

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

ICASA REGULATIONS ON LOCAL TELEVISION CONTENT

I, Rubben Mohlaloga, Acting Chairperson of the Independent Communications Authority of South Africa ("the Authority") acting on behalf of the Council of the Authority hereby publish the Local Television Content Regulations set out in the Schedule and made by the Authority in terms of section 4(3)(j) of the Independent Communications Authority of South Africa, 2000 (Act No. 13 of 2000) read with sections 4(1) and 61 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).

A handwritten signature in black ink, appearing to read "R. Mohlaloga", written over a horizontal line.

RUBBEN MOHLALOGA
ACTING CHAIRPERSON

SCHEDULE

1. Definitions

In these Regulations any word to which a meaning has been assigned in the ICASA Act and Underlying Statutes will have that meaning unless the context indicates otherwise.

"Animation" means any form of television programming in which the images of character and action are made by photographing drawings, puppets or similar images in order to create the illusion of movement and includes such images created by computers;

"Animated Drama" means a scripted fiction or non-fiction story conveyed primarily through animated pictures and visuals;

"Arts Programming" means programming on culture and the arts, including, but not limited to the performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture and music but excluding programmes that exclusively feature music videos;

"Bouquet" means a collection of video and/or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre;

"Channel" means a single defined television programming service of a licensee other than a video on demand programming service;

"Children's Drama" means a fully scripted screenplay or teleplay, produced for children, in which the dramatic elements of the character, theme and plot are introduced and developed so as to form a narrative structure. It includes sketch comedy programmes, animated drama and dramatised documentaries, but does not include sketches within variety programmes, or characterisations within documentary programmes, or any other form of programme or segment within a programme which involves only the incidental use of actors;

"Children's Programming" means programming which is specifically produced for persons between the ages of 0 to 6 years 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;

"Current Affairs Programming" means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;

"Documentary Programming" means a factual treatment or analysis of people, events or social issues, whether past or present, with a normal minimum duration of about half an hour with a single theme;

"Drama" means an audio-visual interpretation whether involving live actors or animation of a fully scripted screenplay or teleplay, literary work, dramatic work, folklore or improvised storytelling or performance, in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure. It includes genres of drama such as situation comedy, soap operas and other genres in any of the following formats: one-off dramas including feature films, tele-plays and tele-movies, animated dramas, episodic drama series, serial dramas and mini-series;

"Educational Programming" means programming specifically and primarily designed to support structured educational activity where such structured activity relates to institutional-based education;

"Feature Film" means a film produced primarily for theatrical release in cinemas;

"Historically Disadvantaged Persons" means black persons, women, and people with disabilities;

"Digital incentive channel" means a new channel authorised in terms of the 2012 Digital Migration Regulations to be provided by a terrestrial television broadcasting service licensee as a digital broadcast in addition to the existing television channel or channels broadcast by that licensee as an incentive for digital migration and to encourage consumers to take the steps necessary for successful digital migration;

"Knowledge-Building Programming" means programming acquired through personal experience, outside of the formal learning environments such as schools and training courses which provides information on subjects such as, for example, science, technology, health, law and citizens' rights, religion, culture, business, finance and the natural or built environment;

"Mini-Series" means a series with a pre-determined number of episodes usually drama and usually 26 episodes or less;

"Post-production" means the processes following completion of production including the editing of images and sound, creation of special visual effects, subtitling, processing and duplication of programmes as well as any other process necessary for the completion of the production;

"Prime Time" means the period between 18H00 and 22H00 every day;

"Produced" means a process of acquiring and/or developing a story or programme theme, selecting and engaging key creative personnel and exercising control over decisions relating to the development, costing, pre-production, production and post-production of the programme;

"Production" means the recording of images and sound to form the substantial and integral part of the programme;

"Production Costs" means, for the purpose of section 61 (2) (a) (vi) of the ECA, a minimum of 20% of the pre-production and production costs is incurred in the Republic;

"Repeat" means television programming that is not a first broadcast by a South African television licensee and has been broadcast by the same or another South African television licensee;

"Serial Drama" means a drama series containing story-lines and developments that flow from episode to episode;

"Situation Comedy" means a television comedy set within a defined situation location, environment and characters and their relationships;

"Soap Opera" means a drama, usually daily, with an indefinite number of episodes and usually long-running;

"South African Drama" means drama programming which consists of South African television content and in which South Africans have exercised direction over the creative and administrative aspects of pre-production, production and post-production. South Africans will be taken to have exercised such direction if:

(a) in the case of programmes which have been produced in terms of section 61 (2)(a) (i), (ii), (iii) or (iv):

- (i) the director or directors of the programme and/or the writer or writers of the programme are South African;
- (ii) not less than 50% of the leading actors appearing in the programme are South African;
- (iii) not less than 75% of the major supporting cast, are South African; and
- (iv) not less than 50% of the crew are South African;

(b) in the case of programmes produced in terms of section 61 (2)(a) (v) and (vi):

- (i) not less than 50% of the production crew are South African; and
- (ii) South Africans are involved in post-production;

"South African Television Performance Period" means the total number of hours between 5H00 and 23H00 every day;

“Tele-play” means a drama usually located in a narrowly defined geographical area, and usually less than 90 minutes in length and often adapted from a play written for stage drama;

“Tele-movie” means a film produced for television.

2. Purpose

The purpose of these regulations is to develop, protect and promote national and provincial identity, culture and character. In achieving this, these regulations will seek to promote programming which:

- (a) is produced under South African creative control;
- (b) is identifiably South African, and recognises the diversity of all cultural backgrounds in South African society;
- (c) will develop a television industry which is owned and controlled by South Africans;
- (d) will establish a vibrant, dynamic, creative and economically productive South African film and television industry.

3. Public Television Broadcasting

- (1) A public television broadcasting licensee must ensure that after twenty four (24) months of the gazetting of these regulations or within twenