4	Skeem Saam	Local
5	Tempy Pushas	Local
6	Zulu News	Local
7	Metro FM Music Awards	Local
8	Room 9	Local
9	Xhosa News	Local

10	Tropica Island of Treasure 5	Local

Source: SABC (2012) Snapshot of Media Landscape

Table 30: SABC 2 top ten programming in LSM 5-7 and LSM 8-10

Rank	**LSM 5-7**		**LSM 8-10**	
	Programming	**Local/International**	**Programming**	**Local/International**
1	Muvhango	Local	7de Laan	Local
2	Mponeng	Local	Afrikaans News	Local
3	Speak Out (repeat)	Local	Noot vir Noot	Local
4	Powerball	Local	London 2012 Paralympics H/L	
5	Lesilo Rula	Local	Pasella	Local
6	Tlharantlhope		Die Vierde Kabinet	Local
7	Ga Re Dumele	Local	Good Evening London	Local
8	Ses/Tsw/Sep News	Local	Music	Local/International
9	Speak Out	Local	Erfsondes	Local
10	Bophele Ke Semphego	Local	Cine 2: Voetspore	Local

Source: SABC (2012)

Table 31: SABC 3 top ten programming in LSM 5-7 and LSM 7-10

Rank	**LSM 5-7**		**LSM 7-10**	
	Programming	**Local/International**	**Programming**	**Local/International**
1	Isidingo – The Need	Local	Mr Bones 2: Back From the Past	Local
2	Days of Our Lives	International	Isidingo:the Need	Local
3	Isidingo (repeat)	Local	Days of Our Lives	International
4	7de Laan (repeat)	Local	Cricket:Sunfoil One Day International	Local
5	Hawaii Five-O	International	Mr Bean's Holiday	International
6	News	Local	Survivor Samoa	International
7	Noah's Ark	Local	Survivor Heroes vs Villains	International
8	SABC 3 Talk	Local	News	Local
9	The Secret Life of Elephants	International	News in 60 Seconds	Local
10	7th Annual South African Film&Television Awards	Local	Top Billing	Local

Source: SABC (2012)

Figure 52, Figure 53, Figure 54 and Figure 55 below provide the breakdown by LSM groupings for the top 10 programmes broadcast in 2012 on SABC 1, SABC 2, SABC 3 and e.tv respectively.

The difference in the LSM breakdown between SABC 1 and SABC 2 further shows that SABC 2's viewership consists of a somewhat more affluent audience. Of the local content screened on SABC 2, 7de Laan appears to be the only outlier, attracting an audience that falls within higher LSM groupings than is the case for the other content that is screened.

The LSM breakdown of the top ten programmes screened on SABC 3 (whose overall viewership consists of a more affluent audience than SABC 1 and SABC 2) suggests that the genre, rather than the source (local or international) largely determines the audience. This is clear from looking at, for example, Isidingo and Days of our Lives: Whereas Isidingo is locally produced and Days of our Lives is an international production, the two programmes attract an almost identical audience in terms of LSM breakdown. Locally produced Isidingo also attracts a more affluent audience than internationally produced McGyver, Hawaii Five-0 and National Geographic. In contrast, reality show Survivor and the drama Desperate Housewives, attract a more affluent audience than Isidingo.

The LSM breakdown observed for e.tv suggests a similar trend. For instance, locally produced SA's Got Talent attracts a more affluent audience than internationally produced I Shouldn't Be Alive or Breaking the Magician's Code.

In short, this brief analysis of the LSM breakdown of the top ten programmes suggests that it would be erroneous to assume that international content generally attracts a more affluent audience and consequently higher advertising revenue. Issues such as the language of programmes (e.g. 7de Laan) and the genre of content also plays an important role.

Figure 52: SABC 1: Breakdown of top 10 programmes by LSM groupings, 2012

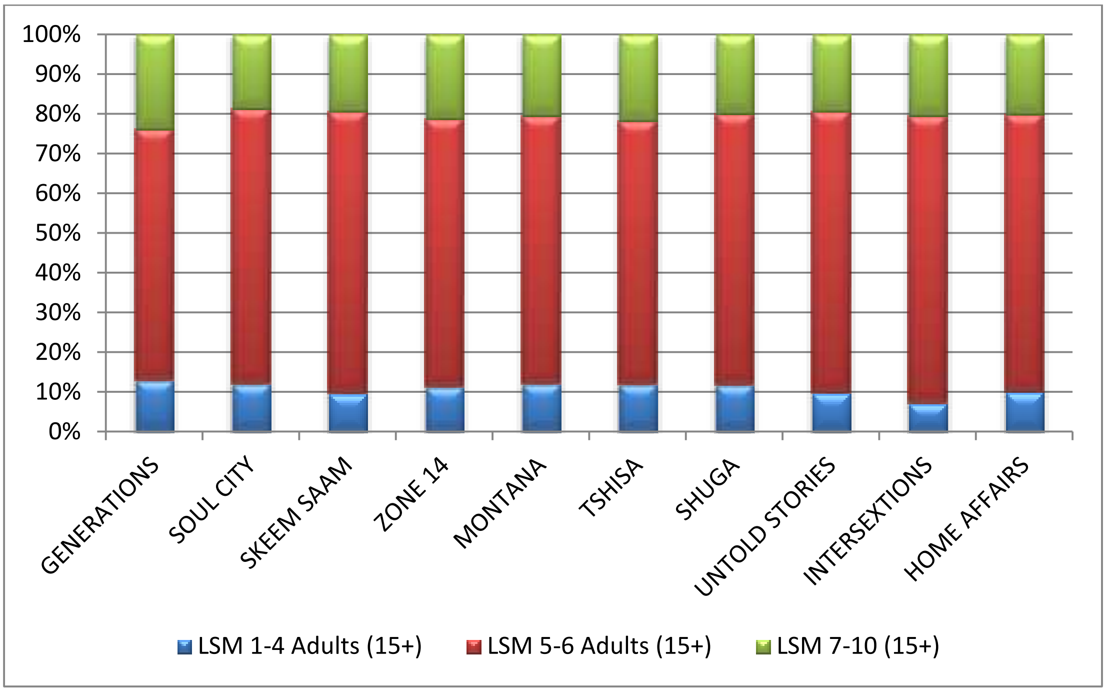


Figure 53: SABC 2: Breakdown of top 10 programmes by LSM groupings, 2012

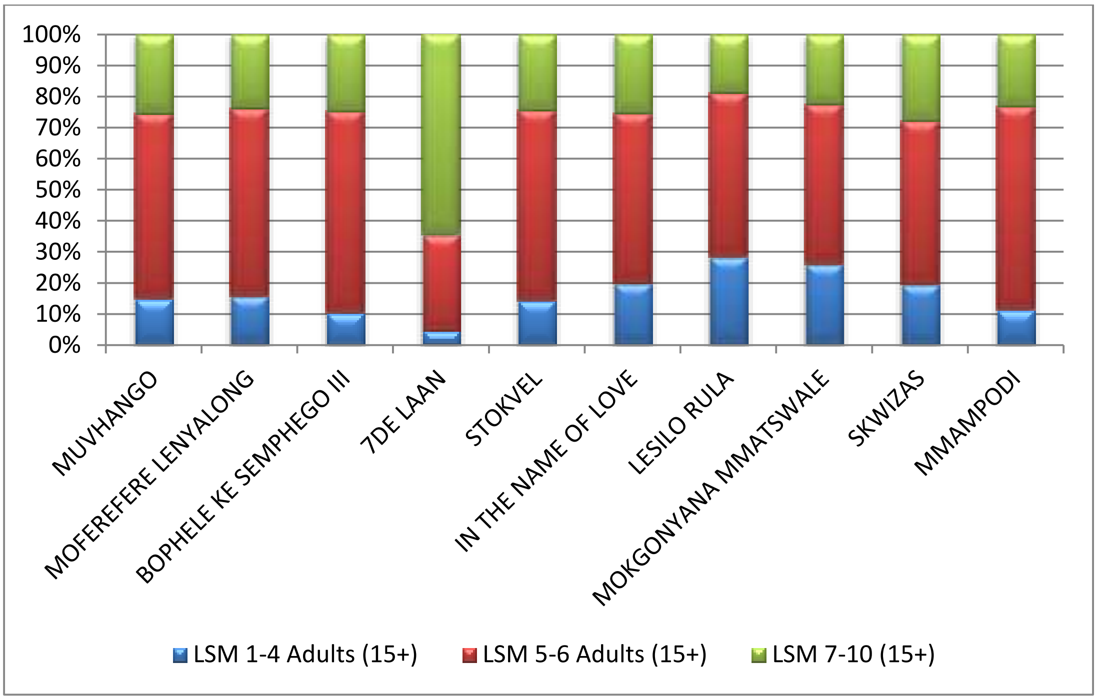


Figure 54: SABC 3: Breakdown of top 10 programmes by LSM groupings, 2012

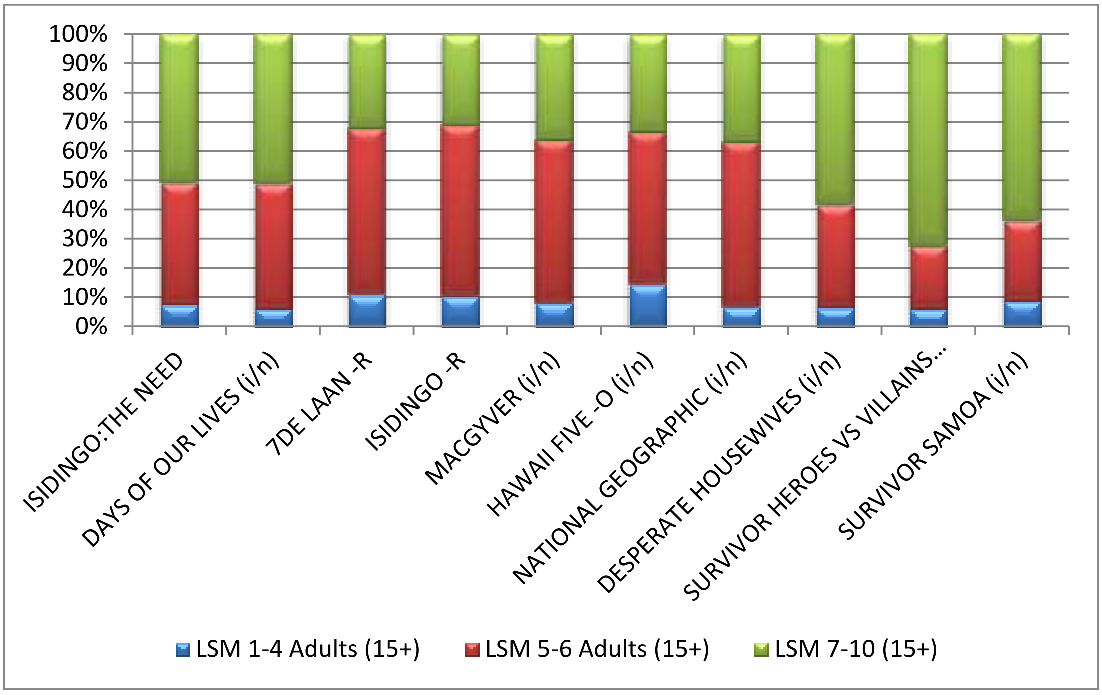
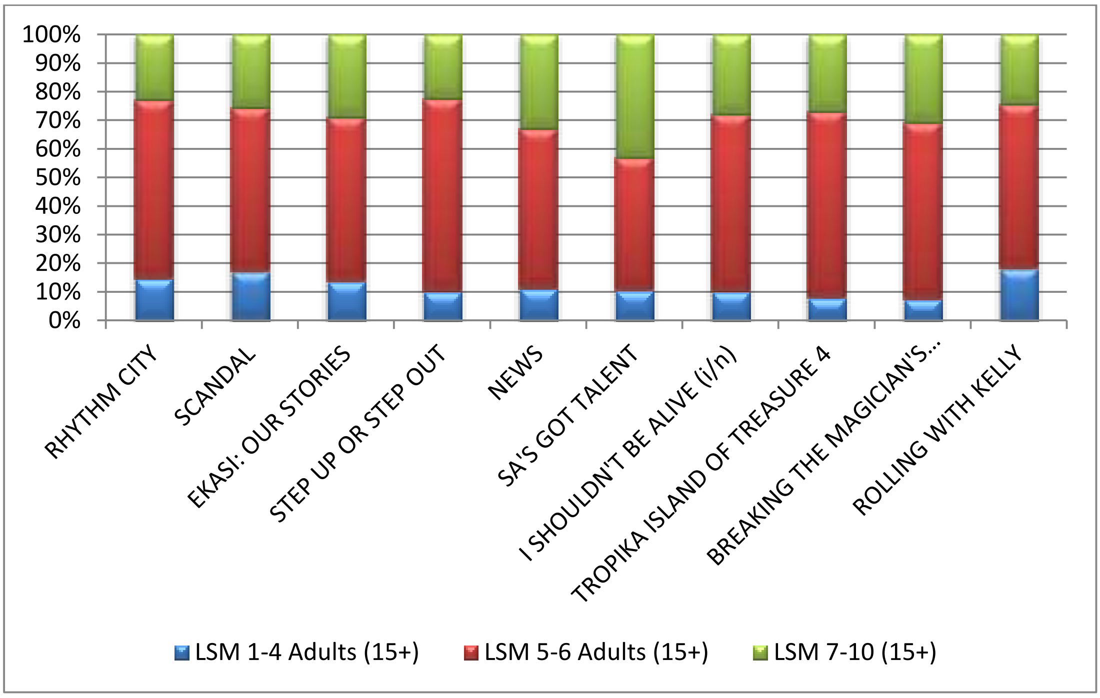


Figure 55: e.tv: Breakdown of top 10 programmes by LSM groupings, 2012

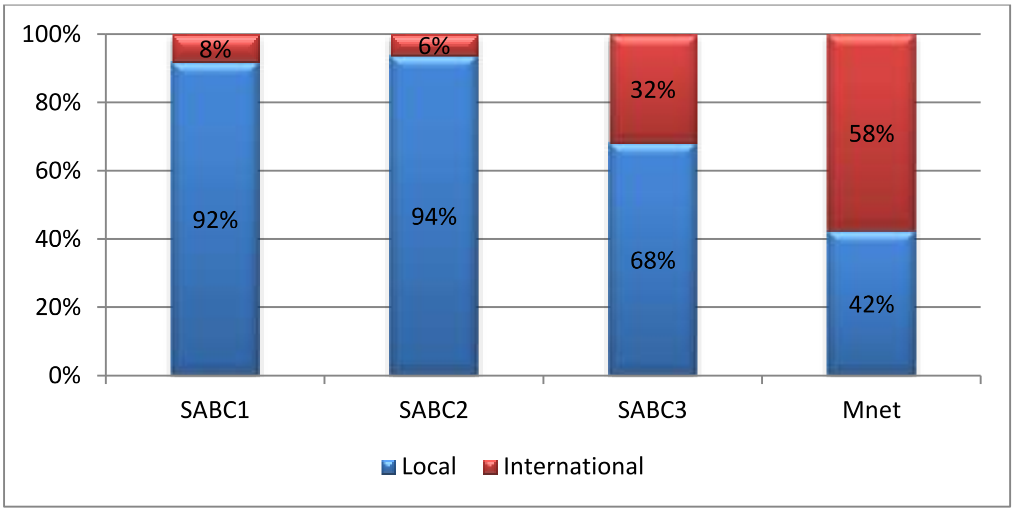


Source: Figure 52 to Figure 55: SABC (2012) Profiles of top 10 programmes

To further assess advertising revenue received during local and international content broadcasts, Figure 56 compares the proportion of revenue received from local and international content broadcasts for the top 10 programmes ranked by advertising revenue received. It illustrates that both public and public commercial broadcasters derive a large proportion of their revenue from local content. Of the top ten programmes ranked by advertising revenue, SABC 1 and SABC 2 only listed one international programme each, whereas SABC 3 listed five international broadcasts (these five programmes on average ranked below the local content broadcasts, and consequently on aggregate had a smaller contribution to overall revenue).

The subscription broadcaster M-Net, that has lower minimum content requirements, screens a larger proportion of international content and therefore derives more advertising revenue from this source of content. Seven of this broadcaster's top ten programmes ranked by revenue were international programmes. It should however be noted that aggregate advertising revenue generated by the top ten programmes of this broadcaster was significantly below that of the public and public commercial broadcasters.

Figure 56: Proportion of advertising revenue received from local and international content by the top 10 programmes ranked by advertising revenue, 2012



Source: Television Broadcaster Survey

Based on the above findings, and in line with the expected higher relative cost of local content, the research suggests that the apparent profitability of international content relative to local content (for public broadcasters) can be ascribed to the relatively low expenditure directed towards international content (as reported in the Television Broadcaster Survey), rather than this content attracting disproportionately high advertising revenue.

e) Trends in content commissioning

It is of particular importance to this study to understand where local content is sourced from and the relative cost thereof. This section considers the total expenditure directed at commissions by public and public commercial broadcasters, and the difference in the cost of content commissioned from independent producers versus internally produced content.

f) Total cost of commissioned content

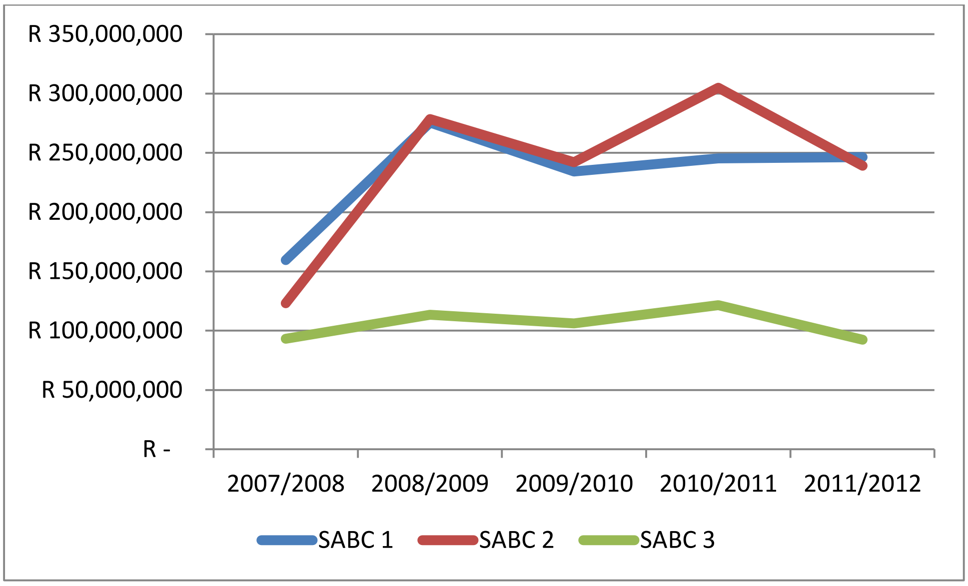
The figure below illustrates the total value of local content commissioned by public and public commercial broadcasters. As expected, the public commercial broadcaster (SABC 3) with lower local content requirements spent less on commissioning local content. This result echoes the lower cost per minute of local content aired on this channel illustrated in Figure 60. It should however also be noted that this could be a function of the type of genre that was commissioned. For both of the public broadcasters, total expenditure on commissioned local content has increased substantially after 2007/2008. Commissions by the SABC were severely affected by the organisation's financial crisis in 2009, which presumably contributed to the stagnation of commissions after 2008/2009.

During the interview with Quizzical Pictures,[123] the interviewee mentioned that almost all of the current commissions are either from the 2011 RFPs, or are re-commissioned programmes. In the same instance, while the quantity of

123 Interview Notes. Quizzical Pictures. 9 October 2013.

productions may have increased, the budgets have not matched this growth, which suggests lower revenue accrued by producers.

Figure 57: Total reported cost of commissioned local content per broadcaster



Source: Television Broadcaster Survey

g) Cost of commissions: Independent Producers versus Internal Production

Considering the relative cost of local content commissioned from independent producers as opposed to the cost of internal production provides information about the financial attractiveness of different sources of content. Figure 58 to Figure 60 below illustrate the difference in cost per minute of content commissioned from independent producers, and content produced internally (as reported in the Television Broadcaster Survey). The figures illustrate that content commissioned from independent producers is, in each instance, less expensive than content that is internally produced by the broadcaster. It is difficult to draw any firm conclusions from this, however, as the types of programming produced internally are very different to those commissioned. The channels produce news and current affairs programming internally, for example, but do not produce their own drama content.

For the two public broadcasters, the reported figures suggest that – on a cost per minute basis – the cost of content commissioned from independent producers is between 25-35% of the cost of internal productions. For the public commercial broadcaster this figure varies between 48-92%, but it should be noted that this broadcaster appears to have a much lower cost per minute for both sources of content.

Figure 58: SABC 1: Cost per minute of content commissioned from independent producers and internal production

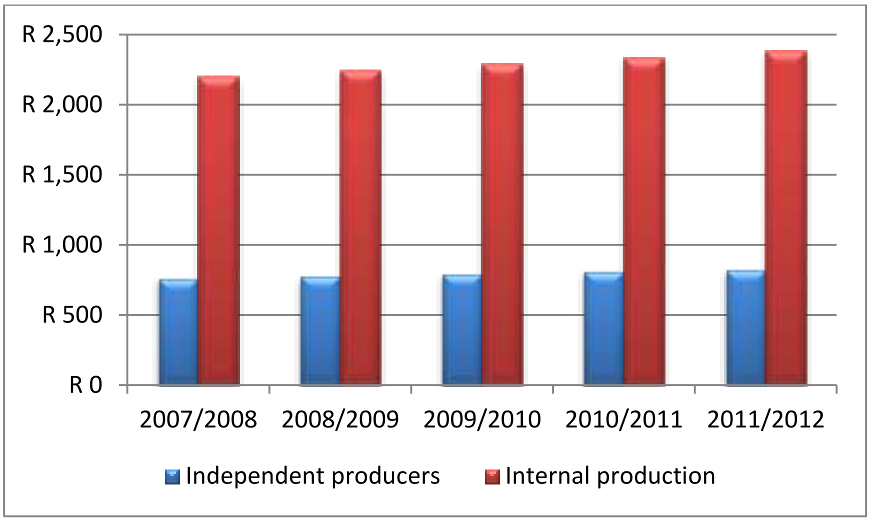


Figure 59: SABC 2: Cost per minute of content commissioned from independent producers and internal production

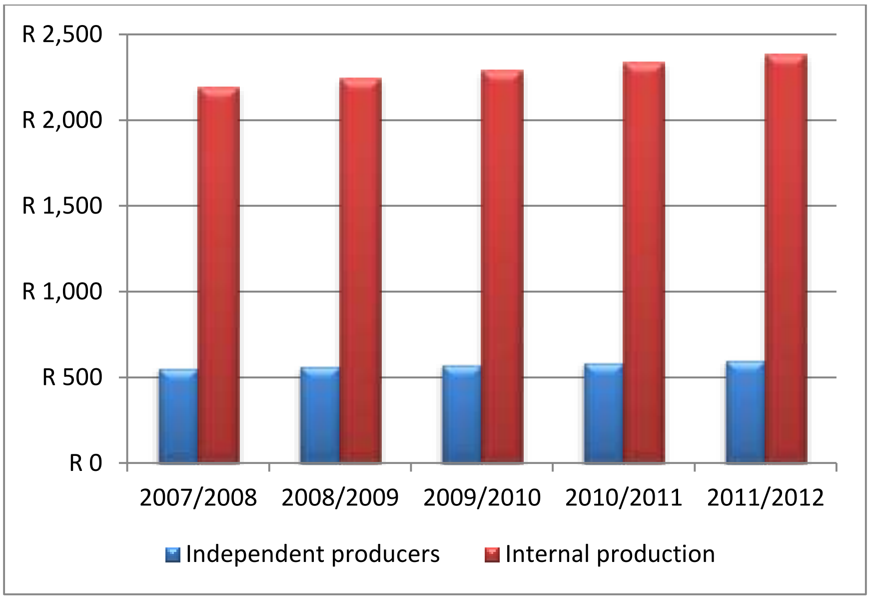
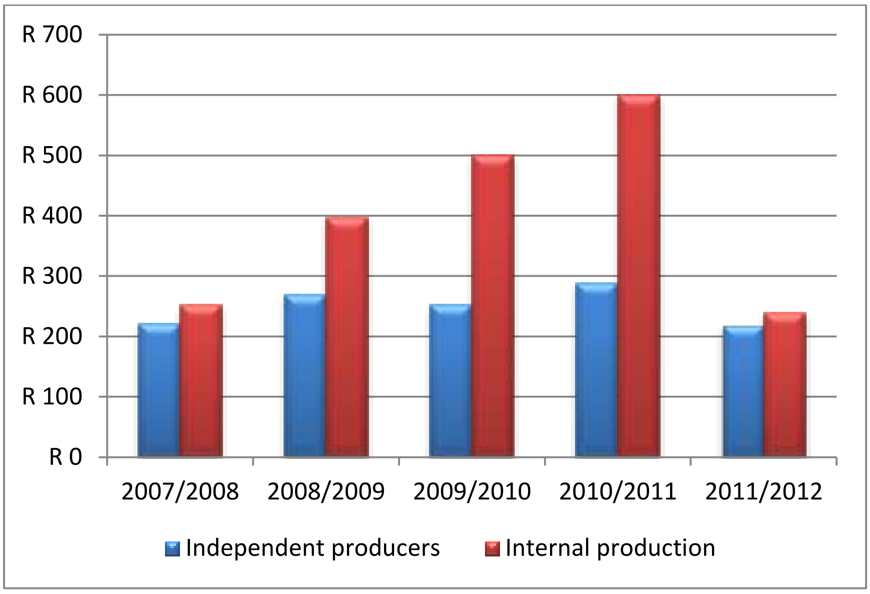


Figure 60: SABC 3: Cost per minute of content commissioned from independent producers and internal production



Source: Television Broadcaster Survey

The one community broadcaster that was able to provide information about the cost per minute of content indicated that – although content is acquired at a much lower rate – internally produced content (R27.50/min) is more expensive than unsolicited programme broadcasting (R21.60/min). This broadcaster also listed a third method of creating content, whereby content producers that make use of the broadcaster's studio receive an all-inclusive rate of R13.75/min for one programme per week.[124]

The interview with CTV further brought to light the difficulties that community broadcasters have with the commissioning 40% of their content from independent producers. Most of their content is funded by the producer through advertiser, donor or sponsorships funds.[125]

It is further noted that e.tv's licence conditions require that they commission 100% of South African content other than news and current affairs programming from the independent production sector. E.tv in turn noted that they would welcome a slight relaxation of this requirement as this would

124 Trinity Broadcasting Network. (2013) Memorandum to Television Broadcaster Survey

125 Interview with CTV. 11 October 2013.

enable them to produce more of their own content, which will become increasingly important when they have to air content for a range of channels.[126] This finding further points to the discrepancy in the data reported by SABC on the relative cost of internal production.

M-Net reported the cost per minute of various procurement methods in their response to the Television Broadcaster Survey. It indicates a lower cost per minute for internal productions, than for acquiring content from independent producers or acquiring completed productions. In should however be noted that in spite of the relatively lower cost of internal productions, M-Net expended 96% of its procurement costs on the commissioning of independent producers for the financial year ending March 2013.[127]

Table 32: Cost per minute of acquiring local content through different procurement methods, March 2013

Procurement method	Cost per minute
Acquisition of completed productions	R 20 451.24
Commissioning of independent productions	R 2 284.70
In-house productions	R 1 626.05

Source: M-Net Memorandum to the Television Broadcaster Survey

We revert back to the impact of expenditure on independent productions as discussed.

h) *Revenue from advertising and subscription income*

Advertising revenue accounts for a high proportion of revenue in the television industry (as illustrated in table 35 below). Overall, according to the OMD South Africa Media Facts 2013 study, television's share of above the line adspend increased from 35.6% in 2002, to 46.2% in 2011/2012.[128] The study cites Nielsen Media Research and states that TV accounted for R3 591 million of the total adspend of R10 078 million spent in 2002, and increased to

126 Interview with e.tv. 18 October 2013.

127 M-Net Memorandum to the Television Broadcaster Survey

128 Nielsen Media Research cited in OMD "South Africa & SADC Media Facts 2013" page 11

R15 560 million of the R33 643 million spent on above the line advertising in 2011/2012.

PwC's latest Entertainment and Media Outlook looks at total spending on television (including advertising, subscription and licence fees on free-to-air TV, Pay-TV, mobile TV and internet TV). According to this report, total spending on television was R23 051 million in 2011.

Table 33: Overview of advertiser spending on television

TV Market (R millions)	2011	2016	CAGR 2012-2016
Broadcast advertising	10 000	14 500	7.7%
Online TV advertising	13	44	27.6%
Mobile TV advertising	2	40	82.1%
Total advertising	**10 015**	**14 584**	**7.8%**
Other sources of revenue (R millions)			
Subscription spending	11 988	21 831	12.7%
Public TV licence fees	1 042	1 081	0.7%
Mobile TV subscription spend	6	55	55.8%
Total TV subscriptions	13 036	22 967	12%
TOTAL SPENDING	**23 051**	**37 551**	**10.3%**

Source: PwC

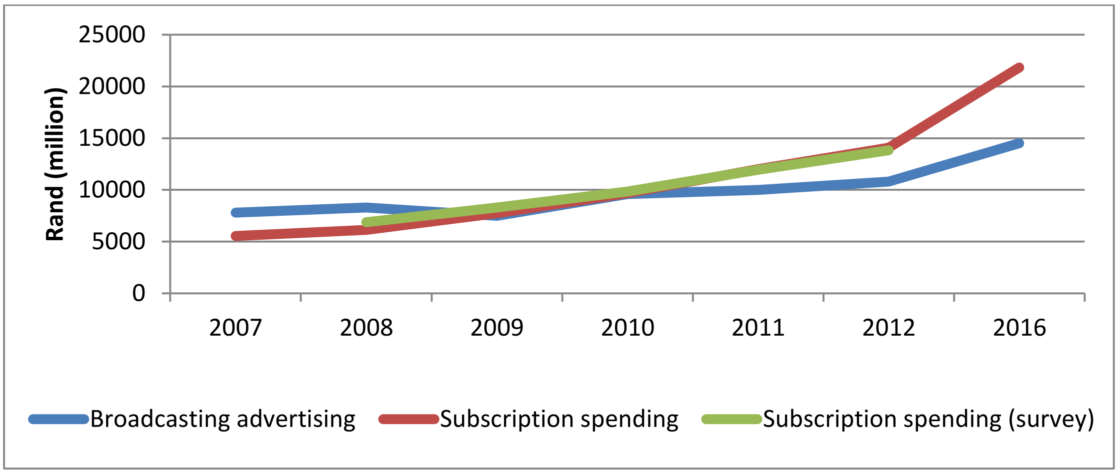
PwC projects a compound annual growth of 10.3% in total TV spend between 2012 and 2016, based on the following projections:[129]

- An expected launch of Digital terrestrial television later in 2012 – freeing up spectrum for mobile and the launch of additional television channels;
- An increase in competition in the paid television market; and
- Increased penetration of smartphones and tablets fuelling growth in the mobile subscription market (though PwC notes that it remains to be seen if mobile TV will result in significant revenues).[130]

129 PricewaterhouseCoopers, South African Entertainment and Media Outlook 2012-2016, Chapter 3: Television, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter3.pdf

One of the most interesting changes in the TV market according to the PwC report is the increase in revenue from subscriptions. Revenue from subscriptions overtook TV adspend in 2009 as the number of subscribers nearly doubled between 2008 and 2011,[131] and seems on par with the results for revenue from subscription spending collected through the Television Broadcaster Survey.

Figure 61: Subscription spending versus advertising



Source: Television Broadcaster Survey (2013); PwC Entertainment and Media Outlook

5.4.5 Conclusions

Based on SAARF's latest All Media and Products Survey (AMPS), television viewership has increased over the past decade from 68% in 2006 to 92 % in June 2013. The public broadcasting channel SABC1 attracts the largest audience. Of the three licenced subscription broadcasting services, DStv has by far the largest number of viewers. According to Pricewaterhouse Coopers' projections, the number of subscribers to pay TV is likely to continue to increase until at least 2016. Community television seems to be gaining prominence, but still has a much small viewer base relative to DStv, Top TV, and free-to-air channels.

130 PricewaterhouseCoopers, South African Entertainment and Media Outlook 2012-2016, Chapter 3: Television, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter3.pdf

131 PricewaterhouseCoopers, South African Entertainment and Media Outlook 2012-2016, Chapter 3: Television, http://www.pwc.co.za/en/assets/pdf/enm-20120-chapter3.pdf

Based on estimates reported in the Television Broadcaster Survey, public, public commercial, commercial free-to-air and terrestrial subscription broadcasters all exceed the minimum required overall quotas set in the regulations. However, public and public commercial broadcasters reported a drop in the overall percentage of South African content screened from 2007/2008 to 2011/2012. SABC 1 and SABC 2 reported that they screened an average of 75% South African programming in 2007/2008 but 68% in 2011/2012. SABC 3 meanwhile reported that its percentage of local content had dropped almost 10% over the period – from 47% in 2007/2008 to 38% in 2011/2012. This is most likely due to the financial crisis that the SABC faced in 2009.

E.tv reported in the Television Broadcaster Survey that they aired a relatively constant level of South African content between 2008 and 2012 (an average of 48%).

South African content remains very popular. According to the responses by broadcasters to the survey (confirmed by Television Audience Measurement Survey (TAMS[132]) data from SAARF), the three most popular programmes in 2011/2012 were Generations, Soul City and Zone 14. This indicates a continuing popularity of multi-lingual dramas, and suggests that the relatively high cost associated with producing dramas can be recouped through advertising drawn by high audience numbers.

While not all broadcasters completed the sections of the questionnaire dealing with the costs of South African content or the cost per minute of particular genres, the information provided in response to questionnaires does allow for some limited conclusions to be reached. Data provided by SABC 1, 2 and 3 suggests that the proportional cost associated with acquiring local content has increasingly exceeded local content's contribution to total broadcast time over the period reviewed (2007/2008 – 2011/2012). M-Net, in

132 There have been disputes around the validity of all TAMS information but the researchers do not think that these significantly affect the results of this analysis.

contrast, indicated that this relative cost (comparing expenditure on local content to the percentage of South African content aired) has remained relatively constant. This could however be a function of the type and genre of local content that has been produced as some genres (such as drama content) has a higher per minute production cost.

Of the overall revenue generated by television broadcasters, broadcast advertising and sponsorship provides the largest source of revenue for free-to-air broadcasters. Subscription broadcasters, however, have a slightly higher reliance on subscription fees, which is in accordance with the Subscription Broadcasting Services regulations and section 60(4) of the ECA.

According to PwC's 2013 media review moreover, the total revenue generated from subscriptions exceeded the total revenue generated from advertising and sponsorship from 2009. This is confirmed by the increase in the number of subscribers to Pay-tv.

5.5 IMPACT ON INDEPENDENT PRODUCERS

One of the key goals of the South African content requirements is to boost the independent production sector and encourage the production of a diverse spread of South African content from a range of sources. This section attempts to identify changes in the television production industry that have taken place subsequent to the 2006 changes in regulations. It is noted that these regulations not only retained the original quota for the percentage of content that must be outsourced, but also introduced incentives to encourage the commissioning of content from independent producers outside of Gauteng and the Western Cape and to reward sourcing of content from companies controlled by historically disadvantaged persons.

Among other things, this report assesses growth in both the film and television production industries by looking at reported growth estimates in industry reports and drawing from interviews with a selection of independent producers. For television production, the number of production companies involved in the industry is considered, as well as the expenditure by broadcasters on South African content.

The film production sector is also considered, given that the film and television industries are closely related and to a large extent rely on similar resources. Many of the studies that were consulted furthermore do not provide separate data for these two sectors (for example the National Film and Video Foundation study into the industry published earlier in 2013). The review therefore looks at the countries of origin of box office films, and estimates the market share of South African productions accordingly. The box office revenue and popularity of different genres is also compared.

5.5.1 Data Collection and Methodology

Given the lack of survey data (as highlighted in the Introduction), this section primarily draws from a selection of industry reports and publicly available data sources, as well as interviews with industry bodies and independent producers. Interviews were had with 2 independent production companies.

It is important to highlight that the different studies appear to contradict each other. Several of the industry studies reviewed indicated that the sector has done relatively well, however sector organisations interviewed stated that the industry has suffered as a result of the 2009 SABC financial crisis – given that the public broadcaster was a primary client for many companies. These organisations, however, did not note the possible positive impact that the introduction of predominantly local content channels such as Msanzi Magic is likely to have had on the industry.

The anomalies evident from the information provided below could also be due to differing definitions of what comprises the television industry. For example, some of the studies that are referred to might include the revenue/costs of production of advertising in their figures for the television industry, while for ICASA's purposes this information is not relevant to the sector.

In addition, the researchers did not have access to all the audited financial statements of broadcasters which would have assisted in calculating whether or not there has been a drop in spending on commissioning of South African content. Where available, the study draws from commissioning reports to serve this purpose.

5.5.2 Quantifying the benefits for television production

a) *Number and size of production companies*

In a 2009 study, the Independent Producers Organisation (IPO) estimated that there were between 122 and 155 active television production companies operating in South Africa in 2008.[133] The table below summarises these estimates according to the number and size of active production companies based on turnover (excluding companies involved in the production of feature films, sports and news, facilities or post production). Small companies (most of which can likely be classified as SMMEs) with a turnover of less than R5 million appeared to dominate the sector.

Table 34: Estimated number of active television production companies by turnover, 2008

Category	Annual Turnover	Estimated no of active production companies
1	R70m – R100m+	4 – 5 companies (mainly long running soap format)
2	R35m – R70m	8 – 10 companies (drama and long running programmes)
3	R10m – R35m	15 – 20 companies (drama and documentary)
4	R5m – R10m	15 – 20 companies
5	Below R5m	80 – 100 companies

Source: IPO (2009)

In an interview for this study, one media company however stated that, while this showed that the focus in TV regulations on growing the industry appeared to have been effective, the proportion of smaller companies could be

133 The Independent Producers Organisation (together with the South African Screen Federation), "The Mirror Crack'd: Report on the Global and SABC financial crises on the independent television and film production sector", 18 November 2009

concerning. They stated that the 2009 SABC crisis showed that many of these were not sustainable as they were overly reliant on one broadcaster for work and thus were particularly badly affected by the financial challenges faced by the public broadcaster. An interview with an independent production company echoed this finding, stating that many of the smaller production companies did not survive the SABC crisis.

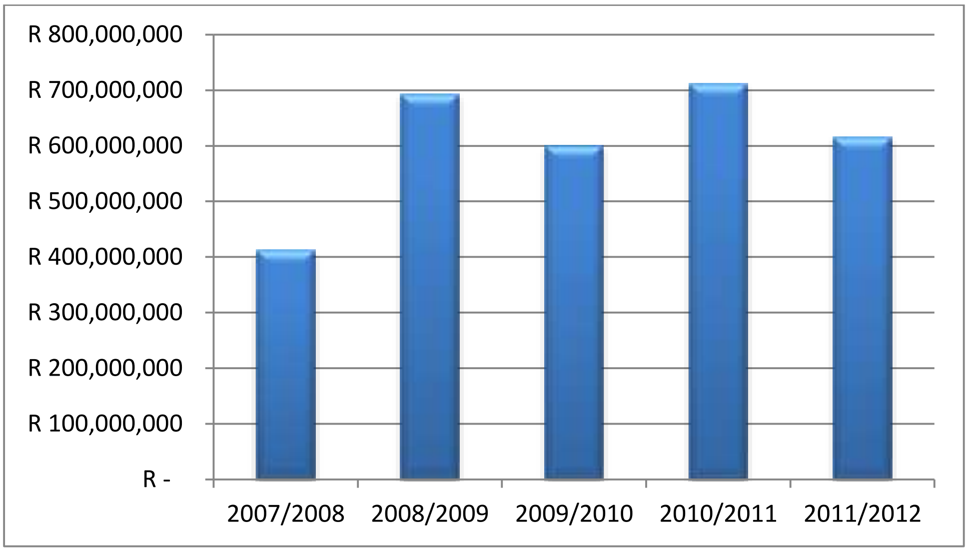
They also stated that very small companies are unable to carry some of the risk of production due to limited cash reserves and thus limited the range of creative options for sourcing South African content. This increases the cost of broadcasting (as broadcasters carry all of the risks and therefore bear all the costs). The media organisation suggested that this meant that the larger production companies were more attractive to new broadcasters. Creative partnerships between government development agencies, broadcasters and producers could assist in mitigating this.[134]

b) Spending on local productions

Based on the Television Broadcaster Survey, spending on acquiring local content seems to have increased since the adjustment of the minimum requirements in 2006. The figure below shows the aggregate reported spending on acquiring local content by public, commercial and subscription broadcasters, and of one class/community broadcaster. Given that this does not capture spending by the entire broadcaster population, it is an underestimate of total spending directed toward local productions. The trend, however, is encouraging in terms of broadcaster investment in the sector and suggests that the regulations have managed to direct spending to the television and video production sector.

134 Interview with Kagiso Media, 12 July 2013.

Figure 62: Aggregate nominal broadcaster spending on acquiring local content



Source: Television Broadcaster Survey

Mzansi Magic, a channel produced by M-Net and incorporated into the DStv bouquets, stated in its May 2012 Commissioning Briefs that it has created a revenue period for independent producers of Bubblegum[135] features or Bubblegum miniseries, by offering the producer a two year window period for the sale of DVDs. Such initiatives further increase the benefits incurred by broadcaster spending on independent productions.

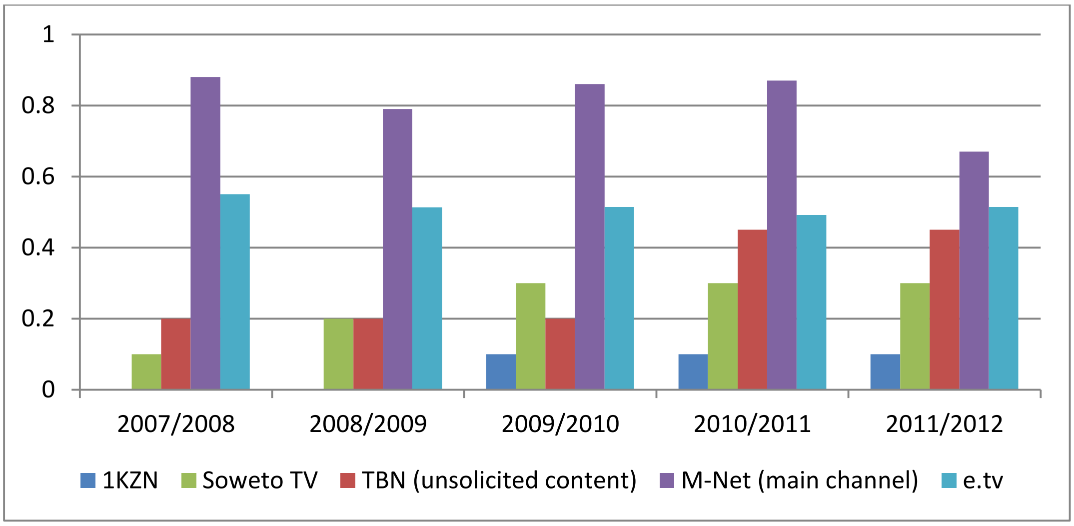
The broadcasting content regulations stipulate that a minimum of 40% of South African programming should be sourced from independent producers. Three class licensees and the terrestrial subscription broadcaster reported on the proportion of content sources from independent producers in the Television Broadcaster Survey. Whereas two out of the three class licensees reported that most of their content is internally produced, both Soweto TV and TBN indicated an increasing reliance on independent productions.

TBN specifically has reduced its proportion of internally produced programming, with a clear increase in unsolicited content. Nevertheless, most

135 Mzansi Magic defined Bubblegum films as "ultra-low budget original, feel good, highly entertaining films that capture the heart and soul of the ordinary South Africans, profiling their everyday achievements and challenges, hopes and despairs, their dreams, way of life in contemporary South Africa." (Mzanzi Magic Commissioning Briefs, May 2012)

community TV stations still produce the majority of their content internally, and – based on the interview with CTV – "are able to do so by facilitating direct access by the local community to studios." [136] M-Net, in contrast, in its response to the Television Broadcaster Survey reported that a large share of its content is acquired from independent producers. The proportion of local content outsourced to independent producers by e.tv includes all local content except news and current affairs programming, as specified by their licence conditions.

Figure 63: Average proportion of local content outsourced to independent producers



Source: Television Broadcaster Survey

c) SABC broadcasters did not report on the proportion of local content commissioned from independent producers. However, during the interview conducted with them they mentioned that the requirement that a minimum of 40% of content needs to be outsourced placed a strain on their operations, and that it should ideally be reduced.[137] This is in apparent contrast with the relatively low cost of independent productions commissioned vis-à-vis internal productions (as reported in the Television Broadcasters Survey), though as stated previously, the

136 Interview with CTV. 11 October 2013.

137 Interview notes. SABC. 16 October 2013.

researchers have asked the SABC to confirm the veracity of information provided as the results seem counter intuitive. At the time of finalising this report, the SABC had as yet not responded to such queries.

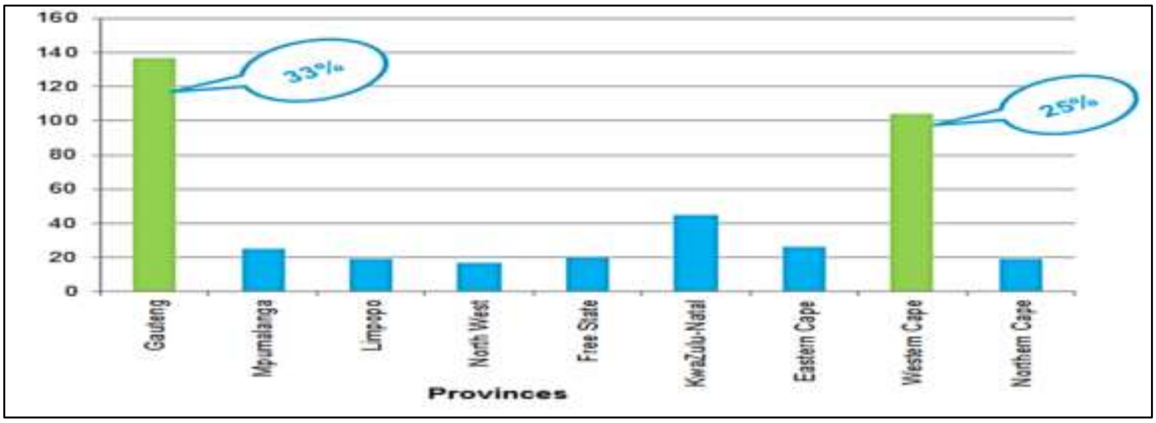
d) Location of production companies and facilities

Of the fourteen producers that responded to questions about their location in the Independent Producer Survey, 50% were located in Johannesburg and the other 50% in Cape Town.

When we compare these results to the number of projects filmed per province in 2012, a somewhat different picture emerges. While Gauteng and the Western Cape still dominate, other areas such as KwaZulu-Natal are gaining prominence. Filming that takes place outside the economic hubs in South Africa can do much to uplift these areas through contributing to job creation and skills development. The figure above suggests that, to a limited extent, such outsourcing is gaining prominence.

During an interview with an independent production company, however, it was noted that it is difficult to implement measures which encourage production outside of major centres as talent, facilities and training are located in these centres. [138]

Figure 64: The film industry per province: number of projects, 2012



Source: NFVF (2013) p.30.

138 Interview Notes. Quizzical Pictures. 9 October 2013.

The interview with Quizzical Pictures, however, further suggested growth of the direct-to-DVD market in regional centres. These types of broadcasts typically cater for the regional language demands and niche preferences, which are not adequately catered for by broadcasters.[139]

e) *Commissioning from previously disadvantaged individuals*

The SABC 2012 Annual Commissioning Report provides the BEE breakdown of producers contracted during the period from 1 January 2012 to 31 December 2012. It indicates that producers contracted during this period, on average had a shareholding of 41% black male, 17% black female, 18% white male, and 14% white female. Although not representative of the entire television broadcasting industry, these estimates suggest that a direct effort is being made to contract companies whose shareholders consist of previously disadvantaged individuals.

5.5.3 Quantifying the benefits for film production

Although the content regulations are only targeted at television licensees and thus box office film production is not directly relevant, it is still important to look at the film production industry given the potential for growth in made-for-TV film production, possibilities for increasing the number of South African box office films screened by broadcasters and that the industries are linked. For example, similar freelance crews can be used by both sectors, and post production and other related facilities are often shared. Growth in the film industry can, it is suggested, give rise to growth in the television production sector. In its latest IPAP Strategy, the DTI notes that it will place a heavier focus on telemovies, amongst other content, as there are a greater likelihood of these being screened, and as they create longer term employment.[140]

Similarly, broadcasters can assist in distribution of a film and in some cases, advances on TV licence deals can be used to provide necessary funding for production costs. Furthermore, distributor commissions on television revenue

139 Interview Notes. Quizzical Pictures. 9 October 2013.

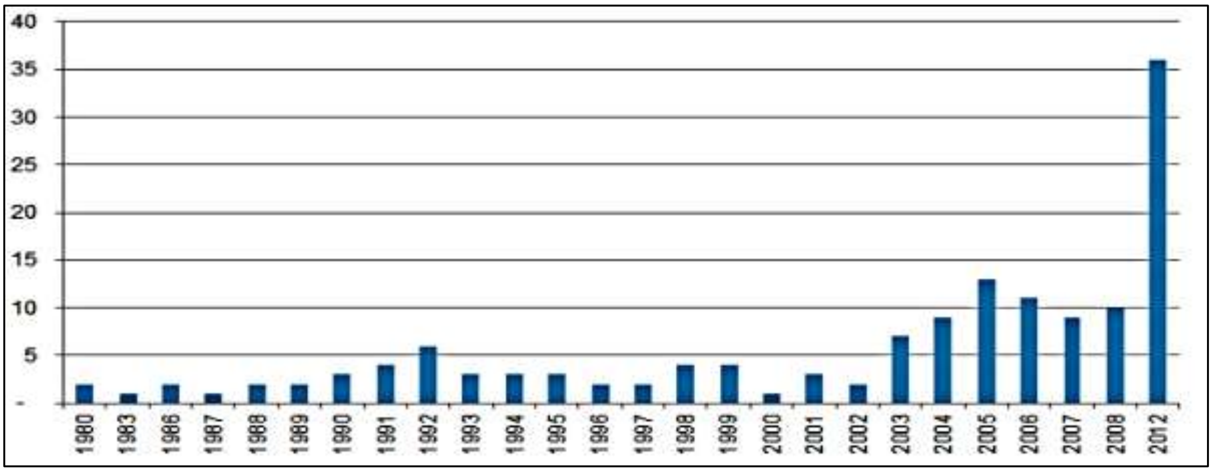
140 DTI (2013). Industrial Policy Action Plan: Economic Sectors and Employment Cluster: IPAP 2013/14 – 2015/15

streams tend to be low, and often producers negotiate directly with the broadcaster to bypass such commission costs.

a) Size and value chain composition of the South African film industry

According to the NFVF "South African Film Industry Economic Baseline Study", there has been a clear increase in the number of South African films produced per annum over the past three decades, particularly since 2003. The film incentives provided by public organisations such as the DTI and the NFVF together with a growing economic base likely drives this increase.

Figure 65: Number of South African films produced per annum



Source: NFVF (2013)

According to the 2013 NFVF study, the total value chain of the South African film industry amounted to R1.26 billion in 2013.[141] This includes spending on goods and services generated by film production within South Africa's economy. When spending is divided between the four stages of the value chain, the study found that by far the biggest proportion of spending is generated during the production phase and that the pre-production, post-production and distribution phases generate more limited spending. The table below compares the estimated size of the different phases of the value chain.

141 NFVF. (2013). South African Film Industry Economic Baseline Study. April.

Table 35: Proportion of film industry comprised by different phases of the value chain

Production phase	Proportion of industry
Pre-production	3%
Production	89%
Post-production	3%
Distribution	5%

Source: NFVF (2013)

b) Market share of South African films versus foreign films

Besides the increase in the number of local films being produced, the market share of local films has increased significantly over the past five years according to the NFVF. Whereas local films had a market share of 0.7% in 2007 (based on gross revenue), by 2010 their market share had increased to 11%.[142] The number of South African films screened were second only to the number of films imported from the USA, with films from the UK, India and France accounting for third, fourth and fifth place respectively.[143] Unfortunately, the market share of local films fell to 5% in 2011, a decline that the NFVF partially attributes to the fact that no film directed by Leon Schuster was released.[144]

The increasing popularity of local films suggests a demand for films with which South Africans can identify. Besides the pride often associated with seeing a high quality South African film, story lines that speak to the cultural identity of South Africans are often easier to identify with.

Nevertheless, films produced in the United States still dominate South Africa's film industry. In 2010, aggregate box office revenue from films produced in the USA amounted to R572 million, compared to R86 million generated by South African films (more than six times as much). Films produced as co-

142 NFVF. (2010). Box office report: January-December 2010.

143 NFVF. (2010). Box office report: January-December 2010.

144 NFVF. (2011). Box office report: January-December 2011.

productions between countries (excluding co-productions with South African companies) accounted for the third most revenue at the box office. Based on box office revenue, South African films had a market share of 11.7%.[145]

Table 36: Aggregate box office revenue from films by producing country, 2010

Production country	Gross revenue at the Box Office (R)
US	572 741 223
South Africa	86 400 328
Co-productions (excl. SA)	37 893 088
United Kingdom	28 682 076
India	4 544 478
Australia	3 890 000
Sweden	3 310 000
Italy	1 491 123
Spain	1 124 203
France	636 879
Germany	320 000
Israel	215 249
Denmark	47 952
TOTAL	**741 296 599**

Source: NFVF Box Office report 2010; own calculations

In 2010 and in 2011, a total of 204 films were screened in South African cinemas during each year. These films grossed more than R782 million and R691 million in 2010 and 2011 respectively. In 2010, of these 204 films, 23 were local releases and accounted for 11% of market share in gross revenues.[146] In 2011, with the absence of a Leon Schuster film, the market share in gross revenues of local films dropped to 5%, with 22 local productions out of the 204 films that were screened.[147]

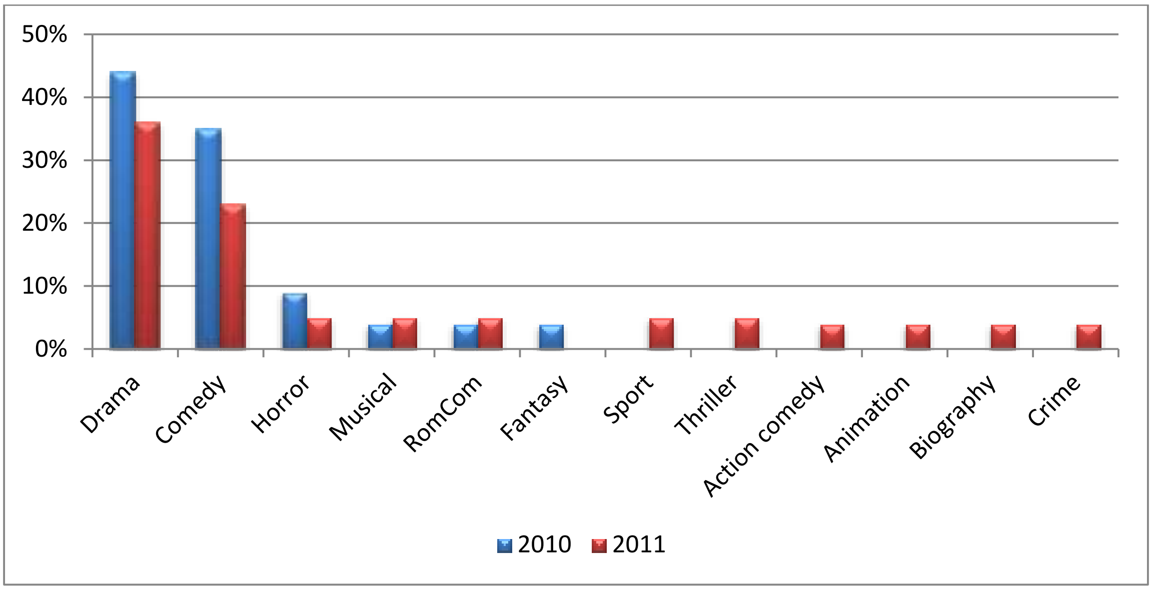
The majority of South African films released at the box office during that period were comedies and dramas according to the NFVF study (as illustrated in Figure 66).

145 NFVF. (2013). South African Film Industry Economic Baseline Study. April.

146 NFVF. (2010). Box Office Report, January-December 2010.

147 NFVF. (2011). Box Office Report, January-December 2011.

Figure 66: Proportion of local films produced by genre, 2010 & 2011



Source: NFVF (2010, 2011)

The number of box office South African films produced in 2010 and the average revenue per film per genre is listed below. The film that had the highest box office revenue in this year was the Schuster directed comedy *Shuck Tshabalala's Guide to SA*, which grossed R38 million at the box office. The other two South African films that did particularly well were the comedy Spud (R16.7 million), and the musical, *Liefling* (R13 million). When comparing average box office revenue between genres (excluding once-off successes such as *Liefling*), comedies seemed to generate the highest box office revenue per film – even when the massively successful Schuster film is excluded.

Table 37: Gross box office revenue by genre, 2010

	Number of films	Avg. per film
Comedy	8	R 7 980 221 (excluding Schuster: R 3 691 681.29)
Drama	9	R 772 896
Fantasy	1	R 794 876
Horror	2	R 244 450
Musical	1	R 13 300 000
Romantic comedy	1	R 1 018 711

Source: NFVF Box Office report 2010; own calculations

In addition to the direct benefit to the South African economy generated through box office revenue, high quality local films that are exported or screened at international film festivals contribute towards marketing South Africa in the international arena. In this manner, potential tourists and investors are introduced to South Africa, generating indirect opportunities for economic growth through the film industry if they choose to visit or invest in the country.

c) *Production budgets*

According to a 2010 survey conducted by the NFVF, feature films have a much higher production budget than documentaries or short films, and averaged R12.9 million per feature in 2010. Based on the rebates paid out in 2012, the DTI provided support to 16 local film projects with a budget of more than R10 million, and for 20 local film projects with a budget of below R10 million.[148]

Table 38: Average production budget by type of film

Type of production	Average production budget
Feature	R 12 866 666
Documentary	R 1 274 590
Short film	R 697 727

Source: NFVF (2010)

5.5.4 Employment in the film and television production sector

The introduction of South African content regulations in the country seems to have resulted in substantial growth in the film and television sector (along with subsidy schemes put in place by government). Content regulations were first introduced by the then IBA in 1997. Whereas, according to the 2009 IPO study, the sector employed approximately 5 000 people in 1994 (including

148 NFVF. (2013). South African Film Industry Economic Baseline Study. April.

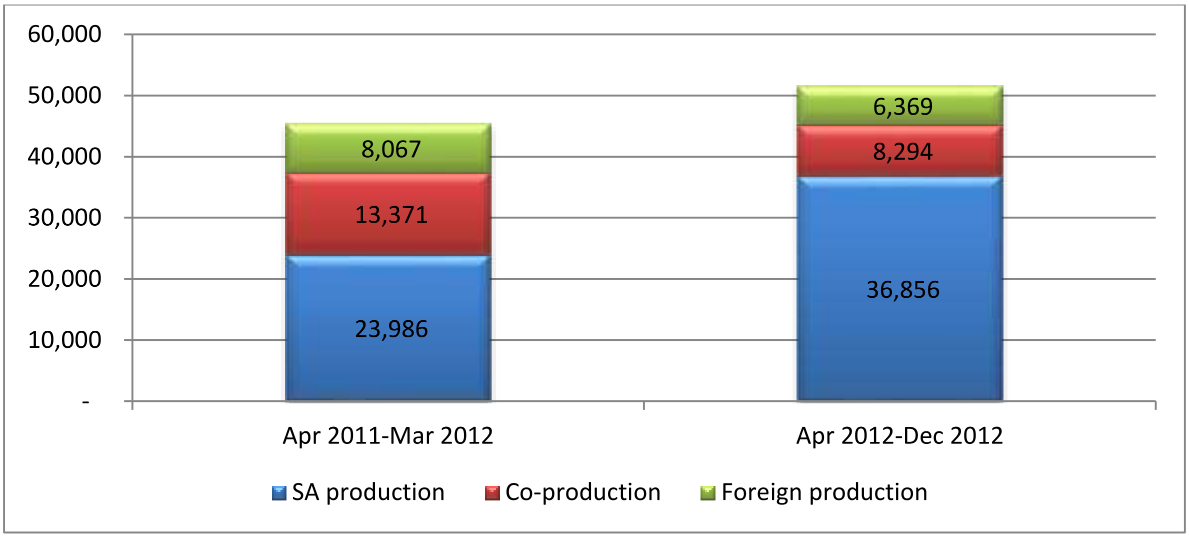
both TV and film producers), the sector provided over 40 000 job opportunities per annum by 2008.[149]

The DTI's IPAP strategy also includes information on job creation in the sector – though the figures are only available from 2011. The estimates provided in Figure 67 include television and film production related employment, and show substantial growth between 2011 and 2012.

According to IPAP, 6 000 jobs were created between April 2012 and December 2012. Although this growth cannot directly be related to independent television production, it does indicate that the industry as a whole is experiencing growth. Furthermore, the DTI estimates that 66% of the individuals working in the film and television industries are black, suggesting that mechanisms to encourage transformation in the industry are effective.[150]

It is further interesting to note the much larger number of jobs created by the South African film and television industry (including via co-productions), relative to foreign productions in South Africa.

Figure 67: Full-time equivalent jobs created through film and television production



Source: the DTI, IPAP 2013/14 – 2015/16

149 TheIPO (together with the South African Screen Federation), "The Mirror Crack'd: Report on the Global and SABC financial crises on the independent television and film production sector", 18 November 2009

150 NFVF (2013) South African Film Industry Baseline Study. April.

The 2013 NFVF study finds that the majority of the employment opportunities created by the film and television industries are short term.[151] This is confirmed by the DTI in its IPAP strategy: [152]

> "*Given the focus on feature films, the majority of the job opportunities tend to be short-term. Shifting the focus to other genres – tele-movies, television drama series or mini-series, documentary or documentary mini-series, video gaming and animation – may open up job opportunities that are more sustained.*
>
> *There remain, however, many other opportunities in the film industry that are untapped by the current incentives. Opportunities across the full value chain of the audio-visual and new media sector have not been fully exploited and there is still a great deal of room for creative thinking around new avenues towards employment creation in the industry as a whole.*"

In an interview for this study, the Gauteng Film Commission stated that they were focusing greater attention on the television industry, and in particular on longer running television series, as these creates more sustainable job opportunities.

Whereas Figure 67 provides estimates of the total amount of direct and indirect employment opportunities created by film and television production[153], Figure 68 below limits the analysis to the number of people who were directly employed within the electronic media and film industry.

According to the Media, Information and Communication Technologies' Sector Education and Training Authority (MICT-SETA),

151 NFVF (2013) South African Film Industry Baseline Study. April.

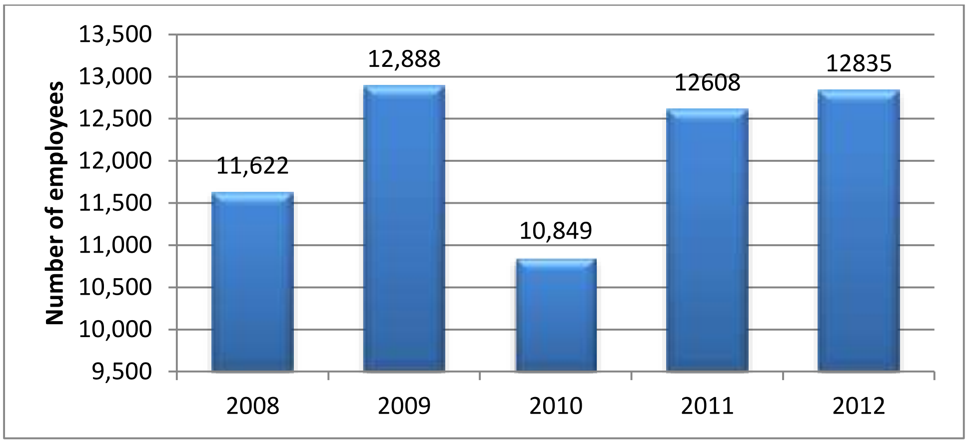
152 DTI (2013). Industrial Policy Action Plan: Economic Sectors and Employment Cluster: IPAP 2013/14 – 2015/15

153 This includes jobs created in other sectors in support of film and television production, such such as accommodation, catering, transport, etc.

employment within the electronic media and film industry has grown since 2008, but with a clear dip in 2010.[154]

None of the other subsectors included in the MICT experienced a decline in employment during 2010. This decline in employment in the electronic media and film industry might thus be ascribed to the SABC financial crisis. Subsequent to 2010, employment in the sector seems to have recovered.

Figure 68: Number of employees in the MICT Sector: Electronic Media and Film



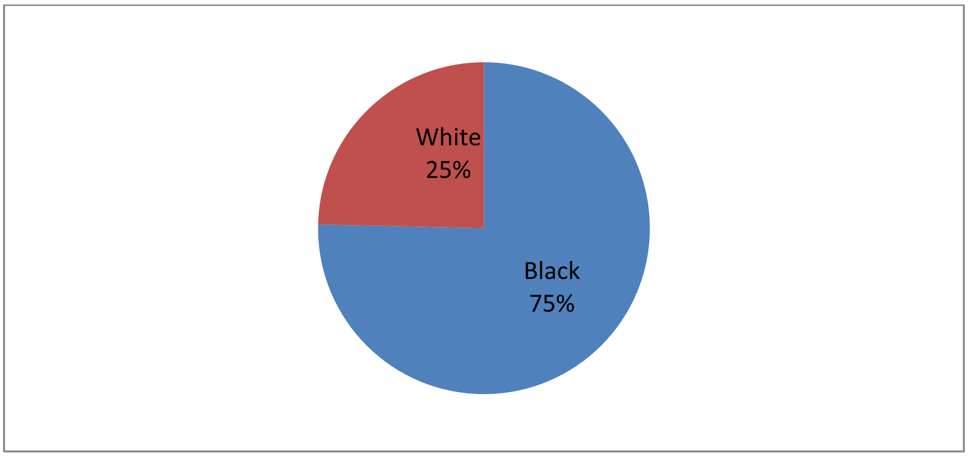
Source: MICT-SETA (2012). Sector Skills Plan 2013-2018

In terms of racial equity, the electronic media and film industry seems to be performing well according to the Department of Labour's target of 85% black (includes African, Coloured and Indian) employees.[155]

154 MICT-SETA. (2012). The Media, Information and Communication Technologies Sector Education and Training Authority Sector Skills Plan 2013–2018

155 MICT-SETA. (2012). The Media, Information and Communication Technologies Sector Education and Training Authority Sector Skills Plan 2013–2018

Figure 69: Race distribution of employees in the electronic media and film industry, 2012



Source: MICT-SETA (2012). Sector Skills Plan 2013-2018

5.6 FINDINGS OF THE COST BENEFIT ANALYSIS

It is clear from this review that the South African content requirements for radio and television have had an impact on the amount of South African music aired on radio and on the percentage of time dedicated to local content on television channels. The report further confirms that both the music and independent television production industries have grown subsequent to the implementation of the regulations. While the direct relationship is difficult to quantify, the researchers believe that the regulations have assisted in stimulating some of this growth.

5.6.1 Impact on the Radio Sector

a) Airtime afforded South African Music

Responses to the Radio Broadcaster Survey indicate that all licensees generally meet the current ICASA quotas for South African music. This is further confirmed by ICASA in its reports on compliance by broadcasters. Public and community broadcasters generally reported exceeding the minimum quota of 40% (indicating that on average they allocated around 60% and 70% of their airtime to South African music respectively).

Commercial broadcasters reported that they also either met or exceeded the minimum requirement of 25% South African music set in the regulations.

Furthermore both community and public broadcasters stated that they have increased the proportion of new and original South African music aired by around 10% between 2007 and 2012, which could indicate that the incentives in the music regulations promoting this have been successful in meeting the objectives of the regulations. Commercial broadcasters however reported that allocation of airtime for new musicians remained proportionally the same over the period.

b) Live Music Aired

In terms of live music concerts and events aired, the results of the Radio Broadcaster Survey indicate a slight increase in the proportion of live music aired by commercial and public commercial broadcasters. Community broadcasters, in contrast, appear to have kept their live music air-time allocation relatively constant between 2007/2008 and 2011/2012. Only two public broadcasters reported an increase in the proportion of live music aired over the survey period.

c) Revenue Analysis

Responses to the Radio Broadcaster Survey indicate that public, public commercial and commercial radio broadcasters currently receive between 90% and 100% of their operational revenue from advertising and sponsorship. Revenue per listener on average has produced positive returns for those broadcasters included in the survey across all licence categories. Profit per listener for commercial and public commercial broadcasters appears to have grown, while for community broadcasters on average profit per listener fluctuated around the breakeven point between 2007/2008 and 2011/2012.

Radio broadcasters' share of total above-the-line advertising spend is currently 15%, up from 14% in 2008[156] (12% in 1999).

d) The Cost of Airing South African Music

Not all respondents to the survey responded fully to questions related to the cost of acquiring music, but some broad trends could be identified by drawing from the broad trends indicated by commercial radio broadcasters. Those commercial radio stations that responded in full to the questions relating to expenditure on music content indicated that expenditure on South African music had remained constant at around 23% of total spend on music. If taken as representative of the radio broadcasting industry, these trends suggest that the relative cost of local music as opposed to international music has remained stable.

5.6.2 Impact on South African Music Production and Sales

The research indicates that there has been a significant drop in total revenue from recorded music sales over the period 2008-2013. However, the data obtained from SAMRO indicates that South African music content regulations have contributed positively towards licence fee and royalty income.

The data indicates that the contribution of South African music to total licence fee and royalty income has increased from 32% to 38% of all royalties and licence fees paid to licensors and copyright owners between 2007/2008 and 2010/2011.

The most important individual contributors to licence fee and royalty income according to SAMRO has typically been broadcasters (including radio and television services, with public broadcasting services contributing by far the largest share), although general licensing income (including income from restaurants, shopping malls, etc.) has become increasingly important in recent years. The commercial radio sectors' share of this increased by 1.5% from 2006-2011, while community radios' share over this period increased by

156 Source: Nielsen Media Research cited in OMD "South Africa Media Facts", 2000 – 2013.

0.3%. The share of total licence fee and royalty income paid by public radio stations however decreased by close to 2%.

5.6.3 Impact on the Television Sector

a) Viewership trends

South African television audience figures have increased significantly since 2006. Public broadcasting channel SABC1 continues to attract the most viewers. Community television seems to be gaining prominence, but still has a much smaller viewer base relative to subscription broadcasters and free-to-air channels. Of the three licenced subscription broadcasting services, DStv has by far the largest number of viewers. According to Pricewaterhouse Coopers' projections, the number of subscribers to Pay-TV is likely to continue to increase to 2016.

b) Airing of South African content

According to broadcasters' responses to the Television Broadcaster Survey, public, public commercial and commercial free-to-air and terrestrial subscription broadcasters all exceed the minimum required overall quotas set in regulations.

Public and public commercial services reported however that the overall percentage of South African content had dropped from 2007/2008 to 2011/2012. SABC 1 and SABC 2 reported that they collectively screened 75% South African programming in 2007/2008, but 68% in 2011/2012 (still above the minimum of 55%). SABC 3 meanwhile reported that its percentage of local content had dropped almost 10% over the period – from 47% in 2007/2008 to 38% in 2011/2012 (slightly above the minimum of 35%). This is most likely due to the financial crisis that the SABC faced in 2009 as reported by the SABC in its 2010, 2011, 2012 and 2013 Annual Reports.

E.tv, according to its responses to the questionnaire, aired a relatively constant level of South African content between 2008 and 2012 (an average of 48%). Note that e.tv's licence conditions require it to air at least 45% South

African content during the performance period – above the minimum regulatory South African quota of 35% set for commercial free-to-air TV.

c) Popularity of South African content

South African content remains very popular. According to the responses by broadcasters to the survey (confirmed by TAMS[157] data from SAARF AMPS), the three most popular programmes in 2011/2012 were Generations, Soul City and Zone 14. These results also show the continuing popularity of multi-lingual dramas and programming.

b) Cost of South African content

While not all broadcasters completed the sections of the questionnaire dealing with the cost of South African content or the cost per minute of particular genres, the information provided in response to the Television Broadcaster Survey does allow for some limited analysis of data.

Data provided by SABC 1, SABC 2, SABC 3 and M-Net suggests that the proportional cost associated with acquiring local content has increasingly exceeded local content's contribution to total broadcast time over the period reviewed (2007/2008 – 2011/2012). Members of SASFED interviewed before the questionnaires were sent out, however, suggested that the reverse was true in some instances (i.e. that broadcasters were effectively spending less per minute on South African content).

An independent producer that was interviewed shed some light on this apparent discrepancy by stating that although the number of productions commissioned increased, budgets did not experience similar growth, resulting in lower expenditure on individual productions.

The findings further show that for the public broadcasting channels, the revenue from advertising and sponsorships generated by international

157 There have been disputes around the validity of all TAMS information but the consulting team is of the view that these discrepancies don't significantly affect the results of this analysis as this research focuses on trends.

content per Rand spent on acquiring such content has outweighed that of local content. This trend can presumably be ascribed to the low cost of licensing international content, as opposed to investment and spend on local content.

In interviews with broadcasters, some indicated that certain genres of South African content (in particular children's programming) did not generate sufficient revenue to cover the costs of commissioning. However, for other genres such as drama content, due to audience demand it has become a commercial rather than a regulatory imperative to air SA content.

c) Revenue analysis

Of the overall revenue generated by television broadcasters, above-the-line advertising and sponsorship provide the largest source of revenue for free-to-air broadcasters. Subscription broadcasters derive the largest source of their revenue from subscription fees, which is in accordance with the Subscription Broadcasting Services regulations and section 60(4) of the ECA.

Pay-tv's share of total adspend however has increased substantially over the period. However, according to PwC's 2013 media review moreover, the total revenue generated from subscriptions exceeded the total revenue generated from television advertising and sponsorship from 2009 onwards, and thus the limitation set in law on advertising revenue for subscription television broadcasters does not severely limit their potential to raise advertising revenue. This is confirmed by the increase in the number of subscribers to Pay-TV[158].

An analysis of revenue generated by local content illustrates that, for free-to-air broadcasters, when programmes are ranked according to advertising revenue generated, the largest proportion of revenue is received from local content programming. It also considers the LSM grouping of viewers, and

158 PwC's Entertainment and Media Outlook reflects that the number of subscriber households more than doubled between 2007 and 2011 (from 1.8 million in 2007 to 3.7 million in 2011)

finds that the genre and language of a programme appears to be a greater determinant of viewership within different LSM levels, than whether the programme was locally or internationally produced.

5.6.4 TV Production Industry

The limited responses from independent producers were augmented with interviews with independent producers. While it is difficult to make final conclusions on the impact of the SA television content regulations on the independent production industry, information gathered through the interviews and from an assessment of industry studies conducted by bodies such as the NFVF and the DTI does provide some information about the growth of the industry in response to increased demand for SA television content.

The following conclusions can be made:

- Information provided by DTI and the NFVF among others indicates that there has been substantial growth over the past decade in both the film and television production industries, resulting in growth in the number of producers and therefore employment in the industry. Independent production organisations have however submitted some research that indicates that this growth might have been partially reversed as a result of the 2009 SABC financial crisis. In recent years (since 2010), however, the number of local content channels on subscription satellite services (eg Mzansi Magic) has increased significantly.
- While most producers continue to be situated in the economic hubs of Cape Town and Gauteng, reportedly to benefit from the close proximity to the broadcasters, a number of TV productions have been filmed outside of these areas. This seems to indicate that the incentives introduced in the most recent regulations has been a catalyst to more productions outside of the two centres.

- DTI has assisted in growth in the industry through its targeted production incentives, though it seems that the film industry specifically (rather than the TV production sector) has benefited most from this. The market share measured in terms of box office revenue of South African films has increased, indicating that more local films are being produced. Some broadcasters noted, however, that the industry could benefit even more if television licensees are also awarded rebates.
- The number of direct and indirect employment opportunities created through film and television production increased between 2011 and 2012. The number of employees in the film and electronic media seems to have been affected by the SABC financial crisis, but has recovered subsequent to 2010.

6. OVERVIEW OF TECHNOLOGICAL DEVELOPMENTS AFFECTING BROADCASTING AND REGULATION

6.1 TECHNOLOGY INFRASTRUCTURE: NETWORK ARCHITECTURE

The purpose of this section is to provide a global overview of the technology landscape that has emerged as a result of digitisation and the convergence of previously separate technologies and markets. The section is also intended as a basic introduction to and explanation of a number of concepts and technology developments. This section therefore provides the necessary technical backgound and context for readers without a technical background. The aim is to define the emerging technology landscape and those areas that may or will require regulatory intervention.

These technology developments have an impact on the future regulatory framework and give rise to several new challenges to the regulation of local content. The major development is the convergence of technology platforms and diverse market segments, giving rise to new broadcasting distribution methods, based on digital technology, and digital production of music and television content.

This section contains a selection of concepts, definitions and terminology associated with convergence, digital technology, and the impact of digitisation on the current regulatory framework, which is based on analogue technology. The shift from a single frequency, single station, analogue radio and television broadcasting system to a multichannel digital broadcasting system, in a converged market redefines the traditional broadcasting value chain.

Convergence has made it necessary for ICASA to consider a new approach to audiovisual content regulation (including traditional music, and television content, new media delivered over all technology platforms for access by all devices) based on global best practice in economic and technical regulation as well as contemporary policy imperatives.

This shift also raises questions about the necessity or otherwise of setting content obligations on licensed operators in the context of an ever-expanding collection of unlicensed content creators, aggregators and content service providers who have no licence obligations and yet compete in the same markets as licensed broadcasters.

The Authority's current approach to the regulation of content, based as it is on the White Paper on Broadcasting Policy[159], the ECA and the Broadcasting Act, is premised on a technology neutral approach to the licensing of broadcasting, and electronic communications services and networks.
The rapid advances in technology require a pro-active and agile response from the regulator if the regulatory interventions are to achieve the desired outcomes of regulating in a multi-channel, multi-platform landscape. This technology overview spans the entire value chain of the emerging communications sector, from networks, to production and reception infrastructure and facilities and consumer electronic devices.

It should further be highlighted that it is expected that issues raised by the changing environment will be an important focus in the ICT Policy Review process initiated by the Minister of Communications. ICASA should be aware that this might have further implications on their approaches to content regulation.

6.2 NETWORKS: CONTRIBUTION, DISTRIBUTION AND ACCESS

Contribution is the process whereby TV signals are received by the broadcaster from venues such as concerts, sporting events or even from production facilities via various infrastructure such as satellites, fibre, microwave etc. Normally these contribution feeds are in an unedited format

159 DOC 4 June1998

and can either be broadcast in real time such as live broadcasts or could be edited and used for broadcasts at a later stage.

Distribution is the process of sending video, audio and data material from a central point to another single point, or multiple receiving points to be used for broadcasting data applications.

Access describes the method in which the end-user/audience can obtain the content to be displayed or made available on an end-user device such as a radio, TV, smart phone, smart TV or a tablet.

6.3 BROADCASTING TRANSMISSION, FIXED AND PORTABLE RECEPTION

6.3.1 Satellite

Satellite transmission systems are used for various applications both in the broadcast environment as well as in the telecommunications market. These are based on earth stations that consist of up-link facilities such as head-ends and associated satellite dishes that convert the broadcast or telecommunications signal into a RF (Radio Frequency) signal that is transmitted to the satellite and then re-transmitted from the satellite to a receiving antenna that will again convert the RF signal into either a broadcast signal or telecommunications signal depending on which platform is used.

In broadcast applications one typically finds what is called a DTH (Direct-to-Home) application, which implies the broadcast of a TV or radio signal from a specific up-link facility to many individual domestic antenna systems (satellite dishes) such as those used by DStv and TopTV. These broadcasts could either be in a Pay TV or Free to Air format.

For telecommunications, satellite applications are mainly used for data or voice distribution from one point to another ground-based single, or even multipoint applications such as the Internet, typically defined as satellite broadband services, using Very Small Aperture Terminals (VSAT) antennae systems.

6.3.2 Terrestrial

Terrestrial transmission is based on transmission of electronic signals from one land-based high site to many or single receiving devices. This requires the installation of many terrestrial or land-based stations to cover South Africa and in many cases satellite distribution networks are used to feed signals from a central point to various base stations or transmitter stations. An example would be the distribution of say the SABC signal from a central up-link point at Sentech to various terrestrial transmitter stations, from where it is re-transmitted and received by domestic TV or radio receiver sets.

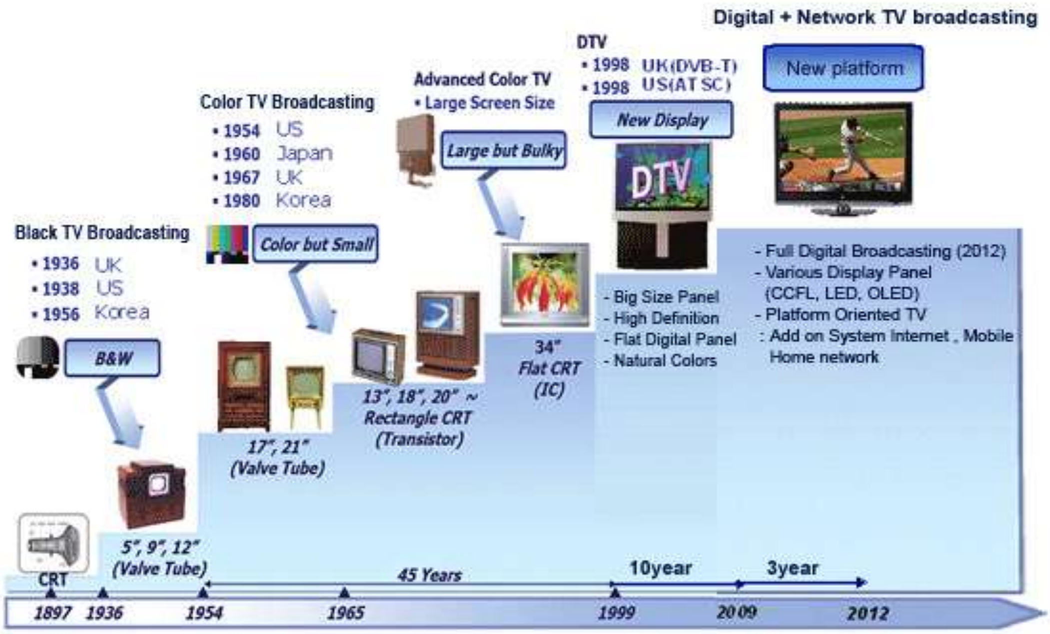
6.3.3 Cable

Although **cable distribution** is deployed on a large scale in Europe and the USA, it is very limited in South Africa and is mainly used for signal distribution in hotels, gated communities and multiple unit dwellings. It used to consist of coaxial cable, running from various distribution POP's (Points of Presence) to homes and businesses. With the growth in fibre technology, cable systems are now converting to fibre feeds which offer increased capacity and bandwidth with the result that operators are now able to offer improved value added or "bundled" services including voice and Internet Protocol TV (IPTV).

6.3.4 Television Evolution (TVE)

Television receivers have evolved from basic black and white sets to colour sets and now to the latest advanced flat screen units that can offer a variety of applications such as Standard Definition (SD), High Definition (HD), Three Dimensional (3D) and Smart TV offerings such as OTT (Over The Top TV). Technological changes will allow viewers to connect to data networks and use the TV set as terminal to view content and access data services such as the Internet, YouTube etc.

Figure 70: Evolution of Television



With courtesy of Google Images

ICASA's local content regulations were developed for an analogue broadcasting system based on a single television channel transmitted over a single frequency. Television content quotas and licensing obligations are based on a linear television broadcast schedule structured around primetime viewing (18h00 - 22h00) and a South African television content performance period (05h00 – 23h00).

The Minister of Communications has indicated that the diffusion of digital technology is one of the reasons behind the current review of the ICT policy framework in terms of which the local content regulations were developed.

The mode of transmission and methods of reception of radio and television content have also shifted from a fixed, home-based system to a mobile environment, raising unique challenges associated with Internet and mobile broadband.

6.3.5 Mobile reception

Content regulation in South Africa to date has been based on point-to-multipoint broadcast transmissions for reception in a fixed environment on a traditional radio or TV set. However the convergence of traditional broadcasting transmission networks and platforms and telecommunications networks now requires new regulatory approaches to content that is accessible by end users in both a fixed and mobile environment and on a plethora of devices.

6.3.6 Cellular

Cellular mobile reception is mainly based on the reception of voice and data services on a hand-held device such as a smart phone, tablet and other mobile devices. Coverage obligations set in licence conditions and regulations require cellular operators to meet defined universal service obligations and these providers have therefore installed thousands of cellular base stations to meet such requirements.

In view of new value added services such as video streaming, Internet access etc. available bandwidth is becoming critical and hence the implementation of LTE (Long Term Evolution marketed as 4G) which offers the end-user improved access to key services due to increased bandwidth capabilities.

6.3.7 Wi-Fi

Mainly an un-licensed protocol, Wi-Fi is used to offer increased customer value at restaurants, airports, hotels etc. Wi-Fi enables customers to access broadband networks and specifically the Internet, either for free or at a nominal fee charged by public area operators. Wi-Fi is also the ideal technology to utilise for domestic applications through which a 3G network can be extended into the home as Wi-Fi, allowing anybody in a specific household to have access to broadband services through the Wi-Fi node.

A Wi-Fi network can either run as an "open" access service or through encryption with an associated password, through which the operator can charge for usage.

6.3.8 Next Generation Networks (NGN)

Due to developments in technology, NGN's are also about efficiency and cost. NGN's will offer platforms to offer true triple play services namely voice, video and data. NGN's are based on the convergence of broadcast and telecommunication services.

This poses particular challenges for the regulator that is now seized with the question of what type of "content" becomes subject to regulation given the definitions for broadcasting services and requirements of legislation. The entire production process has changed, the players and the functions in the value chain have changed, so the focus of regulation on the "broadcaster", the service licensee, may no longer be appropriate.

The types of services and markets that now exist may or may not require specific regulatory intervention, although they still fall within the purview of the regulator. ICASA needs to consider how it proposes such matters are dealt with in future national ICT policies and in revisions to related laws.

The next section provides an overview of the technology involved in the production and distribution of digital audio-visual content to demonstrate the changes that have taken place in the traditional broadcasting environment. The new market sectors that are emerging as a result of these changes challenge the traditional model of music and television content regulation.

6.4 DIGITAL BROADCASTING INFRASTRUCTURE

6.4.1 Acquisition Technology

A digital camera is simply the device that converts an image into digital formats to be used by broadcasters for either a live broadcast or for pre-production. After being edited and changed, it will then be sent to platforms for broadcasting. Cameras for studio production differ from those used for outside broadcasts which are much smaller and more movable than studio cameras.

In digital broadcasting the scope of acquisition equipment has changed significantly over the years and currently equipment such as Smart phones, handy cams, small portable digital cameras as well as very expensive TV cameras are used for recording SD (Standard Definition), HD (High Definition) as well as 3D (Three dimensional material).

The digital quality of commercially available equipment has improved tremendously, allowing cameras built into smart phones and tablets to be used for news inserts at a fraction of the cost compared to what professional news cameras used to cost. Likewise consumers and end users are now in a position to become content creators as well as consumers.

6.4.2 Multiplexing and signal distribution techniques

Multiplexing is the process of combining various encoded digital signals such as SABC 1, SABC2 etc, into a single stream of data called a transport stream. A transport stream containing various encoded video and audio signals, will typically populate a satellite transponder or terrestrial transmitter and the viewer will be able to view these various channels through a specialized receiver called a STB (Set Top Box).

Signal distribution can be done either via satellite as explained earlier in the document or via terrestrial re-broadcast techniques. Another way of signal distribution is via a network of fibre optic cables.

6.4.3 Broadcasting distribution platforms (DTH, DTT, IPTV, mobile broadband)

DTH consists of satellite based broadcasting through a multi-channel platform. DTT is based on digital terrestrial broadcasting whereby a digital signal containing various TV or radio channels are broadcast from land based high sites. IPTV (TV transmission based on the Internet Protocol) can be broadcast via different platforms such as terrestrial 3G or LTE, IP over satellite and IPTV over fibre.

6.4.4 Satellite IP LNB and V-SAT, i.e. Internet via Satellite

Internet Protocol signals (IPTV) can also be broadcast via satellites utilising IP transmission equipment. An LNB (Low noise block converter) is the device installed at the front of the satellite dish that converts the extremely high frequency of the satellite signal to a lower frequency defined as L-Band frequencies operating between 950 MHz and just over 2 GHz.

In many cases the receiving equipment such as VSAT (Very Small Aperture Terminals), also consists of a return path i.e transmitter from the receiving site back to the satellite for requesting information from the service provider. In other cases, other communications networks such as cellular network are used in parallel for the return path, for example, to request Internet information to be downloaded via satellite.

This is an iconic example of a truly converged service that is already widely deployed both in South Africa and a number of developing countries, making use of the capacity of satellite systems to provide enhanced services and innovative content delivery services to remote and underserved areas.

6.5 CONTENT, AND INTERNET SERVICES

6.5.1 Internet and Cloud

The challenges of regulating content over the Internet are made more complex when cloud computing is taken into account. Cloud computing is essentially a virtual world of data centers, servers and high-speed connectivity enabling new spaces for content creation, distribution and consumption.

Cloud Computing or running various computer based applications in the cloud, makes use of multiple computers that are connected through a real-time communication network such as the Internet. This is at times also referred to as distributed computing. In relation to broadcasting, cloud computing allows content providers to store extensive amounts of audio-visual material and make this accessible to users on demand.

6.5.2 Software Management Platforms

These platforms are established by various key service providers such as (International Business Machines) IBM, NEC. Such platforms are essentially based on a centralised application that effectively manages all company's software applications – such as financial systems, call centre applications, data bases and SMS (Subscriber Management Services).

In essence it is a centralised computer system collecting, integrating and managing large sets of structured and unstructured data from various computer platforms. Such platforms are aimed at increasing the efficiency of broadcasters.

6.5.3 Media Management and Content Delivery

Many multichannel broadcasters need to compile channels by collating programmes from various production facilities or movie libraries into a single channel. This content can be sent to the multi-channel operator either via FTP's (File transfer protocol) on fibre, satellite or even via hard copies such as DVD's and tapes.

At the production facilities the content is ingested (stored) in a computer or schedule driven play-out server. Through this process, content will be selected for a specific time to be played out as set up by the schedule.

In a multi-channel environment, many of these services are automated, and often supplied by global service providers to competing broadcast operators located in different countries. This raises questions about the scope and application of current regulatory tools, and the rationale for new forms of regulation.

6.5.4 Wireless Applications Services

The current licensing framework and content regulations do not provide for the regulation of content provided by operators other than broadcasting service licensees.

Wireless applications offer true triple play which consists of video, voice and data. Such services require additional bandwidth and the spectrum vacated by broadcasters post analogue switch-off will undoubtedly assist in partially addressing current bandwidth constraints. In South Africa wireless application services are mainly based on 3G, LTE (4G) and Wi-Fi networks.

As this process unfolds, the types of audio and video services that may become subject to regulation will originate from both within and outside of the country raising questions of international jurisdiction and competition between broadcasting services licensees and unlicensed or licensed communications services providers and global digital music platforms and services.

6.5.5 Digital Music Platforms and Music Services (iTunes, Spotify)

Broadband access services have enabled end-users to have access to advanced media offerings such as iTunes, Youtube, Facebook just to mention a few. This has impacted on entertainment business models as end users can now download music, movies and various applications through broadband networks.

6.5.6 Web Portals

Web portals or ISP's (Internet Service Providers) have become an important part of the broadband offering. These Web portals allow subscribers to access value added services as well as advanced multimedia services – such as, for example, providing access to Video-On-Demand services.

6.5.7 Interactive content and gaming

Interactive services are based on two way communications between the viewer and the channel operator to facilitate real time interactivity, for example, enabling audience participation during game shows or talk shows on radio or television. Most cellular operators and broadcasters are working towards advanced interactive facilities and services.

Currently cellular operators already have two-way communication by default connecting with mobile phones, tablets etc. A return path or link is essential for proper deployment of interactive services. Current content regulation does not provide for interactivity, but is based on a point-to-point model of broadcasting in line with the definition of broadcasting in the EC Act which emphasises that it must be unidirectional.

6.6 CONSUMER DEVICES

6.6.1 Digital radio and TV receivers

Digital radio and TV receivers can be used for DTH (Direct-to-home) satellite services; DTT (Digital Terrestrial Services), digital radio transmission or even IP (Internet Protocol) based services, including fibre networks. These devices convert the digital signal from a specific digital format to be viewed or listened to on the relevant device. The receivers therefore remove the need for a separate Set Top Box to access the signal.

6.6.2 Tablets

Tablets have changed the way in which people do business as well as how people experience and access information and entertainment. In many cases the tablet has either replaced the computer or is used extensively for mobile applications. Tablets have made access to networks such as terrestrial 3G, LTE and Wi-Fi possible, and therefore access to a variety of content from South Africa and abroad.

6.6.3 Smart Phones

Smart phones such as the iPhone and the Samsung Galaxy have truly become multiple access devices allowing the user to make calls, access e-mails, view video clips and many more applications. Many smart phones have exactly the same functionality as the tablet, the only limitation being the size of the screen. It is anticipated that the smart phone will become the access device of choice for many if not all digital applications

Mobile devices are used by people while travelling such (eg tablets, smart phones, DVB-H handheld TV receivers or laptop computers). *Portable devices* are normally bigger and used as indoor units such as portable radios and TV's while *fixed receiver devices* are normally stationery e.g. flat screen TV sets, Hi-Fi systems, projectors and end-user equipment that cannot be moved around easily.

6.6.4 Media Players and Personal Video Recorders

Media players are mainly based on gaming consoles and video players such as DVD and Blue Ray. In South Africa, Personal Video Recorders have also been relatively recently introduced by satellite subscription services enabling viewers to 'record' programmes and watch them outside of their scheduled times.

These consumer electronic devices give the end user the flexibility to view or consume content anywhere, at any time and challenge the traditional model of regulating content to provide audiences with "full spectrum" services on radio and television.

6.7 IMPLICATIONS FOR LOCAL CONTENT REGULATION

The section above gives an overview of technological developments relating to broadcasting. This section sets out to explain how convergence and technological advancements might change the way in which audiences access and engage with audio-visual content and therefore the approach to regulation.

ICASA has to strike a careful balance between stifling innovation, ensuring the objectives set for the sector are realised and that audience expectations are met. Likewise a balance has to be struck between regulating for audience protection and audience choice.

Convergence and technological changes allow audiences to access content anywhere, anytime across a range of platforms and devices – necessitating new approaches to ensuring audience access to a range of programming, including local content. The section that follows analyses a number of different responses to these challenges adopted in selected benchmarked countries.

The rapid advances in technology require a pro-active and agile response from the regulator if the regulatory interventions are to achieve the desired outcomes of regulating in a multi-channel, multi-platform landscape. Section 9 of this report outlines strategies for ICASA to consider in light of lessons learned from around the world.

7. INTERNATIONAL BENCHMARK

This chapter of the report benchmarks the local television and music content regulatory systems in Australia, Canada and the United Kingdom (UK). These three countries were selected from an initial list of seven countries (Australia, Brazil, Canada, China, New Zealand, Nigeria and the United Kingdom/ European Union) based on the following criteria:

- Availability of information;
- Existence of regulations;
- Approach towards independent production sector; and
- Progress regarding digital migration.

Australia, UK and Canada have similar approaches to the local content regulation system in place in South Africa. In particular, Canada and Australia informed the regulatory framework adopted in South Africa in the mid-1990s. Both Canada and Australia have systems in place to promote both music on radio and television content.

Furthermore the UK and Australia have in recent years reviewed their approaches to content regulation to address, among other things, issues arising from convergence and digitisation. The decisions they have taken in this regard will be useful for the current review by ICASA.

These countries also have broadcasting sectors similar to South Africa (ie public, commercial and community tiers and free-to-air and subscription services). Ideally, the benchmark should also consider approaches adopted by developing countries. However countries with similar economies to South Africa do not have similar broadcasting models or regulatory frameworks.

Furthermore, others (such as India) have not set local content quotas as Indian content is predominant without any such regulations. Many countries in Africa do not have publisher/broadcasters model as in South Africa, but rather "sell" space on their schedules to content providers. Their business models therefore are significantly different to South African broadcasters.

Finally, the three countries selected have effective monitoring and compliance frameworks in place, which can be benchmarked in improving the system currently employed in South Africa.

7.1 AUSTRALIA

7.1.1 Regulatory approach

Local content in Australia is regulated for social and cultural reasons. The three standards applied state the following as the main objectives:

- Developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the communities continued access to television programmes produced under Australian creative control.[160]
- Ensuring that children have access to a variety of quality television programmes made specifically for them, and to provide for the protection of children from possible harmful effects of television.[161]
- Ensuring that the majority of advertisements on television are Australian-made, by means of a flexible regulatory system that recognises the market reality of advertising.[162]

Australian content requirements form part of a broader system of government regulation and support for the Australian cultural sector, which includes setting quotas, funding and incentives for producing and broadcasting Australian content. Australian content requirements have their basis in the Broadcasting Services Act 1992 (BSA), which has as one of its objectives the promotion of diverse, innovative and quality programming, including programs that reflect Australian identity, character and cultural

160 Australian Content Standard 2005

161 Children's Television Standard 2009

162 Television Programming Standard for Australian Content in Advertising 2009

diversity. It also serves to promote the development of a broadcasting industry that is responsive to audience needs, respects community standards and places a high priority on the protection of children from harmful material.

Australia provides a regulatory framework for broadcasting content that combines direct regulation (through standards and legislation) with co-regulation (through the development and registration of industry codes).

The main institutions responsible for policies and regulations governing Australian content over broadcasting networks are the Australian Department of Communications (formerly the Department of Broadband, Communications and the Digital Economy (DBCE)) and the Australian Communications and Media Authority (ACMA). Government provides the policy framework and funding, while AMCA is responsible for the regulation of broadcasting, internet, radiocommunications and telecommunications.

ACMA’s role in regulating broadcasting includes:

- Planning the channels that radio and television services use
- Issuing, renewing, suspending, and cancelling broadcasting licenses
- Planning and implementing digital television and radio services
- Monitoring the digital broadcasting industry
- Regulating the content of radio and television
- Administering the ownership and control rules for broadcasting services; and
- Upholding the regulatory regime established by the Broadcasting Act 1992, which covers radio, television and digital services

One of ACMA's objectives is to promote the role of broadcasting in developing and reflecting a sense of Australian identity character and cultural diversity. Therefore, ACMA works towards increasing content diversity in the broadcasting services, and providing audiences with better access to these services. ACMA performs an independent adjudicator role where complaints under the code of practice are not resolved between a complainant and a national broadcaster.

The BSA was recently amended by the Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013 (The Broadcasting Amendment Act), which came into effect on the 31st March 2013. The Broadcasting Amendment Act effectively gives the Minister more say over Australian content regulation and has elevated content standards to primary legislation.

Among other things, it specifies Australian content quotas for broadcasting licensees; it limits the number of commercial television broadcasting licences within a given area; and provides for the Minister of Communications to direct ACMA in relation to its program standards making powers.[163]

Regulation of Australian music quotas is largely self-regulatory and the government's role is mainly in funding the development of new Australian music through the Australian Music Radio Airplay Project (AMRAP), while ACMA plays an oversight role to ensure the self-regulatory system meets country objectives.[164] This sector is regulated through the Australian Music Performance Code 4 of the Commercial Radio Codes of Practice.

This code is administered by the Australian Music Performance Committee (AMPCOM), which is a voluntary association comprising of commercial radio and recording industry associations, including Commercial Radio Australia (CRA), the Australian Recording Industry Association (ARIA), the Phonographic Performance Company of Australia (PPCA) and the Australian Music Publishers' Association Ltd (AMPAL).

163 The Broadcasting Legislation Amendment Act was part of a package of six bills representing the Australian Government's initial response to issues identified by two independent media reviews conducted in 2011 and 2012 , that is, the Convergence Review and the Independent Inquiry into the Media and Media Regulation. Out of the six bills, the Television Licence Fees Amendment Act 2013 was the only other bill passed in March 2013. The others bills, including; the Broadcasting Legislation Amendment (News Media Diversity) Bill 2013; the News Media (Self-regulation) Bill 2013; the News Media (Self-regulation) (Consequential Amendments) Bill 2013; and the Public Interest Media Advocate Bill 2013 did not proceed further.

164 The Department of Broadband, Communications and Digital Economy 2012-13 Annual Report.

In addition to Australian content requirements, regional commercial television and radio services have since 2008 been required to broadcast locally originated content – defined as content from their coverage areas. The requirements for television are currently under review by ACMA and the outcome of this review is scheduled for reporting by December 2013.

7.1.2 Regulation of local content on television

The following instruments are applied in regulating Australian content on commercial television:

- The Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013;
- Australian Content Standard (ACS);
- The Children's Television Standards (CTS);
- Australian Content in Advertising (ACA) ; and
- License conditions for regional commercial stations issued post the 2006 , Broadcasting Services Amendment (Media Ownership)

These define the scope of Australian content regulations and set minimum quotas and reporting requirements as well as mechanisms for enforcement of Australian content standards. The license conditions impose minimum amounts of material of local significance (local content) requirements on regional commercial broadcasters in Queensland, New South Wales, Victoria and Tasmania.

Note that the public broadcasting services in Australia (the Australian Broadcasting Corporation and Special Broadcasting Services) do not fall under ACMA and therefore do not have specific requirements spelt out in the above codes. The recent Convergence Review Report recommendations to government suggested that these broadcasters should be given specific Australian content quotas and obligations either within their charters or via other mechanisms.

a) *Australian Content Standard*

Australian programmes are defined in terms of creative control and the origin of key creative personnel. However in accordance the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement of 1988, the standard also recognises Australian official co-productions and New Zealand programmes equally with Australian programs.

The ACS requires all commercial free-to-air television licensees to broadcast an annual minimum transmission quota of 55 per cent Australian programming between 6am and midnight.

In addition, there are specific minimum annual sub-quotas for first-release Australian drama, documentary and children's programmes, as well as sub-quota requirements for repeat children's programmes and Australian preschool programmes to be met by licensees on their core/primary commercial television services. Compliance to these quotas is measured over a year but points are accrued over a pre-set three-year period.

Commercial broadcasters are required to score at least 250 points for first-release Australian adult drama per year and a three-year score of 860 points. The score is calculated by multiplying a 'format factor' by the duration of the programme. The format factor is a scale based on a combination of programme type (serial or series, feature film, telemovie, mini-series or stand-alone drama of less than 90 minutes) and/or the level of licence fee paid.

Commercial broadcasters are required to screen, at least 20 hours of first-release Australian documentary programmes of at least 30 minutes' duration, on an annual basis between 6 am and midnight. [165]

165Australian Content Standard 2005

b) *The Children's Television Standard*

The children's programming sub-quota is expanded in the CST, which requires licensees to broadcast a combined total of at least 390 hours of children's (C) and preschool (P) programs each year, with a minimum of 260 hours of C-classified and 130 hours of P-classified programs annually. These are the C and P quotas. The Broadcasting Services (Australian Content) Standard 2005 requires that 50 per cent of the C-quota must be first-release Australian programmes and that all P-programmes are Australian. [166]

c) *Subscription licensees and channel providers expenditure on Australian drama*

Channel providers that provide subscription television drama services are required to spend at least 10 per cent of their annual total program expenditure on eligible drama programmes during a financial year. If the 10 per cent expenditure requirement is not met in the current financial year, the shortfall amount must be made up the following year.

To be eligible, a drama programme must be an Australian or New Zealand production or co-production, and must not have been televised in Australia or New Zealand on a broadcasting service at any time before the expenditure on the programme is incurred. While this requirement imposes a spending obligation on licensees and channel providers for Australian and New Zealand programmes, there is no broadcasting requirement.

d) *Australian Content in Advertising*

Unlike ICASA, ACMA is also required in terms of its founding legislation to regulate Australian content in advertising. To this end, the standard for Australian Content in Advertising states that at least 80 per cent of advertising time broadcast each year by commercial free-to-air television

166 Children's Television Standard 2009

licensees, between the hours of 6am and midnight, must be Australian produced advertisements.

e) Regional commercial television local content obligations

Regional commercial television broadcasting licensees in Queensland, New South Wales, Victoria and Tasmania are also required to broadcast minimum amounts of material of local significance (local content) as a result of an additional licence condition imposed on them. The minimum amount of local content is 720 points per six-week period, with a minimum 90 points per week. Points accrue on the basis of two points per minute for local news, and one point per minute for other local content material, excluding paid advertising.[167]

The table below summarises Australian content requirements for commercial and subscription television.

Table 39: Australian content requirements for commercial and subscription television

MINIMUM STANDARDS	
Commercial networks overall	At least 55% of transmission be devoted to Australian programming between 6am and midnight
First release Australian Drama	250 points between 5pm- 1.30pm, totalling 860 points over a set three year period
First release Australian Children's Drama	25 hours, totalling 96 hours over a set three year period
First release Australian Documentary	20 hours
First release Australian Children's Programs	130 hours
All Children's Programs	260 hours
Repeat Australian Children's Drama	8 hours
Australian Preschool Programs	130 hours
Advertising	At least 80% of advertising time broadcast by

167 On 28 June 2013, following a ministerial direction, the ACMA commenced a review to investigate the operation and effectiveness of section 43A of the BSA, which sets out local content requirements for regional commercial television broadcasters. The review is considering a range of issues, including the importance of and access to local content in regional areas, the economic circumstance of regional commercial television broadcasters and whether local content requirements should be extended to other regional areas. The outcomes of the review are scheduled for reporting by December 2013.

MINIMUM STANDARDS	
	commercial television licensees, between the hours of 6am and midnight, to be used for Australian advertisements
Subscription Television	At least 10% of total program expenditure be spent on new eligible drama

7.1.3 Regulation of local content on radio

Australian music quotas are regulated through an industry code - the Australian Music Performance Code is Code 4 of the Commercial Radio Codes of Practice. This code is administered by the Australian Music Performance Committee (AMPCOM). It sets out the minimum levels of Australian music which broadcasters are required to air during the Australian performance period.

The requirements are based on music formats, under which stations are categorised into five format based categories, ranging from A to E, and music quotas imposed on a varying scale based on the popularity of the music format (genre). Categories A to C also have minimum requirements for New Australian Performances as a proportion of total Australian Performances. The minimum requirements for New Australian Performances are calculated across all Australian Performance Periods occurring in any financial year. The Australian music quotas are summarised below indicating minimum requirements per station format.

Table 40: Australian music content requirements per service format

CATEGORY	FORMAT OF SERVICE	APPLICABLE PROPORTION OF AUSTRALIAN MUSIC CONTENT	APPLICABLE PROPORTION OF NEW AUSTRALIAN PERFORMANCES
A	Mainstream Rock Album Orientated Rock Contemporary Hits Top 40 Alternative	Not less than 25%	Not less than 25%
B	Hot / Mainstream Adult Contemporary Country Classic Rock	Not less than 20%	Not less than 20%
C	Soft Adult	Not less than 15%	Not less than 15%

	Contemporary Hits & Memories Gold - encompassing Classic Hits News Talk / Sports Talk		
D	Oldies Easy Listening Easy Gold Country Gold	Not less than 10%	None
E	Nostalgia Jazz NAC (Smooth Jazz)	Not less than 10%	None

Because the quotas are based on music formats, these formats are very clearly defined and radio stations are required to notify AMPCOM by written notice (through Commercial Radio Australia) of any material change to radio station formats. This must be within seven days of implementing such changes.

In addition to Australian music requirements, regional commercial radio has since 2008 also had local content obligations imposed on them requiring that they include programming from their coverage area. They are required to broadcast prescribed amounts of material of local significance (local content) between 5 am and 8 pm on business days.

7.1.4 Australian content and the Independent Production Sector

Apart from the above requirement for subscription licensees and channel providers to invest in new Australian drama, the Australian government also provides direct funding such as the financing of the public broadcaster Australian Broadcasting Corporation (ABC), SBS, Screen Australia and indirect funding through producer tax offsets.[168]

Australian content requirements imposed on broadcasting services (either through regulations or in the case of the ABC Corporation via its establishing legislation) have led to broadcasters significantly contributing to the production sector. According to Screen Australia, Australian broadcasting services remain the primary commissioners of Australian drama and documentary programmes.

168 PWC , "*Minimum content requirements research report*", May 2011

Of these services free to air and public broadcasting have been the main contributors of funding towards the Australian drama, children's programme and documentary programmes between 2008 and 2010.[169]

7.1.5 Review of Policies affecting local content regulation

The Australian government appointed a Convergence Review Panel in 2011 to look at the implications of convergence and digitisation on its overarching regulatory framework for communications. The Convergence Review Panel delivered its final report in March of 2012.

The report made a number of recommendations on the structure, licensing and approach to content regulation in Astralia. Amongst its key recommendations on content was for the extension of the current Australian Content Standard to the new digital multi-channel environment and the Pay TV platform.

This report set the basis for the Broadcasting Amendment Act of 2013, which introduced the following changes to regulation of Australian content;

- Australian content quotas are now specified in the Act;
- The Australian content standard has also been extended to non-core television services for commercial free-to-air broadcasters;
- Airtime afforded to Australian content quotas is set to increase progressively over a period of three years; from 730 hours in 2013; to 1095 hours in 2014; and 1460 hours from 2015 onwards;
- Licensees are incentivised to broadcast new Australian adult drama programs over channels other than their primary channels, by providing for one hour of each first release Australian drama program during the targeted viewing hours (18h00 to midnight) to count as two hours of Australian programs;
- Broadcasting services are afforded greater flexibility in fulfilling Australian content sub-quotas such as for Australian drama, documentary and

169 Screen Australia, "Convergence 2011: Australian Content State Of Play", August 2011, pages, 27-29

children's programmes, and are allowed to select programme types that contribute to the overall sub-quota score;

The most significant change introduced by the Broadcasting Amendment Act was a provision enabling the Minister to direct the ACMA in relation to its programme standards making powers.

7.1.6 New Media and Digitalisation

ACMA indicates on its website that it engages on the impact of convergence on communications and its impact on media regulation on an on-going basis. By so doing it says that it constantly re-examines the fundamental basis of its regulation and tools that it employs in regulation.

It publishes regular policy discussion papers in this regard, most notably the *Broken Concepts* (in 2011, updated in 2013) and *Enduring Concepts* (2011). *Broken Concepts* sets out the problems convergence poses for the current legislative and regulatory framework for communications and media, while *Enduring Concepts* sought to identify those concepts that are of on-going importance to media and communications in Australia, notwithstanding the pressures of convergence.

In addressing emerging digital television technologies and standards such as 3D television, ACMA published a discussion document titled *Beyond switchover—the future technical evolution of digital terrestrial television in Australia*. The document was released for public comment in January 2012 and explores ways in which the regulator should manage Australia's progression to new digital terrestrial broadcasting technologies over the next decade and beyond.

Following publication of the submissions to the paper in June 2013, ACMA commenced a process of engaging with industry experts on key broadcasting technology issues such as transmission and compression standards, the impact of connected TV platforms and the future of high definition. Further consultations are planned with industry and, if appropriate, the wider public in 2014.[170]

Digital radio services using the DAB+ standard, officially commenced in Adelaide, Brisbane, Melbourne, Perth and Sydney on 1 July 2009. In July 2012, ACMA approved a 12-month extension to trials of DAB+ being conducted in Canberra and Darwin. It has also licensed a trial of a DAB+ on-channel repeater (OCR) in Melbourne.

The OCR is designed to supplement the main Melbourne DAB+ signal and provide improved coverage to the Melbourne central business district. DAB+ OCRs may provide a model for DAB+ in-fill retransmissions in other digital radio markets. ACMA is working with industry on its plans to roll out OCRs on a permanent basis to improve coverage in metropolitan areas. [171]

7.1.7 Monitoring and Compliance

ACMA's compliance monitoring role, stems from its regulatory mandate contained in its empowering legislation, the ACMA's specific responsibilities in this regard include;

- regulating compliance with the relevant legislation, licence conditions, codes of practice, standards, service guarantees and other safeguards
- promoting and facilitating industry self-regulation and co-regulation;
- where necessary, exercising powers to create legislative and other instruments, often in the form of standards or service provider rules;
- facilitating the provision of community information to promote informed decisions about communications products and services; and
- reporting on matters relating to the communications industry, including its performance.

170 ACMA 2013 Annual Report

171 ACMA 2013 Annual Report

From a compliance perspective, licensees are required to report annually. They must retain audio records of local content broadcast and compile a local content statement for each business day. Licensees must keep audio records of local content for six weeks. Most licensees must keep local content statements for 18 months (unless another timeframe is stipulated by ACMA), additionally these must be made available to the public.

ACMA has also developed a suggested format for annual compliance reports and guidelines for their completion. It is interesting to note that regional commercial radio licensees are not required to meet the local content requirements during a prescribed 5 week period each year. The five week period commences on the second Monday in December each year (unless ACMA specifies another date).

a) Television

The ACMA monitors commercial television broadcasting licensees' compliance with the Broadcasting Services (Australian Content) Standard 2005 using its Australian content database. This database contains information provided by the three commercial television networks—Seven, Nine and Ten—under a self-reporting system about the programmes broadcast by their metropolitan services. The ACMA also collects compliance information from regional commercial television licensees, including network affiliates and independent broadcasters.

The table below summarises compliance requirements by broadcasting services in Australia.

Table 41: Compliance and reporting requirements

Requirements	**Free to Air**	**Pay TV**	**IPTV**
Financial Information			
Gross revenue earnings	Required to provide audited financial statements including gross revenue earnings performance on an annually	No obligations	No obligations

Requirements	Free to Air	Pay TV	IPTV
Profit	Required to report their Earnings Before Interest & Tax (EBIT) annually	No obligations	No obligations
Programme Expenditure	Required to detail expenditure on total programming, Australian programming, Australian drama, children's programing expenditure per C and P, as well as expenditure by genre	Required to provide information on drama programme spend on selected channels	No obligations
Programming quotas and expenditure			
Australian Programming quotas	Required to demonstrate compliance with Programming quotas on an annual basis	No obligations	No obligations
First Release Australian drama quotas	Required to demonstrate compliance with Programming quotas on an annual basis according to a point system	Drama based channels must demonstrate compliance with Australian drama expenditure quota	No obligations
Children's programming quotas	Required to demonstrate compliance with Programming quotas on an annual basis	No obligations	No obligations
First release Australian Documentary quotas	Required to demonstrate compliance with Programming quotas on an annual basis according to a point system	No obligations	No obligations
Local Content	Regional commercial television licensees required to demonstrate compliance with minimum local news and information quotas	No obligations	No obligations
Code Complaints	Industry required providing quarterly reports to ACMA and publishes an annual Code Administration report.	Industry required availing an annual summary to ACMA.	No obligations
Code of Practice review	The code must be reviewed every three years and include a period public consultations	The code must be reviewed every three years and include a period public consultations	No obligations
Public Awareness Obligations	Broadcasters required to demonstrate compliance with promotion of the Industry Code (specified to be 360 spots annually across all timeslots)	Channels to advice subscribers when subscribing and publicise the availability of the Code at regular intervals	No obligations

Requirements	Free to Air	Pay TV	IPTV
Australian Advertising Content	Broadcasters required to provide a report on country of origin for advertising content broadcast between 6 am and midnight	No obligations	No obligations

Source : Free TV Australia

b) Radio

The Australian Music Performance Committee (AMPCOM) monitors and reports to ACMA on commercial radio stations' compliance with their obligation under Code 4 of the Commercial Radio Codes of Practice. This code of practice sets quotas for the broadcast of Australian music by commercial radio licensees.

Previously ACMA also relied on the Compliance Program Standard covering three program standards dealing with advertising, commercial influence and compliance programs across the commercial radio industry. These standards provided procedures for monitoring and compliance with Australian and other content requirements.

The standards required licensees to formulate, implement and maintain a compliance programme to ensure that licensees and their staff were educated about, and trained in, their regulatory obligations under the BSA, the commercial radio standards and the commercial radio codes of practice.

In 2008, the ACMA announced a review of the commercial radio standards to consider the effectiveness, efficiency and appropriateness of the regulatory arrangements under the three standards. Research and industry submissions provided as part of the review indicated a high degree of awareness by licensees of their regulatory obligations.

The review also indicated that the vast majority of commercial radio licensees surveyed by the ACMA has in place a culture that encourages compliance, and that licensees are likely to maintain compliance mechanisms independent of the requirements of the 2000 Compliance Program Standard. Accordingly, the ACMA decided to revoke the 2000 Compliance Standard, and rely more strongly on self regulation.

7.2 CANADA

7.2.1 Regulatory Approach

Broadcasting policy in Canada is regulated under the auspices of the Broadcasting Act (1991). The Act deems the airwaves to be a public commodity critical to the cultural sovereignty of Canada. It imposes a Canadian owned and controlled system of broadcasting, and includes provisions regarding Canadian content in programming and production. It encourages the development of Canadian expression, and the use of Canadian talent and creative resources.

The Canadian Radio-television and Telecommunications Commission (CRTC or the Commision) is an independent public organisation that regulates and supervises the Canadian broadcasting and telecommunications systems. The Commission reports to Parliament through the Ministry of Canadian Heritage. This Commission is guided by the Broadcasting Act; and is given a mandate to develop policy guidelines and statements. Policy guidelines and statements are periodically reviewed to ensure they are up to date. These reviews are done in consultation with the public and industry.

Canada has a three tier broadcasting system similar to that in South Africa.

The Commission is mandated to ensure that all Canadians have access to a wide variety of high-quality Canadian programming. The CRTC also monitors barriers to entry by new entrants to promote employment opportunities and to encourage growth of the sector.

Content is regulated by the Commission by means of Public Notices and licence conditions. The Commission's role in this regard is to ensure that programming reflects Canadian creativity and talent, the country's bilingual nature, and multi-cultural creativity. The Commission further has to in particular consider the needs of aboriginal Canadians in fulfilling its objectives. The Canadian laws and policies place priority on ensuring broadcast programming of Canadian content (both in English and French), including drama, dance, music, regional, new and long-form documentary content.[172]

7.2.2 Regulation of local content on television

The CRTC's current rules require that Canadian programmes must make up 60 percent of television broadcast time overall for Canadian conventional, over-the-air broadcasters and 50 percent during evening hours (6 p.m. to midnight). Thirty five percent of popular musical selections broadcast on the radio must qualify as "Canadian" under a Canadian government-determined point system.

For cable television and direct to home broadcast services, a "preponderance" (more than 50 percent) of the channels received by subscribers must be Canadian programming services. Non-Canadian channels must be pre-approved ("listed") by the CRTC.[173]

Additionally, the CRTC requires that the English and French television networks operated by the Canadian Broadcasting Corporation not show popular foreign feature movies between 7 p.m. and 11 p.m. The only non-Canadian films that may be broadcast during that time must have been released in theatres at least two years previously and not be listed in the top 100 of Variety Magazine's top grossing films for at least the previous 10 years.

In the instance of other services, such as speciality television and satellite radio services, the required percentage of Canadian content varies according to the nature of the service. However, Canadian licensees may appeal the listing of a non-Canadian service which is thought to compete with a Canadian pay or speciality service and the CRTC will then decide

172 See 'Priority Program Categories' in CRTC public notice at: http://crtc.gc.ca/eng/archive/1999%5CPB99-97.htm

173 http://www.musicinaustralia.org.au/index.php/Broadcasting_Content_Quotas_%E2%80%94_Appendix_D

whether or not to remove such services from the list, or shift them into a less competitive location on the channel dial.

7.2.3 Regulation of local content on radio

Canadian radio stations are required to devote a percentage of their weekly music broadcasting to Canadian content. The required amount of Canadian content depends both on the type of radio station and the type of music it broadcasts: Popular Music (Category 2) or Special Interest Music (Category 3). These categories and their subcategories (genres or groups of genres) are set out below:

Table 42: Canadian music content subcategories

POPULAR MUSIC (CATEGORY 2)	SPECIAL INTEREST MUSIC (CATEGORY 3)
• **Subcategory 21 (Pop, rock and dance)** • **Subcategory 22 (Country and country-oriented)** • **Subcategory 23: Acoustic** • **Subcategory 24: Easy listening**	• Subcategory 31: Concert • Subcategory 32: Folk and folk-oriented • Subcategory 33: World beat and international • Subcategory 34: Jazz and blues • Subcategory 35: Non-classic religious

Source: Public Notice CRTC 2000-14

Canadian music quotas are summarised below indicating minimum requirements per station category.

Table 43: Canadian music content requirements per music category

TYPE OF RADIO STATION	CATEGORY 2	CATEGORY 3
Commercial stations	At least 35% of the Popular Music broadcast between 6:00 a.m. and 6:00 p.m. Monday to Friday must be Canadian content (applies to both English and French language stations) Commercial services can apply for the following special license condition designed to enable broadcasters to broadcast less than the stipulated 35%. *Pre-1956 music*: in program periods where all of the popular music broadcast is composed before 1956, at least 2% each week must be Canadian; in periods where **90% or more** of popular music consists of	At least 10% of all Special Interest Music broadcast must be devoted to Canadian selections. At least 25% of all concert music (subcategory 31) and 20% of all jazz and blues music (subcategory 34) broadcast is devoted to Canadian selections. Special Interest Music selections, including Canadian content must be scheduled in a reasonable manner throughout the broadcast day. Services are expected to propose an increase in the Canadian Special Interest Music (except in the case of concert music or jazz and blues) on license renewal

TYPE OF RADIO STATION	CATEGORY 2	CATEGORY 3
	selections composed before 1956, at least 10% must be Canadian *Oldies music*: [174] in any broadcast week where at least 90% of the popular music aired consists of selections released before January 1 1981, at least 30% must be Canadian, both on a weekly basis and between 6 a.m. and 6 p.m. Monday through Friday.	Services operating a concert / classical music format must also provide specific commitments to the broadcasting of works by Canadian composers. This applies to both English and French language stations
Campus stations	At least 35% of the Popular Music must be Canadian content (applies to both English and French language stations)	At least 12% of all Special Interest Music broadcast each week must be devoted to Canadian selections The CRTC may approve conditions of licence that establish lower Canadian content requirements for program periods devoted to new and emerging popular, in view of the fact Community and campus stations often program new and emerging popular music genres.
Community stations	At least 35% of the Popular Music must be Canadian content (applies to both English and Canadian stations)	At least 12% of all Special Interest Music broadcast each week must be devoted to Canadian selections The CRTC may approve conditions of licence that establish lower Canadian content requirements for program periods devoted to new and emerging Popular, interview of the fact Community and campus stations often program new and emerging popular music genres.
Ethnic stations **Native stations**	At least 35% of the Popular Music must be Canadian content (applies to both English and Canadian stations)	10% of all Special Interest Music broadcast each week must be Canadian selections
CBC / Radio Canada	At least 50% of their popular Music selections broadcast each week are Canadian content.	At least 20 % of all Special Interest Music broadcast each week must be devoted to Canadian selections

Source: Canadian content requirements for music on Canadian radio

If less than 35% of all music broadcast each week consists of instrumental selections, at least 35% of popular music must be Canadian content. If at

174 Given the limited availability of Older Canadian music compared to contemporary music genres, the CRTC provides some flexibility in terms of Canadian content requirements (through either regulation or condition of licence).

least 35%, but less than 50%, of all music broadcast each week consist of instrumental selections, at least 20% of all popular music must be Canadian.
If more than 50% of all musical selections broadcast each week are instrumental, at least 15% of all popular music broadcast must be Canadian content.[175]

7.2.4 Support for the Independent Production Sector

Canadian independent producers are protected by a provision in the Broadcasting Act (1991) that requires Canadian broadcasting services to include significant contributions from the Canadian independent production sector. The CRTC has consistently applied this legislative directive and required conventional and specialty channels to make specific commitments to independent production.

In 2010, the CRTC set out its new policy framework for the large English broadcast groups (CRTC Broadcasting Policy 2010-167), and renewal hearings were undertaken in the spring of 2011. The new provisions require the large broadcasting groups (Bell Media, Shawand Rogers) to spend 30% of their revenues on Canadian programming expenditures (CPEs), of which 5% must be spent on programs of national interest (PNI) which is specific to the genres of drama, documentary and awards show programming. For PNI, 75% of this programming must come from Canadian independent producers.

The CMF is the main source of television production funding in Canada, in the genres of drama, documentary, children's and variety. It was originally created by the CRTC and is funded by mandatory contributions from Canada's cable and satellite distributors, and the Government of Canada. The CMF has adapted its primary focus on television programming by expanding into digital media, and now requires television projects to incorporate a digital media strategy into their applications for CMF funding.

175 Canadian content requirements for music on Canadian radio

7.2.5 New Media and Digitalisation:

Canada is in the process of migrating from analogue to digital terrestrial television. The CRTC has not as yet reviewed its regulatory approach to content regulation in light of digital migration.

New Media (Internet and mobile TV) are specifically exempted from regulation by the CRTC.[176] Therefore, Internet content is regulated by either more generic criminal and civil laws (such as those prohibiting the sexual exploitation of children or racial discrimination) or a self-regulatory code of conduct established by the Canadian Association of Internet Providers.

However Video on Demand (VOD) is considered a broacasting service subject to the same regulation and local content requirements as traditional broadcasting services.

Note that the CRTC publishes an annual review of the sector, which among other things, tracks the impact of new media on traditional broadcasters and the public interest goals set for the sector to allow the regulator to intervene if necessary.

7.2.6 Review of Policies affecting local content regulation

In October 2013 the CRTC launched two processes aimed at reviewing policies regulating commercial television and radio in order to accommodate technological and market realities facing the Canadian broadcasting landscape.

The commercial radio review has a limited scope based on the argument that the sector had remained relatively stable. It thus seeks to improve elements of the current regulations and policy to improve regulatory effectiveness in the following areas:

- Approach to licensing small markets;
- Definitions of regional advertising; and

176 www.crtc.gc.ca/eng/info_sht/t1003.htm.

- Mechanisms to improve compliance to licence conditions.

The television review is more comprehensive and seeks to address the impact that digital technology will have on the future of the Canadian television system, in particular on programming diversity and attractiveness, and will cover three broad themes (programming, technology and access devices). The review is planned to take place over three phases, culminating with a public hearing scheduled to take place in September 2014. The first two phases will be exploratory and will inform the actions implemented in the third phase.

7.2.7 Monitoring and Compliance

The CRTC exercises its mandate set out in section 3(1) of the Broadcasting Act by developing policies, regulations, licence conditions, sanctioning non-compliance and issuing mandatory orders. The Commission has also developed procedures to assess licensees' compliance with the terms of their licenses and CRTC's regulations.

a) Television and Radio

These are outlined in broadcasting information bulletins (formerly known as Circulars). The CRTC procedures rely on data provided by the licesees under various broadcasting services regulations, including; Section 10(3) of the Television Broadcasting Regulations, 1987; section 7(2) of the Speciality Service Regulations, 1990 ; and section 4(2) of the Pay Television Regulations, 1990.

These regulations require licencees to retain recording of the programmes for at least four weeks and to furnish the CRCT with either with programme logs or a machine readable record of its programming every 30 days, and upon request by the CTRC.

Broadcasters are also required to provide the CRTC with audited annual financial statements. As part of the annual return process, commercial radio broadcasters must report on their contributions to Canadian Content. This information enables the CRTC to ensure that radio licences are complying with their conditions of licence or regulatory requirements relating to Canadian Content Development (CCD) contributions and that broadcast distribution licensees are fulfilling their obligations regarding the creation and production of Canadian programming, including contributing to the Canada Media Fund (CMF), Local Programming Improvement Fund (LPIF), independent funds, and local expression.

Broadcasting licensees are also required to complete an annual survey administered jointly with Statistics Canada. Statistics Canada uses the data to develop national accounts, while the CRTC uses it to monitor the broadcasting and telecommunications industries' performance, adherence to regulations, and the overall effectiveness of the CRTC's regulatory frameworks.

Most licensees with the exception of a few radio stations, who are mailed in physical form every October, use CRTC's secure web-based form to submit the data. The key results from this data are used to produce annual financial and statistical summaries of revenues and expenditures, such as expenditures on Canadian and international programming.

These summaries are published on the CRTC website and are included in the CRTCs annual Communications reports describing trends and statistics including compliance to Canadian content regulations.

b) Radio

Similarly the CRTC's assessment of a radio licensee's compliance is based on complaints received, monitoring of programming, contributions to Canadian content development (CCD) and the filing of annual returns. The compliance record of each station during a licence term is usually reviewed when the Commission considers the renewal of the station's licence.

The compliance of licensees with requirements governing the filing of annual returns and CCD contributions is also reviewed when the Commission considers applications for licence amendments.

7.3 THE UNITED KINGDOM

7.3.1 Regulatory Approach

The UK has a converged legislative framework, in which broadcasting, telecommunications, radiocommunications and the internet are within the scope of a single Act, the Communications Act of 2003. The enactment established Ofcom, as a converged regulator, responsible for regulation of the communications sector, including content regulation.

Self-regulation and 'light touch' regulation form a key part of the Communications Act and are reflected in the regulatory approach of Ofcom.[177] However, direct and prescriptive regulation of linear television services and radio services remains.[178]

Ofcom licences all commercial and community television and radio services. Ofcom is a member of the European Commission's information society which includes broadcasting and content services. As such the Commission provides guides and policy directives for industry bodies which are member states of the commission. The United Kingdom's Ofcom has built some of its regulations and directives on the guidance of the European Commission.

7.3.2 Regulation of local content on television

As one of the policy directives in the Communications Act, Ofcom has a committee for content called the Content Board; which is a sub-committee of the main board. It sets and enforces quality and standards for television and radio. The committee is delegated with the advisory responsibility for a

177 Generally, see http://stakeholders.ofcom.org.uk/consultations/coregulation/statement/ and regarding regulation of TV-like video on demand (VOD) Services, see www.atvod.co.uk/downloads/who_should_notify.pdf.

178 See 'Ofcom licensing' page at http://licensing.ofcom.org.uk/ and 'Television licensable Content Services' http://licensing.ofcom.org.uk/tv-broadcast-licences/tlcs/ and 'Formats and content regulation' page http://stakeholders.ofcom.org.uk/broadcasting/radio/formats-content/.

wide range of content issues, predominantly dealing with broadcasting. This committee is set up under statute, Section 12(1) of the Communications Act 2003.

Section 277 of the Communications Act 2003 requires public service broadcasters to source at least 25% of their content from independent production companies and section 309 applies a 10% quota to all other licensed digital television programme services.

The Act further identifies certain genres of programming as priority tiers for promotion. In line with this Ofcom has set rules for the amount of "original content" which must be aired in these genres. It further has a specific requirement to promote news and current affairs, including ensuring production of local and regional news.

The British Parliament has noted that it needs to consider mechanisms to particularly promote local children's and drama programming in addition to news and current affairs programming. This could include reviewing quotas for original content in these areas as well as incentives to promote these genres. It has further indicated that any rules should take into account current financial constraints in part due to the increased costs associated with digitisation.[179]

Television broadcasters in the UK (including multichannel services) it must be noted are also subject to the obligations of the European Union Audiovisual Media Services Directive (AVMS). The AVMS Directive requires that, "where practicable", more than half of all programming on television channels should consist of content produced in EU countries. In practice, for most UK channels this means UK content. Ofcom provides guidance for broadcasters on implementing these articles of the Directive.

179 http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcomuni/37/3708.htm

7.3.3 Regulation of local content on radio

In as far as radio is concerned; Ofcom publishes "localness" guidelines based upon the Act. Section 314 of the Communications Act 2003 defines 'local material' as *material which is of particular interest to those living or working within (or within part of) the area or locality for which the service is provided or to particular communities living or working within that area or locality (or a part of it)*. It can be delivered in a number of ways (local news, local information, comment, outside broadcasts, what's-on, travel news, interviews, charity involvement, weather, airplay for local musicians, local arts and culture, sport coverage, phone-ins, listener interactivity etc.). The balance of the different elements of local material outlined is for each station to determine for itself. But, where a station is required to broadcast local material it should include at least some of these elements.[180]

The localness guidelines state that generally, each FM station should produce a minimum of 10 hours a day of locally-made programmes during weekday daytimes (this should include breakfast). However, where an FM station provides an enhanced news service, of local news at least hourly during daytime on weekdays and at weekend peak times, that station should produce a minimum of 7 hours a day of locally-made programmes during weekday daytimes (this should include breakfast). Stations wishing to move to this type of arrangement are allowed to submit a format change request.

Whether these stations provide an enhanced news service or not, each station should produce a minimum of 4 hours a day of locally-made programmes at weekends (in daytime).

In each case, the locally-made programmes should include local material across the stated minimum hours as a whole, although local material need not be included in each of those individual hours if this is not appropriate.

180 http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/localness-guidelines

In exceptional cases, if a station can put forward a convincing case as to why it should be treated differently, for example, as a specialist music station, and so have to provide less local material and less locally-made programmes than these guidelines suggest, Ofcom will consider such requests on a case-by-case basis.[181]

7.3.4 Support for the independent production sector

All television channels licensed by Ofcom are subject to a range of regulatory requirements set down by the Communications Act 2003. One of the requirements is that licensed public service broadcasters have to implement a 25 per cent independent production quota. The Act also requires Ofcom to set quotas for original UK productions for each public service channel and to set down minimum requirements for news and current affairs programmes on these channels. Original productions are programmes made in the UK and can come from two sources: either commissioned from independent producers, or a broadcaster's own in-house production facilities.

The table below shows the quotas currently set by Ofcom for each channel both in peak-time and for the whole day. It demonstrates that all channels comfortably exceeded their original production quotas in 2008. The table covers all UK content, though not necessarily first-run productions since it includes repeats.[182]

Table 44: Original production quotas by public service channel:

	Quota all day% hours	Quota peak time% hours
BBC 1	70	90
BBC 2	70	80
ITV1	65	85
Channel 4	60	70
Five	53	42

Source: Ofcom

181 http://stakeholders.ofcom.org.uk/broadcasting/radio/localness/localness-guidelines

182 http://www.publications.parliament.uk/pa/ld200910/ldselect/ldcomuni/37/3707.htm

7.3.5 New Media and Digitalisation

Video-on-demand services are also regulated by Ofcom under new provisions introduced in 2010 in response to the European Audio Visual Media Services Directive.[183] Ofcom has in line with its founding legislation devolved this responsibility to a self-regulatory body.[184] However, for the most part, Ofcom does not directly regulate content on the internet.[185]

It should be noted under UK legislation; the 10% independent production quota currently applies to all digital television programme service broadcasters in the UK at a national, regional and local level (a separate 25% quota applies in the case of Public Service Broadcaster channels).

Ofcom also regulates content services. These are defined in legislation essentially as all services which provide audio-visual material for reception by the public. They include editorial content providers, tele-shopping providers and self-promotion services. Ofcom requires that content service licensees (dubbed Television Licensable Content Services) also adhere to the European Union requirements that at least 50% of the content transmitted must originate from Europe.

7.3.6 Review of Policies affecting local content regulation

In July 2013 the Department for Culture, Media and Sport published a Policy White Paper on the Communications industry, titled Connectivity, Content and Consumers - Britain's digital platform for growth. The document is intended to address changes in the communications landscape. This was preceded by a two-year review of the media and telecommunications sectors and is intended to bring corresponding regulation and legislation up to date.

The paper is "set to fundamentally change communications policies, institutional arrangements and consequently the manner in which the

183 See legislation at www.legislation.gov.uk/ukpga/2003/21/contents.

184 See 'Home' page for ATVOD at www.atvod.co.uk/.

185 G.J.H Smith, Internet Law and Regulation, (2007) 914.

communications are regulated in the UK". It is framed around four concepts, namely, connectivity (digital inclusion), innovative content, consumer safety and the costs of living.

The regulation of content is addressed under the innovative content and consumer confidence and safety standards sections of the report. In this instance regulation is aimed at strengthening the Public Broadcasting System as a key driver of contest in a Converged environment, by amongst others legislating to maintain the prominence of Public Service Broadcasters (PSBs). [186]

The paper advocates for an industry led self- regulatory system in preparation for a more converged future, and that a more common and consistent framework for media standards is applied across different media. It addresses a wide range of issues for consideration within this context, including, inappropriate and harmful material, filtering and blocking mechanisms for online media and video on demand services; advertising and privacy.

The framework, however does not articulate on UK and local content regulation standards and quotas. Instead this area is limited to encouraging investment in content creation, funding and creating a supportive environment for content development. It proposes the creation of a network of local TV services and supporting the development of local talent.

Content development is also supported by protecting intellectual property rights, protecting consumers and providing certainty around content. This will be achieved by setting appropriate standards across both traditional and new platforms providing broadcast like services, such as connected TV and video on demand.[187]

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186 Department of Arts, Culture, Media and Sport, Connectivity, *Content and Consumers: Britain's digital platform for growth,* July 2013, page 25.

187 Department of Arts, Culture, Media and Sport, Connectivity, *Content and Consumers: Britain's digital platform for growth,* July 2013, page 28-29.

The framework report states that it also aims to scale back Ofcom's duties in relation to Public Service Broadcasters, in order to reduce unnecessary regulatory burdens on the PBS services, including certain regulatory requirements such as requirements that these broadcasters provide annual statements of programme policy. [188]

The paper also contemplates the introduction of ex-ante regulation of competition in the broadcasting sector in order to address competition challenges brought about by changes in the market including the competition that traditional broadcasting is facing from broadcast-like services.[189]

7.3.7 Monitoring and Compliance

a) Television

Reporting requirements to Ofcom are based on genres, in order to provide a practical breakdown of investment, the genres applied are illustrated below.

Figure 71: Ofcom Genre Reporting

Copy	2005	2008	2009	% change 2005 - 2009	% change 2008 - 2009
News and Current Affairs	£363m	£298m	£293m	-19%	-1%
Arts and Classical Music	£72m	£48m	£50m	-31%	+4%
Religion and Ethics	£25m	£15m	£15m	-37%	+3%
Education	£23m	£25m	£26m	+10%	+3%
Factual	£521m	£479m	£467m	-11%	-3%
Drama and Soaps	£886m	£819m	£732m	-17%	-11%
Entertainment and Comedy	£565m	£505m	£468m	-17%	-7%
Feature Films	£194m	£198m	£211m	+9%	+7%
Sport	£456m	£507m	£418m	-8%	-18%
Children's programmes	£146m	£103m	£108m	-26%	+5%
TOTAL	£3,252m	£2,997m	£2,788m	-14%	-7%

Source: Ofcom PSB Annual Report 2010

188 Id, page 9

189 id, page 45-46

b) Radio

According to Ofcom, their research indicates that audiences continue to value local content on commercial radio: both for key information (local news, traffic, travel and weather) and for other local programming (such as local sport or community issues) that reflects local identities. However, they recognised in 2010, that local programming can be expensive to produce. And that this cost has been difficult to bear for some commercial radio stations due to declining advertising revenue particularly for smaller local stations.

The main challenge for regulation is to ensure, as far as possible, that all UK listeners are served by one or more commercial radio stations providing local programming, in such a way that allows the radio industry to remain financially viable. Accordingly, Ofcom decided in 2010 to take a more flexible approach. Ofcom's regulatory guidelines and licence conditions previously required the majority of FM local stations to broadcast at least ten hours during weekdays of locally made programming containing local material. Co-location and programme sharing were generally permitted only for smaller stations.

However, the need to balance protection of local content with stations' need to achieve commercial scale led the regulator to propose a new set of defined or approved local areas within which stations would have far greater flexibility, while still being held to local programming requirements[190].

Ofcom decided, that within each approved area, FM stations can request to co-locate and share all of their programming, effectively allowing them to come together to become larger, more viable stations. Ofcom also indicated they would be likely to consent to such requests if they are satisfied that the stations involved will continue to meet their licence obligations to

190 http://stakeholders.ofcom.org.uk/consultations/radio/statement/

provide local material relevant to the listeners in the licensed areas. They have changed their localness guidelines and format change policy to this effect.

Ofcom also indicated that requests for flexibility beyond these areas will still be considered, but will require individual consultation and assessment using the existing criteria of station size, local affinities between the licensed areas of the stations concerned, distance between them and financial viability. Ofcom may consent to such requests, following public consultation, if the relevant statutory requirements are met.

Listeners indicated to Ofcom during the review process that they value news more than other content on local commercial radio. Local radio also provides a source of news plurality, complementing the BBC. Therefore Ofcom changed their guidelines on local programming so that stations may choose either to retain the current commitment of at least ten hours of locally made programming daily, or to request a licence variation to reduce them to at least seven hours in return for broadcasting local news.

These must be broadcast regularly refreshed and updated, at least hourly during weekday daytimes. Ofcom has revised their localness guidelines and format change policy in accordance with this approach. Local AM stations may request to be freed of any requirement to provide locally made programming, except for the existing licence requirement to produce at least 10 hours a day of daytime programming (including breakfast) on weekdays from within their home nation.

7.4 LESSONS FOR SOUTH AFRICA

The purpose of the benchmarks were to consider local television and music content regulatory systems employed by Australia, Canada and the United Kingdom for the purpose of reviewing local content regulations in South Africa. The benchmark considered the following key aspects of local content regulation;

- The content of the local content standards;
- Mechanisms for Monitoring and Enforcing local content regulations;
- Impact of new technology on content regulation; and
- The resultants review of local content regulations

7.4.1 The content of local content standards

a) Television format factors

The benchmark countries were selected based on their similarities to the South African broadcasting system (market structure, approach to regulation and regulatory tools). It follows therefore that the design and content of local content regulatory standards would be similar.

Local content regulations in all the three benchmarked countries are structured around quotas/points applied in varying degrees across the three broadcasting sectors (public, commercial and community and free-to-air and subscription services), depending on the public interest obligations placed on the sector. For example public broadcasting services would typically have more stringent requirements as compared to pay/subscription television services.

Of the three benchmarked countries, the Canadian system appears to be the most stringent, as it imposes the highest quotas and regulates pay television more stringently, including setting rules for the scheduling of Canadian content within pay-tv bouquets.

In addition quotas vary across programming categories, with certain categories having more stringent requirements than others. In some of the benchmarked countries this is also applied to programming subcategories, especially those deemed to be of a higher public value such as children's programming and documentary programming. These format factors are also applied to address programming targeted at minorities, towards promoting neglected languages.

All three of the benchmarked countries have an element of format factors. In Australia these are applied to drama, children's programing and documentaries. In the UK certain genres of programming are considered to be priority tiers for promotion, requiring Ofcom to set quotas and include news, current affairs, and originated productions.

Although children's programming and drama are not considered priority programming in the UK, the British Parliament has noted that it needs to consider mechanisms to particularly promote local children's and drama programming in addition to news and current affairs programming. This could include reviewing quotas for original content in these areas as well as incentives to promote these genres.

Broadcasting services are normally incentivised to provide local programming in these categories and subcategories, through a point system where neglected genres comparatively count more towards the overall compliance total.

Currently in South Africa format factors are applied to encourage quality programming (and investment in more expensive genres), neglected genres such as arts programming, production of programmes in official languages other than English and Afrikaans and commissioning of producers from outside the major centres.

Of interest to the current review is whether the format factor system is effective in promoting these genres. A number of stakeholders interviewed were of the opinion that the current system was ineffective and warranted to be reviewed. The respondents proposed that these only be retained for neglected and expensive genres such as children's programming, drama and documentaries.

Australia reviewed its local content requirements as part of its Convergence review. The outcome was a progressive increase of the overall content quota, while retaining the programming categories (genres) and subcategories. However it relaxed the requirements towards quantifying the overall score. For example, whereas previously the score for Australian repeat drama was calculated by multiplying a 'format factor (based on a combination of program type, that us serial or series, feature film, tele-movie etc. and/or the level of licence fee paid) by the duration of the program, the review allows for broadcasters to select programming types contributing towards the overall score.

b) Financial Contribution

Since the regulations also have an element of economic development, the quota system is supplemented by requirements/quotas for sourcing programming from the independent production sector; and supported by a requirement to make a financial contribution towards content development, either as an alternative to broadcasting local content or to supplement the content aired. This approach is applied in Australia and Canada.

In Australia, subscription service providers are expected to devote at least 10% of total program expenditure be spent on new eligible drama. The Canadian requirements are more stringent and broadcasters are expected to make financial contributions towards Canadian programming expenditures (CPE) and programs of national interest (PNI) within the specific genres of drama, documentary and awards show programming. For PNI, 75% of this programming must come from Canadian producers.

c) Music Formats

One of the factors considered in the 2002 South African music position paper was the need to explore implementation of music format specific factor, especially given the fact that it was easier to meet quotas in some formats as compared to others. Whereas this was considered as an 'objective' measure to relax requirements in those genres where there might not be sufficient local music, it was also employed to encourage the development of new music, as in the case of Australia. Additional requirements to air new Australian music were imposed on certain music formats.

The Canadian system is more detailed, and similar to television programme genres makes provision for detailed definitions and format subcategories. [191] Likewise it is intended to encourage the broadcast of special interest music across all broadcasting networks.

The level of detail also allows for quotas to be reduced within certain music formats, where there is insufficient supply of Canadian music. It should be noted however some of the respondents interviewed were of the opinion that there was sufficient South African Content within all music genres.

d) Regional and local programming

In addition to Australian and UK programming, Australia and the UK also impose locally originated programming.

7.4.2 Monitoring and compliance

Although the three countries have similar approaches to South Africa in monitoring compliance to local content, they also differed from South Africa in the level of detail and the structure of compliance reporting. For example, reporting requirements to Ofcom are based on genres, in order to provide a practical breakdown of investment.

Similar to South Africa, the three countries measure compliance over an annual period, requiring broadcasters to keep programming logs and recordings over a given number of days. There is also a requirement to submit audited financial statements and separate reports on programming expenditure.

Over and above these reporting requirements, all three countries collected sector performance data on annual basis. This information is used establish a database of industry statistics that can be used to conduct regulatory impact assessment.

191 Public Notice CRTC 2000-14

For example, in Canada licensees are required to complete an annual survey administered jointly with Statistics Canada. In addition to monitoring adherence to regulations this data is used to monitor the industry's performance and the overall effectiveness of the CRTC's regulatory frameworks. This information is published on the CRTC website and in an annual Communications set or (including telecommunications) performance report. The Ofcom and ACMA also produce similar reports.

One critical consideration is that Canada for example uses web-based forms, that simplify compliance by the industry and analysis by the regulator. Several of the broadcasters interviewed for this research indicated that it would reduce the regulatory burden on them if ICASA developed web-based or electronic reporting forms.

7.4.3 Approach towards new technologies of local content regulations

Australia and the UK both initiated convergence review process with differing outcomes in recent years. The Australian Review culminated in the development by the Ministerial appointed panel of recommendations on restructuring the broadcasting regulatory framework. While government has not as yet issued any public statements on which of these recommendations it will take forward, it has promulgated the Broadcasting Amendment Act incorporating select recommendations by the Convergence Review Panel.

The UK process is currently at the White Paper stage and has adopted a very broad approach to convergence, spanning both their traditional telecommunications sector (characterised as infrastructure) and broadcasting (approached as content).

The White Paper does not specifically deal with UK and local content regulation standards and quotas but provides for the developmental aspects of local content regulations such as creation of platforms for dissemination of content (local and regional channels), protection of Intellectual Property and funding. The paper also attempts to control/ regulate broadcast like services and non-broadcast television by extending self-regulatory standards and codes to these services.

Canada has also recently initiated separate radio and television reviews. The former is intended to refine regulatory instruments in the face of market changes, whilst the later considers the impact that digital technology will have on the future of the Canadian television system, in particular on programming diversity and attractiveness

8. INDUSTRY PERSPECTIVES

8.1 INTRODUCTION

The purpose of this part of the report is to provide in summary, industry and other stakeholder feedback. The feedback is based on written and face-to-face interviews regarding their perceptions of the impact of the local content regulations on the market, an indication of benefits and challenges of the regulations on society more broadly and future recommendations regarding the regulatory approach going forward.

The approach followed in obtaining the information was initially through either face to face or telephonic interviews, using a standardised questionnaire. Thereafter further exploratory questions were asked to ensure an in-depth understanding of the relevant industry player's perspective and to validate data and obtain further verified financial and other data to assist the cost modelling process. A sample of interviewees were chosen from the stakeholder list and all broadcasting services licensees, and based on availability and time constraints, interviewees selected and further interviews were conducted. It should be noted that industry bodies were interviewed as far as possible to ensure a deeper understanding of the perspectives of respondents and to obtain a representative sample of the diversity of industry views.

As illustrated in the report, there are certain common concerns and considerations throughout the industry, as well as sector specific concerns and considerations. These are identified and summarised towards the end of this report. The report includes views from the following sectors and stakeholders:

- Free to Air Television
- Subscription Television
- Commercial Television Channels and Radio Stations
- Public Television Channels and Radio Stations

- Public Commercial Television Channels and Radio Stations
- Community Television Channels and Radio Stations
- Independent Production Sector
- Music Industry representatives, and
- Government departments and state agencies

8.2 FREE TO AIR - TELEVISION

8.2.1 Perception of Impact of Local Content Regulations and Related Regulations

The industry players interviewed indicated, that although it was a struggle at first to meet the local television content requirements because of cost and limited demand, the situation has changed over time, and local content has become one of the most important features on the broadcasting schedule and forms part of core content. Audiences now demand local content.

It is not possible to conclusively ascribe the increased demand to local content regulations, but it can definitely be stated that these have contributed to stimulating demand.

According to broadcasters interviewed, it is currently a commercial rather than a regulatory imperative for broadcasters to screen South African content. New services launched by broadcasters, have moved, for example, specifically developed channels that focus on local content (i.e. eKasie), despite there being no regulatory requirements for free to air satellite services to do so.

The regulatory regime for South African television content can therefore be touted by ICASA as a real success story. It has achieved its objectives – stimulated such a demand for local content that broadcasters are compelled to air it to remain viable.

The broadcasters therefore indicate that the question that must be asked by ICASA during its review is whether or not regulations for local content are still necessary and which genres in particular are not commercially viable and therefore will still require regulatory interventions. The point was raised by at least one respondent that there may still be a need to focus regulation on specific programming that traditionally is not profitable (such as children's programming), because in the absence of regulations broadcasters would not be providing such content.

In the view of several respondents there is a need for ICASA to revisit the advertising and sponsorship regulations as part of this local content review because they are very old and have been in many ways overtaken by the current practice of Advertiser Funded Programming. There will be an increasing need for a more liberalised regime around advertising and sponsorship the more things change through technological development, given the growth in the number of AFP's as reported by all the broadcasters to the Broadcaster Survey. Broadcasters, they noted, are increasingly competing with other unlicensed platforms and they need to be "agile" to accommodate advertisers' needs if they are to continue to attract the advertising spend they currently command.

8.2.2 Monitoring and Compliance

The current regulatory requirements expect that quotas be met over the period of a year and that makes it difficult to confirm compliance. In light of this concern from ICASA, interviewees were asked to comment on whether or not it would be impossible to meet the requirements over a shorter period.

They stated that the effects of measurement over a shorter period on their business "would be disastrous". The argument raised, is that television is seasonal and the regulatory requirements must recognise this. As an example, over December holiday periods more movies are broadcast during the day time in response to audience demand, which do not necessarily meet the quotas for that specific month. However, the broadcasters believe that they more than make up for it though in other periods throughout the year.

It was proposed that ICASA should treat its monitoring of compliance like an audit and identify risk areas that the broadcasters would address with the guidance and assistance of ICASA's monitoring and compliance division. Some broadcasters also raised concerns about a lack of communication from ICASA. It was alleged that the broadcasters only receive an acknowledgement of receipt of quarterly and annual compliance reports but never an indication from the Authority on the adequacy of such reports or issues of non-compliance.

8.2.3 Regulated Elements

Repeats: The broadcasters indicated that the multi-channel environment may necessitate more repeats across different time slots or days or channels to allow audiences a chance to watch the programme given that there will be so much competing content. The approach could consider how many repeats will allow a broadcaster to cover the cost of a programme. They stated that South African content is more expensive and that they therefore have to maximise how they use it. In terms of regulating repeats, broadcasters stated that they don't have a specific proposed approach, but that in considering the issue, ICASA should be guided by the purpose of the regulations.

Format Factors and Incentives: e.tv indicated that they have not used format factors at all as they are in their view too complicated to work out and understand. The channel it should be noted has higher and very specific licence condition requirements that exceed those set out in the regulations. The licence conditions do not include format factor incentives and the broadcaster stated that it focuses on compliance with these – which automatically result in it exceeding the regulatory requirements.

Genres: It was proposed that ICASA should consider which of the genre specific quotas are still necessary, in other words, where the industry may not further the objectives of policies and laws if it was not specifically regulated. This will allow more flexibility and allow for broadcasters to respond to the demand for particular types of programming, in areas where regulation is not required. So, for example, it was proposed that where broadcasters are all exceeding the minimum requirements, genre quotas can be dropped. Where it is clear that broadcasters have a commercial imperative to focus on specific genres, these can also be removed or made less rigid and an incentive approach adopted.

Nonetheless, for example, with children's programming, it remains difficult to meet the SA content quotas. It was indicated that broadcasters run at a loss for most or all of their children's programmes. However it was strongly proposed that no new genres be added.

It was again stated that ICASA should have clarity on exactly why it regulates a specific area, and if there is still a need for regulation. More flexibility is proposed in a multi-channel environment to meet the overall requirements of audiences, advertisers and content producers.

Prime time: The broadcasters believe that the regulation of broadcasting of local content during prime time is no longer necessary. Broadcasters indicated that they try as far as possible to broadcast local content during prime time, when the largest audiences are available to view and advertising slots are sold at a premium. Broadcasters can therefore best monetise their investment in local content during prime time and local programmes compete more effectively for audiences against cheaper licensed international content.

Independent Producers: The requirements that 40% of all television content is commissioned from independent producers by broadcasting services licensees were considered to be reasonable and should be maintained in the view of most broadcasters. The independent producers were predictably in support of the continuation if not an increase in the 40% requirement.

8.2.4 Way Forward

In order to meet the demands of a multi-channel environment, it was proposed that the regulatory approach in future must be focused on maximum flexibility. If there is not maximum flexibility, it was submitted that there is a danger that the quotas will be formally met by airing lots of cheap programmes which will defeat the purpose of the local content regulations.

It must be recognised that the regulatory framework is seen by stakeholders interviewed as a success and that broadcasting of South African television content is now a commercial imperative – the reason why special local niche channels are already growing, albeit in an uncertain licensing framework of "channel authorisation".

Therefore, the regulatory approach in future must allow for the flexibility required in a fully converged ICT sector and the innovations brought about by multi-channel broadcasting to be exploited for the benefit of South African audiences. This would involve ICASA for example encouraging more local niche channels and specialist programming and not impose per channel regulatory requirements but rather let broadcasters determine how to meet requirements across their network of channels and their bouquet of offerings.

This flexibility is also important given the range of changes facing broadcasters and broadcasting as a whole. For example, while ICASA has recognised in a policy paper that IPTV is a broadcasting service and therefore must comply with local content requirements, it has not taken this further or indicated how it would approach such licensing. There are also no requirements in place on SA content for free to air satellite multi-channel services. It is hard to predict what other services will be launched in the new converged environment – and when broadband becomes more pervasive and affordable, although international research has shown that demand is growing fastest for video and multimedia services (i.e. 'television-like' content) over the internet.

One of the critical issues raised, is that ICASA must have measures in place to ensure there is fair competition across platforms and services and that the regulatory environment is responsive to what is happening in the sector/market. For example, the current framework has not addressed the fact that subscription broadcasting services are no longer niche services aimed at a minority of people as they were when the local content regulatory framework was developed and the extremely light touch regulation of pay-tv adopted.

Broadcasters indicated, that although new services and technologies (such as video on demand, PVR and time shifted viewing) have not affected their viewership, as broadband and unlicensed "content services" become more pervasive and easy to access they believe that traditional licensed broadcasters will undoubtedly be affected.

Additionally, it was submitted that there should be different local content requirements for the migration period from analogue to digital that recognises that there will not be the same access to audiences with dual illumination. In effect, audiences will be fragmented across the analogue and digital television transmission networks, with no additional advertising revenue accruing to broadcasters that have to provide the same content across two networks without an overall increase in audiences.

In order to encourage innovation and increased investment in local television content, a number of broadcasters stated that there needs to be a much more light touch approach during the migration period so that broadcasters can be viable and have flexibility in their approach to attract viewers and incentivise STB take up for DTT and DTH satellite reception.

A suggestion was made, that the approach could be progressive and has a cumulative increase in local content within individual channels and an increase in the number of niche local content channels. Accordingly, ICASA should consider setting different requirements for the first year, second year etc. and these could increase in response to audience demand and regulatory objectives.

Several broadcasters interviewed stated that it would be ideal if certain local content requirements could kick in depending on the activation of a minimum number of set top boxes[192] and thus be based on the potential revenue that a broadcaster can secure. Others stated that the new framework should have different requirements for new entrants – and thus reduce barriers to entry as new broadcasting licensees would not be able to rely on archives to meet local content requirements.

At switch off of the analogue signal there will need to be further reviews based on the experiences of the regulator and the sector and the lessons they have learned from the dual illumination process.

There is a perception that the dual illumination period could extend for a very lengthy period – until even 2023 according to one broadcaster.

The contention of some broadcasters is that in relation to analogue subscription television licensees, they use valuable and finite spectrum and should accordingly have public service obligations relating to the use of that spectrum as do FTA broadcasters in the analogue environment. They believe that the extremely light touch approach needs to be totally reviewed to ensure that there is a level playing field in a fully digital environment.

In relation to satellite subscription services, some respondents argued that the approach might be different based on the fact that spectrum scarcity is no longer a basis for economic and technical regulation.

It is submitted that ideally the sector only requires economic regulation. It is proposed that the ECA requirements on the access by pay-TV broadcasters to advertising should be changed, so they are reliant on subscriptions rather than competing directly with commercial broadcasters for advertising as

192 A figure of at least two million TV households with active STB was given by one commercial broadcaster.

they currently are. They also believe there should be requirements forcing them to pay for carrying other broadcasters' services under the Must Carry regulations. In as far as they compete in the same commercial space for advertising they should have similar obligations.

They cannot be competing for advertising but not have the same cost obligations in regard to local content. That results in unfair competition. Therefore, going forward services should perhaps be distinguished based on the service provided but looking at a cross-platform approach. So services on the same platform are treated equivalently.

So, in summary, until the ECA is changed to limit the access by pay-TV broadcasters to advertising and therefore they are not directly competing with free to air broadcasters for advertising, they should have similar obligations in relation to local content and be required to fulfil other public interest obligations.

It was also submitted by one group of broadcasters, that studies they have conducted indicated that the current SA content regulations for free to air broadcasters would not be viable for new licensees. According to a range of different models that they ran to assess viability for new services, all their findings showed that they would not be able to break even in ten years.

Another issue that was raised was that any new framework must not only consider the implications of digital and multi-channel television, but also the impact of convergence – and the possibilities of Google television and Netflix or other such new initiatives.

It was submitted that in developing the framework, ICASA's own capacity must be considered. For example, it is unclear how effectively it is monitoring and enforcing compliance of the current regulations. If it is producing regular reports, these are not published. What appears to be a lack of evident capacity, ends up prejudicing those that are complying with regulations as they are unsure if others are actually doing this. There is a need to ensure that reports by ICASA are seen as valid to encourage licensees to comply. A system of independent auditing could assist in this.

At the same time, it was indicated, that it is important to think about how the framework can lessen the burden of administration of new players – and therefore to have a stepped or phased in approach to regulations and compliance. It was suggested that a three to five year phased approach be followed.

ICASA must have the capacity to monitor its own regulations otherwise there is no point to any framework.

8.3 COMMUNITY TELEVISION

8.3.1 Perception of Impact of Local Content Regulations and Related Regulations

Over and above furthering the education and cultural aspects of broadcasting, local content is also meant to reflect a diversity of worldviews through a variety of programming types or genres. One community broadcaster indicated that the regulations have to some extent been effective in achieving the objectives set out in legislation.

However, it was submitted that:

> *"community, public and private needs to have different regulations. You can't have a one size fits all"*

It is noted that the current regulatory framework does set different requirements for the different categories, but this was developed before licensing of new community television services – and thus not based on either their own or ICASA's experiences of the sector.

Another point of view raised was that there needs to be a clear funding model and clear guidance from ICASA on how it is defined. The financial model for community television must be considered in relation to this. If they are to have limited commercial revenue, for example, whether by law or because of challenges they face, they need to be able to supplement this in other ways. It was proposed that ICASA needs to clearly define what is meant by community television, considering its financial model and ensuring that it can be viable.

8.3.2 Monitoring and Compliance

One community broadcaster acknowledged that they were not able to comply 100% with their licence conditions, and they were aware that other community broadcasters were in a similar situation. They stated that they were in consultation with ICASA to assist them to fulfil their obligations. As an example, the cost associated with news programming and commissioning 40% of content from independent producers made compliance difficult due to the costs involved. However, the broadcaster believes that ICASA has been able to effectively enforce compliance overall.

8.3.3 Regulated Elements

Genres: There is growing popularity of local programming, mostly drama and soapies on community TV. There is also other content that can be tapped into, new trends such as the hip hop culture, and other education and social cohesion type of programmes. Additionally, it was submitted that news is very expensive to acquire and ICASA should reconsider how it deals with news in the community television sector, especially what is considered to be local news for geographically founded/bound community television channels.

Independent Production Sector:

> "*Look community TV stations are just an entirely different creature, we are not a traditional television station, as we know it, so I think ICASA needs to wrap their heads around the reality of the community TV environment. We are really here to create opportunities for emerging film-makers…*"

It was submitted that the 40% requirement for independent producers is too high for the community television sector, and they had developed other business models to meet the overall industry development and cultural objectives of the regulations. Community TV channels it was noted do not commission producers in the same way as other TV services.

8.3.4 Way Forward

It was emphatically stated that ICASA should not be making any new regulations until the [DOC's ICT] policy review process has been completed.

8.4 PUBLIC TELEVISION

"South African content is something we have to do naturally. We can't deliver on our mandate via international content. Local content is important to meeting our mandate."

8.4.1 Perception of Impact of Local Content Regulations and Related Regulations

The SABC indicated that the regulatory framework does not allow them flexibility to implement the objectives in the best manner considering market needs. The current approach does not allow them, for example, to determine how they meet the objectives across all their channels but pigeonholes each channel and takes away their ability to be responsive to audiences.

It was further stated that the regulations restrict competitiveness as they are too specific – dictating for example essentially what prime time should look like.

The compliance methodology in the TV content regulations is also perceived to be very complex and has not been formally clarified by the regulator. It is therefore proposed that ICASA develop an explanatory memorandum to explain how to calculate the different requirements.

The SABC believes that when the regulations came into effect, ICASA should have held workshops to explain how to apply them. Ideally regulations should be self-explanatory. For example, the regulations require the SABC to meet requirements weekly but don't state whether a week starts on a Monday or a Sunday. This gets more complex when monthly reports are incorporated into quarterly reports as some months end on an arbitrary day and not at the end of a week. It is also stated that the regulations do not specify if the times should be recorded according to the scheduled or the programme length.

8.4.2 Monitoring and Enforcement

A number of areas were highlighted by the SABC where it alleges the interpretation of the contents of the local content regulations is uncertain. This they said results in different staff members at ICASA interpreting compliance requirements differently.

The SABC concurred with the sentiments raised by the commercial free to air broadcasters, that measurement of compliance should be done over a year, stating that –

> *"We cannot meet the requirements each and every week. That would be impossible as television programming is season- and event-driven and the regulations need to recognise this. It should remain as a year."*

8.4.3 Regulated Elements

Prime time: The regulations are regarded as restrictive, as an example, the SABC has to air a certain amount of current affairs in prime time, even if viewers no longer want this at those times. Accordingly, they stated that they cannot be responsive to audience needs, and even if it is part of their overall mandate, the SABC will lose audiences to channels during those times.

Repeats: These have, according to the SABC, not worked optimally. The approach is regarded as too blunt and inflexible and they believe there should be different approaches for different content dependent on the investment required. Critical considerations are to get a return on investment in programming and that this was difficult due to the SA content requirements on repeats.

They stated that they tended not to air local content more than twice as it made it difficult to meet overall quotas given that further repeats did not count towards compliance. This they said resulted in them not necessarily recouping the investment in such content.

To expand on the comment on repeats, the SABC states that dramas in particular are very costly and they believe the regulations should recognise that broadcasters have to "*sweat assets and allow for a reasonable return on investment*". They are of the view that this situation could be improved if regulation allows for more repeats of drama to be credited as local content (or as if it were flighted for the first time).

The proposal is that South African dramas and other such programming should get credits for at least three broadcasts (dependent on the costs involved). The quality of the content and the forces of demand and supply will determine the size of audiences that such content will attract, therefore repeats should not be disincentivised.

Children's programming should be considered differently for a number of reasons according to the SABC. At certain ages children want programmes repeated and, importantly, they stated they learn from repetition of educational programming. The regulatory limitation on repeats discourages the SABC from repeating programmes in line with this educational best practice.

The SABC noted further that repeats of children's programmes are often "new" to those watching. Programming for example for 7-9 year olds can be repeated every few years as it is essentially targeting a "new" audience of 7-9 year olds. The SABC tends to avoid repeating much of the very valuable educational programming produced over time as they will not get credits for this for local content.

The broadcaster further stated that it must also be recognised that the SABC has a rich archive of cultural content produced over many years. One of their mandates is to preserve and showcase different cultures but many valuable cultural programmes sit in their archives rather than get aired due to the regulations on repeats.

Incentives: The SABC, unlike e.tv, voiced its resounding support for the incentives (for producing in regions outside the major metropoles for example) and indicated that they use them to meet their statutory and licence objectives. This means promoting certain types of programmes and increasing diversity in commissioning of independent producers. They submitted that the incentives do add value.

The SABC stated that ICASA should perhaps include more incentives – to for example incentivise broadcasters to invest in developing new formats which could be exported overseas. This would contribute towards growing the independent production industry as a whole.

They also stated that some of the incentives were insufficient to really promote quality programming.

Genres: The SABC proposes that the different genre specific quotas should be reviewed. There are some that are not clear anymore as television has changed. The definitions don't always fit the way programmes are categorised. For example, some sports programmes (not coverage of sports) fit under documentaries when they are not necessarily documentaries, additionally; the category "Informal Knowledge Building" is very broad and vague.

There are also new genres of programming which were not really aired at the time the regulations were finalised. This includes reality shows which have become increasingly popular. They are not dramas but some are similar, while others might be educational. The SABC indicated that there are some reality shows that cannot currently be allocated to any of the genres defined in the regulations. They suggested that ICASA consider whether or not reality shows are possibly a category of their own.

The SABC lastly proposes that an assessment be conducted to determine whether all the current genres are still required.

Independent Producers: As far as the 40% requirement regarding independent producers, the SABC believes this should certainly not be increased.

8.4.4 Way Forward

It is proposed that the regulations should set out requirements across all SABC channels rather than determine what must be on each channel. The SABC noted that this would be increasingly important in a multi-channel environment.

The SABC also made a proposal regarding the enhancement of incentives going forward. To this end they also added that incentives should be introduced for "ground breaking" programming and innovation.

The SABC proposed that genre based quotas be reviewed to simplify the process (particularly in light of the fact that most broadcasters exceed the quotas for particular genres).

The SABC lastly submits that it is not necessary to set quotas for South African music on free to air television as recommended by the Dti Copyright Commission.

One of the critical elements in regulating local content is however, that going forward there must be enough material to fulfil requirements set.

Overall, the SABC believes that ICASA must play a big role in encouraging digital adoption in South Africa and must consider its regulatory approaches in relation to this. They propose that ICASA needs to find ways to incentivise broadcasters to promote digital take up across different platforms. The approach should be on incentives rather than punitive measures.

The SABC submits that audiences are adopting a wide range of technologies and as a result traditional broadcasters have to innovate in order to maintain and grow their audience base. They indicated that they have seen for example that PVR is changing the way in which audiences consume television and the way in which broadcasters now schedule their programmes. New distribution platforms such as mobile broadband and VOD are eroding their audiences. Audience research shows that this has had an impact specifically on their day time audiences and on weekends – even in primetime on weekends.

In as far as the dual illumination period is concerned; the SABC proposed that there should be no content regulation for the incentive channels during the dual illumination period. The focus of this period will be on promoting the purchase of set top boxes as there will initially be very few viewers on the DTT platform as a limited percentage of the households will have STBs. The process should not cripple broadcasters but allow them the opportunity to attract viewers and persuade them to buy STBs without being forced to meet a range of regulatory requirements when they may not attract advertisers to recoup costs.

They also indicated, in particular that a staged process (phasing in) would make the process of implementing new regulations too complex. Rather a completely new regulatory framework should be in place for the post analogue switch off.

Similar to the comments by free to air broadcasters, the SABC believes that the whole approach which underpinned subscription broadcasting regulation in the past needs to be reviewed given the increase in subscribers. They submit that ICASA needs to recognise viewers as consumers needing consumer protection and minimum standards of service which must include that the broadcasters should provide additional benefits to viewers and to South Africa's content industry and other public goals. If subscribers are viewed as investors in subscription broadcasting services there must be returns for the public that has invested. The increase in subscribers has also changed the profile of viewers[193] of subscription services and the regulatory framework needs to recognise this and place more obligations to ensure they meet the needs of all these viewers – and for example air content in a range of South African languages.

The SABC submits that new technologies will also make some of the regulatory requirements redundant over time. For example, PVR will allow audiences to determine their own prime time and so in the future setting requirements for prime time will not fulfil original intentions. The focus should rather be on making sure broadcasters make South African content easily accessible for viewers.

Additionally, the SABC like e.tv proposed that the advertising and sponsorship regulations be reviewed. In the digital multi-channel environment broadcasters are going to have to find increasingly creative ways of funding content – not only to meet ICASA's requirements but because audiences demand South African content. SABC does air a number of AFPs, although they always retain editorial control and this is specified in their agreements. According to the SABC, this does not breach the objectives of the current regulations.

8.5 SUBSCRIPTION TELEVISION

8.5.1 Perception of Impact of Local Content Regulations and Related Regulations

One of the licensees indicated that to encourage the growth of South African music, local music quotas should be enforced across all distribution channels (including television, cinemas and other media platforms) and encourage the use of South African music in local film and TV productions.

Another proposal by this broadcaster was that if the creation of social cohesion and national identity are the main objectives behind the regulations, ICASA should consider local content in its totality, and all aspects

193 A service that was, until 2006 limited to LSMs 9 and 10, is now consumed by audiences across all LSM groups (mainly LSM 4-10)

of the value chain including origination, dissemination (distribution), publication etc. when they regulate.

However, another broadcaster believes that the current set of regulations (2006) come out of a totally different world.

> *"There may have been a point in time in SA where local content quotas played a role in stimulating demand, but this is no longer the case. Audience demand for local content is so strong, that even if all the regulations are taken away, no TV broadcaster will stop providing local content. The reason is that it has become a key differentiator."*

This broadcaster explained that initially, the challenge to provide local content was around cost (as it was so much more expensive). However, their experience is that even though it is still more expensive, audience demand is so strong that the bigger challenge now is to meet audience demands.

The above mentioned view was shared by another broadcaster that added that the objective of the regulations has been achieved. However, it is submitted that, as with other regulations these regulations were conceived in isolation from other government initiatives (DTI, NFVF and Department of Arts and Culture initiatives) which were being implemented in silos whereas they should be aligned to address SA creative and cultural industries in their totality.

"It is proposed that ICASA asks themselves if the fear that, without regulation, only foreign content will be consumed is still relevant?"

8.5.2 Monitoring and Enforcement

The experience of one of the subscription broadcasters is that they are monitored effectively by ICASA. However, they are aware that concerns have been raised that some other broadcasters have not been regulated. They suggested that there is a perception that ICASA is not using the content of broadcasters' compliance reports in any meaningful way.

Another broadcaster however submitted that ICASA should consider streamlining internal processes to make regulation and monitoring more effective..

8.5.3 Regulated Elements

Genre:

> *"Genre is no longer applicable, it was applicable in a single channel environment".*

Music: One of the subscription broadcasters made an interesting observation regarding music, and indicated that music licensing is a big cost to broadcasters – and it is not correct to assume that broadcasters rely on foreign music.

They stated that foreign music is expensive and most broadcasters use local music and/or library music because of budgets. It was explained that very seldom will foreign commercial tracks be used in programming. SA musicians are still asking for assistance, but it is submitted that further quotas on broadcasters are not the way to do this. They argue that the question to be asked is why the huge licence fees paid by broadcasters are not getting to SA musicians and this may mean greater oversight over collecting societies.

Format factors: The subscription broadcasters plainly stated that the format factors are clumsy and not effective.

Advertising and Sponsorship: It was submitted that these regulations lost all relevance during the ECA process due to their lack of application in a multichannel environment, and that commercial imperatives on how much advertising audiences are prepared to accept, and broadcasters are prepared to flight cannot be regulated.

8.5.4 Way Forward

It was proposed by one of the subscription broadcasters, that the basis for developing the way forward should be what is possible in the next ten years, and creating an appropriate enabling framework. A specific proposal is that instead of the current system, the approach should focus on content versus budget. Additionally, they proposed that 10% of channels offered on any multichannel platform should be local.

One of the broadcasters raised a concern that ICASA should regulate competition and restrict incumbents from acquiring all rights to premium content, thus limiting competition. This broadcaster also proposed that regulatory interventions should be introduced across all segments of the production value chain.

In as far as the regulation of IPTV is concerned, it was indicated that ICASA should consider international best practice, where it does not fall within the regulated space. Another subscription broadcaster added that regulation is based on the use of public or scarce and finite resources. If none are used, what is the justification for regulating? The same applies for video-on-demand.

However, one of the broadcasters had a completely different view and indicated that as long as providers of content are competing, they should be subject to the same regulations. Accordingly IPTV and VOD should both be regulated, and therefore that the definition of broadcasting should be one of the fundamental changes to legislation that should be considered as part of the policy review process.

It was also stated that in a true multi-channel environment, the more channels you have, the more broadcasters are able to provide niche content. Regulating per channel is very restrictive and frustrates the potential of multi-channel broadcasting to cater to diverse audience needs. The regulator has to allow broadcasters the freedom to cater to the tastes of their audience (whether this means a basketball channel or a reality TV channel) –

> "*to the extent that they continue to regulate, regulation should allow licensees the flexibility to meet the needs of their audience.*"

A more general comment by one of the broadcasters is that there must be clarity on the underlying reason for regulation. A common rationale is that use of national or scarce resources justifies regulation. For this reason,

- public Broadcasting is most heavily regulated because these services are publicly funded through licence fees,
- next free-to-air because they have access to all television owning households using scarce terrestrial spectrum,
- then pay television using terrestrial spectrum and finally satellite broadcasting services which use little or no high-demand spectrum.

However, in the case of broadcasting services which use little or no high-demand spectrum, the justification for regulation has never been clear to them.

It was submitted that ICASA is still not regulating for a converged environment. The focus it was argued, is still on broadcasting and broadcasting content, and the rationale for this was that broadcasters were the primary creators and distributors for locally produced content. This is no longer the case with local content being created by international channel providers[194], and online operators[195].

In terms of the approach to be followed during the dual illumination period, it was categorically stated by one respondent that the current regulations cannot stay as they are as they are simply not workable in a multichannel environment. It was however submitted by another broadcaster that there should be as little disruption as possible and that local content regulation should only be addressed, post digital migration.

"ICASA needs to take a longer term view – what are they trying to achieve and what instruments do they want to use to achieve this.

194 As en example - MTV, BBC, CNN, Comedy Central.

195 Such as Youtube and Netflix

A separate submission proposed a different approach to regulating subscription broadcasters than that currently in place. It was proposed that those subscription operators that are competing directly with FTA services for ad revenue (ie generating similar amounts of ad revenue to FTA services) should have similar content obligations placed on them.

It was argued that FTA players had to expend a significant portion of their revenue on SA content, while the existing light touch approach to content regulation for subscription players did not place similar obligations on pay-tv operators.[196]

It was argued in this regard that a light touch approach could be reintroduced if more effective legislative and policy limitations on subscription broadcaster's access to ad revenue was put in place. Several interviewees argued that the limitations set in the current legislation on ad revenue for subscription services (requiring that ad revenue must not exceed subscription revenue) have essentially become irrelevant as, given that total subscription revenue now exceeded total TV ad revenue.

It was stated that this requirement was put in place to ensure fairness – recognising that free to air services should have greater access to advertising and therefore ensuring that their greater regulatory obligations would not render them unviable.

8.6 PUBLIC RADIO

8.6.1 Perception of Impact of Local Content Regulations and Related Regulations

The public radio stations interviewed indicated that they are happy with the current quotas. They constantly engage the local music industry and work on promoting it in a wide range of ways beyond the quotas – including interviews, speciality shows, promotion of new artists etc. For example, on 5fm they introduced Mashlab where they get the audience to participate in

196 This point was made by several interviewees – including aspirant and existing licensees

writing a new song and then they get artists to perform it. It is a station driven initiative to promote South African music and artists. Some of these songs have ended up being hits after being played on 5fm and then are played across different stations.

It is however submitted that one can't look at the SA music regulations without looking at the entire radio market. ICASA has on one hand opened up the market to many more players and stimulated competition which is a good thing, but sometimes it seems that licensing of new radio services is done without enough consideration given to issues of diversity, audience availability and the impact on stations that are offering similar formats, types of content and music, or an analysis of the current stations share of advertising.

> *"The most important thing is to look at regulation holistically. ICASA needs to make sure that there is a demand for any new services it licences and for any requirements it places on radio stations. Otherwise they are setting us up for failure."*

8.6.2 Monitoring and Enforcement

It was submitted that the new reporting formats introduced in the compliance manual are extremely cumbersome and have significantly added to their reporting burden. The SABC is particularly badly affected by this as they have to submit 18 different reports of about 15 pages per station.

> *"It is extremely laborious – particularly as these all have to be completed manually. Reporting now, takes up substantially more time for each station and for the regulatory affairs department."*

Some respondents stated that they are not even sure if the regulator is looking at all the information the SABC gathers. They would understand the reason for submitting compliance reports if they could see the results and it was clear why the regulator needed all this information. This issue was raised extensively by numerous licensees in the hearings on the draft compliance manual they stated – and there were reports given during the process that ICASA had lost reports from stations and was requesting the same information from some licensees.

Additionally, it is submitted that the current approach is making it more difficult for ICASA itself, and the SABC is still waiting for them to complete their monitoring report for the last financial year. They normally have received these before October. This late finalisation of monitoring reports makes it difficult for the SABC as they are not alerted to problems in time to correct them in the relevant financial year.

> *"It would help a great deal if at least ICASA introduced electronic reporting. It would also help if ICASA investigated synergies with other sectors that require reports to reduce the regulatory burden on licensees."*

They however acknowledge that it might be difficult to streamline the ICASA reporting requirements with those of SAMRO, for example, as ICASA only wants information for the performance period, though SAMRO requires reports for the full 24 hours.

A specific proposal made by the SABC is that ICASA takes a more diligent approach towards licensing stations and ensures that licence conditions are clear and that they are enforced. There need to be in depth assessments by ICASA at the licensing phase across commercial and community radio of whether or not there is a demand for the proposed format and an assessment of how the station would be different from what is currently on offer and then monitoring and enforcement to ensure they stick to their formats.

8.6.3 Regulated Elements

Needletime: It was indicated that one of the big challenges facing the radio industry as a whole is the ongoing lack of clarity about needletime calculations. The uncertainty is said to be crippling, and has an impact on all of the SABC's businesses. They keep aside contingency funds in the meantime but are not able to plan or budget with certainty.

Recording Industry: Another big challenge was indicated to be with the recording industry – they are not promoting new South African musicians or new genres but tend to still push well known artists in a limited number of formats. To really grow the music industry, one also needs to address the problems in the recording industry itself.

Point System: The SABC does not believe the points system is significant enough to really promote new artists and new music as intended. They don't even bother to calculate incentive points they could accrue from this as they stated that it is too much trouble and would result in an insignificant increase in their quotas. SABC thus indicated that they exceed the minimum requirements purely through airplay of South African tracks and did not need to boost their figures by spending time calculating the impact the incentives available in the current regulations.

The representatives from the SABC argued that the system is too complex without sufficient rewards. They suggested that any new regulations should not only reward airplay of new music and promotion of artists in interviews but focus on innovation like the Mashlab initiative. One proposed solution could be, for example, to get 5 points for a five minute interview with an artist instead of one point it would be significant enough to make a difference.

Formats: SABC stated that there is a severe problem with the vague definitions of formats, and a great deal of format/scope creep. They stated that some newly licensed stations shift their formats after they have been licensed and these often coincide with some of the formats of established commercial and public radio stations. The SABC is aware of instances where community stations, for example, use the same names for their shows as existing stations and essentially try and become clones of the more successful services.

The SABC has raised this concern through representations made at the recent commercial radio and the subscription television licensing process. They support clearer definitions of formats as well as better monitoring and enforcement by ICASA of breaches of licence conditions.

The public radio services are mostly full spectrum services in a particular language and thus do not have specific formats in the same way as commercial radio. They have to cover a wide range of programming formats to meet all audience needs. There is not an equal or equitable amount of music being recorded by the record companies across all languages and music genres.

There is a great deal of Afrikaans music being recorded and produced, for example, but not across other languages. Gospel is another format that record companies are focusing on – as well as kwaito and house due to the growing popularity and demand for this. However, for example there is very little South African Indian music being recorded.

The following music formats are included in the radio stations of the public commercial division of the SABC:

- In terms of commercial radio, 5fm is urban contemporary hit music and it therefore airs breaking hits (top 40). It is reliant on the record companies investing in new South African hits and music.
- Metro is different although it is urban contemporary. It is aimed at a different, older audience. It does not play breaking hits to the same extent as 5fm.
- Good Hope FM is regional rather than national and a contemporary hit radio rhythmic format. It is focused on the particular music tastes of the population in the Western Cape.

8.6.4 Way Forward

The SABC submitted that the current local music quotas should not be increased. Some of the stations have problems meeting the current quotas and would have to play music outside of their "format" or language focus if they were to meet a much higher target.

It was also submitted that the online streaming of music services will have an impact in the future when broadband is more affordable and therefore accessible. Providers of such services are unregulated and therefore do not have SA music quotas to adhere to. It is also much cheaper to distribute as there are minimal distribution costs. The SABC has substantial transmission costs which are increasing as they meet their obligations in relation to universal service. Online service providers can stream/play whatever they want and if stations are forced to air music that is not in demand by listeners they will switch to other services.

8.7 COMMERCIAL RADIO

8.7.1 Perception of Impact of Local Content Regulations and Related Regulations

It was submitted by the commercial radio licensees, that the local content requirements have made radio accessible to artists. While many of the broadcasters thought of regulation of local music as a burden when the regulations were first introduced, local content is now really valued by them.

In response to questions about the CRC recommendations on increases to quotas, respondents stated that if unreasonable local content requirements are imposed it may drive audiences away. This is particularly concerning in an environment where more and more digital solutions allow audiences to listen to whatever music content they want from around the world.

"Consumers don't differentiate between local and international but rather between genres."

8.7.2 Monitoring and Enforcement

It was suggested that completing and submitting compliance reports is going smoothly. However, it is burdensome, and if there is an opportunity to streamline the process, that should be done.

8.7.3 Way Forward

A concern was raised that increasing the quotas substantially would mean that they would have to deviate from their formats. To this end, this one broadcaster also submitted that they do not believe that formats should be done away with as they are critical to ensure that broadcasters are distinct from each other.

The one broadcaster indicated that they have launched online music.

> *"As a radio station, we receive so much music each week and cannot play it all because of time and our particular format, so we now use the online station to stream currently unknown artists. We are very proud of it – and it allows us to showcase new musicians and therefore to increase exposure to these artists and potentially grow their material into hits."*

8.8 COMMUNITY RADIO

8.8.1 Perception of Impact of Local Content Regulations and Related Regulations

The feedback received indicated that the current local content regulations have had a positive impact on the local music market. It was stated that the introduction of local content and South African music regulations forced broadcasters to promote local artists, and therefore served to grow the SA music industry.

The community radio sector in particular served as a platform to introduce a crop of new artists and was instrumental to the growing popularity of SA music such as Kwaito.

However, it was indicated that broadcasters are heavily reliant on the music released by the recording industry but that not all players in the value chain are regulated i.e. record companies and online providers are not –

"if the source is not regulated you cannot regulate the user."

8.8.2 Monitoring and Compliance

The majority of respondents indicated that they submit quarterly reports and that it is simple and easy to comply with the reporting requirements. However, some broadcasters submitted that the compliance requirements are a "bit confusing".

8.8.3 Regulated Elements

Formats: One of the broadcasters indicated that formats are not adequately defined or definable and should be done away with. It was also submitted that formats are limiting radio stations from growing their audiences. It was also indicated that some stations with very specific genres, sometimes find it difficult to meet quotas as music has to be approved by programming committees prior to it being broadcast.

Talk Radio: It was submitted that even talk radio stations play music and therefore should also be required to meet local content quotas.

News: It was submitted that community stations struggle to obtain local news – it is easy to obtain regional and national news. They therefore submitted that ICASA should consider reviewing this requirement.

8.8.4 Way Forward

It was submitted by most licensees that any increase in local content requirements would depend on the format, as the availability of content to meet all formats is a concern. It was recognised however that formats are currently ill defined making it difficult to finally determine format specific quotas.

A proposal was made that local content should be a promise of performance, and be dealt with on a case-by-case basis. ICASA should treat each application on its own merit.

Generally, it was stated by community broadcasters that content and format should be driven by listeners and not be prescribed.

However, there were some respondents that believed an increase of up to 70% of the local content requirement should be implemented.

A specific proposal was made that ICASA should reconsider the licensing regime to introduce a category such as "small commercial". This is intended to be a cross over between big commercial and smaller community radio stations, although they recognised that such a class of licence does not exist.

Another specific proposal was that there should be a closer relationship between ICASA and other entities such as the MDDA and rights bodies, as their actions have an impact on the viability of community stations.

8.9 INDEPENDENT PRODUCTION SECTOR

8.9.1 Perception of Impact of Local Content Regulations and Related Regulations

The feedback received was that the regulations have been of enormous benefit to the country both from a cultural and economic perspective and served to grow the independent production sector.

- The country, in particular the PBS would have otherwise been flooded with international content.
- The independent production sector would not have developed without local content quotas.

It was indicated that the SABC financial crisis has had a huge impact on production companies. Only the strong companies who had other clients had survived the 2009 SABC financial crises. Additionally, it was explained that the quantity of productions has grown, but the budgets have not matched this growth, they have either remained constant or are decreasing.

8.9.2 Monitoring and Compliance

The respondents also expressed reservations about whether the regulations are being effectively monitored and reported on. The industry expressed reservations about ICASA's monitoring system and compliance reporting and doubts about its transparency and perceived credibility (they cited ICASA's reliance on broadcasters' information and thus not independently monitored) and limited / sporadic reporting on compliance by ICASA adds to their concerns.

The challenges are mainly around the transparency of ICASA's monitoring of compliance to the local content quotas. There is no regular and consistent reporting on the extent of their monitoring activities.

> *"The irony is that whereas initially there was a grudging compliance to the quotas set by the regulations, local content is currently what is selling and it makes business sense to provide local content."*

Therefore the broadcasters are actively expanding their local content offering, because it gives them a competitive edge over their competitors.

It is clear from the audience figures (for example local content features among the Top 10 programmes on all channels) and audience preferences that South African audiences prefer local content and to be addressed in their own language.

8.9.3 Regulatory Elements

Genres: It was submitted that from a business perspective, it has become more lucrative to provide local content, although there are challenges with providing sufficient local content in minority languages and in less lucrative genres such as documentaries and children's programming.

Format Factors: The feedback received indicated that there is no conclusive indication as to whether the factors that were meant to encourage origination of local content from outside the major film centres - Cape Town, Johannesburg and Durban - and historically disadvantaged companies have been effective. Respondents also pointed to the difficulty of implementing measures to encourage production outside the major centres as talent, facilities and broadcast opportunities are located in the major cities.

8.9.4 Way Forward

It was submitted that there is growth in competition for local content producers, as well as new market opportunities such as that of the direct-to-DVD market in regional centres, mainly because it caters for the regional language and niche preferences, which are not adequately catered for by broadcasters.

Information was provided that broadcasters are now marginally increasing local content budgets to meet demand for local programming. Although there is a mix of quality of production, there is a move to improve the quality of the production. There has also been a growth of "lokshion bioscope" type of low cost television productions. This is a positive development as it has opened up the market to new productions and has provided up and coming film makers with a platform to air their content.

It was however submitted that this is not sustainable, and more funding must be provided to improve the quality of the productions and their sustainability.

A proposal was also made that the current IP licensing model must be reviewed allowing producers to exploit the rights to their productions on other platforms and in other territories, which would make the independent sector more sustainable.

Another consideration was that play or pay could be an option to allow flexibility while meeting the objectives of building a production industry, for example. It was however submitted that there would need to be very careful thought about who distributed funds collected and how these were distributed. There have been too many public agencies that have not delivered on their objectives (such as USAASA) and money has not been used as intended.

It is believed that such a system though, if a workable way of distributing it was found, could be used to assist the independent sector to be more creative and self-sustaining – to for example have the means to bear some of the risk involved in production and therefore not rely on commissioning by broadcasters taking all of the risks and therefore owning all of the rights.

Another issue raised was incentivising broadcasters - finding ways to encourage them to invest more in quality local content, focus on particular genres that would be otherwise neglected and develop innovative new programming.

The format factors in the current framework are aimed at this, but a simpler system could probably better ensure the objectives are met while not overburdening the regulator and licensees.

Lastly, it was submitted that there are a range of options that could be explored to encourage innovation.

> *"One way of building the industry in South Africa for example would be making exportable content and reinforcing the production of this. Would it be possible to have an incentive scheme that rewarded the production of content that was exported?"*

8.10 MUSIC INDUSTRY

8.10.1 Perception of Impact of Local Content Regulations and Related Regulations

The perception of the music industry is that broadcasters try their best to avoid having to comply with the local content regulations. However, the industry body did provide an indication that there are widely differing views on the impact of the content regulation.

Another respondent indicated that the regulations are not effective, and believes that the challenges actually stem from the management challenges within the broadcasting sector (in particular radio). It was also submitted that payola and corruption are hampering the growth of SA music in terms of introducing new artists and also the variety of music played.

It was suggested that although the quotas might be complied with, this is done using the same artists who are paying to be played and promoted by the radio stations. It's important that one distinguish between payola which is illegal, and paying for a promotional spot. However these practices defeat the whole purpose of having SA content regulations in the first place. It was stated that if stations are properly managed and corrupt practices are effectively dealt with, the regulations could be well served.

8.10.2 Regulated Elements

Needletime: There was an indication that the music industry is experiencing difficulties with the provision of information by broadcasters regarding usage data.

Format: It was strongly submitted that the issue of complying with format and availability of South African music in certain formats is not valid. i.e. Kaya FM played a key role in promoting South African jazz, and YFM promoting Kwaito.

8.10.3 Way Forward

From the feedback, it seems that the music industry would like the quotas to be increased to up to 90%.

8.11 CONSOLIDATED INDUSTRY RECOMMENDARIONS

Almost all industry players and stakeholders interviews suggested that ICASA should not lose focus on the reason that they regulate, and that regulation should only be used when necessary to promote effective competition or to meet certain public policy goals.

Across the board (television and radio) it was indicated that the current regulations were effective not only in creating a market for local content but in the creation of market demand. Accordingly, for television broadcasters prime time slots are used to air the bulk of local content and most radio stations exceed their local content requirements throughout the day.

Television:

Constant reference was also made during the interviews that the local content regulations should not be viewed in isolation and the future development and the impact of other regulatory processes and regulatory bodies must be considered. It was therefore generally believed that the advertising and sponsorship regulations have been in many ways overtaken by current practice. There will be an increasing need for a more liberalised regime around advertising and sponsorship the more things change through technological development.

In terms of monitoring and enforcement, there was a general feeling that the current system, is the only practical solution from a television broadcaster perspective. However, most broadcasters indicated that they have not used format factors at all as they are far too complicated to work out and understand.

There was consensus that in a multi-channel environment, there may be a need for more repeats across different time slots or days or channels to allow audiences a chance to watch the programme given that there will be so much competing content, and that broadcasters needed to recoup their investments in local programming.

Another important matter, where there seems to be consensus among broadcasters, is that the usefulness of genre quotas should be considered. All broadcasters indicated that more flexibility is required (it seems that the only two potentially problematic areas are documentaries and children's programming).

In general, it was proposed that in order to meet the demands of a multi-channel environment, ICASA's approach in future must be focused on maximum flexibility. If there is not maximum flexibility, it is submitted that there is a danger that the quotas will be technically met by airing lots of cheap programmes which will defeat the purpose of the local content regulations.

In as far as the digital migration process and dual illumination period is concerned, there was consensus that the regulations would have to be updated. However some believed the regulations should not be changed whilst others wanted the regulations to be relaxed, and a light-touch approach to be followed.

As far as the requirement regarding commissioning of 40% of their local content from independent producers, the SABC believes this should certainly not be increased and propose that it should be reduced, whereas not one of the other broadcasters proposed an increase in the 40% independent producer quota.

Radio:

One of the critical issues raised by some broadcasters was that the new reporting formats introduced in the compliance manual are extremely cumbersome and have significantly added to their reporting burden. In particular it was proposed that ICASA introduce electronic reporting and perhaps investigate synergies with other sectors to align reporting and reduce the regulatory burden on licensees. It should be noted however, that most other radio broadcasters found that reporting format to be simple and easy to comply with.

An issue that was constantly raised was the ongoing lack of clarity about needletime calculations. Licensees have to keep aside contingency funds in the meantime but are not able to plan or budget with certainty.

There was also recurring reference to the vague definitions of formats, and a great deal of format/scope creep. Linked to this was the general feeling that quotas should not be increased, as it would mean that a number of radio stations would have to deviate from their formats in order to meet the quotas.

Independent Production Sector

The major concern from the independent production sector was that they are concerned that the regulations may not be effectively monitored and reported on. The industry reservations about ICASA's monitoring system and compliance reporting are based on its lack of transparency and perceived credibility (ICASA reliance on broadcasters' information and thus not independently monitored) and limited / sporadic reporting on compliance by ICASA adds to their concerns.

Music Industry

The music industry on the other hand would like quotas to be increased (some argued that these should be lifted up to 90%). There seems to be a perception in the music industry that broadcasters try their best to avoid having to comply with the local content regulations.

During the course of the interviews, it became clear that there are a number of problems in the industry that do not fall within ICASA's mandate i.e. regulation of the acquisition of IP rights and the fees charged by rates bodies.

However, many respondents suggested that ICASA consider building relationships with other bodies in order to ultimately become more effective in executing its mandate.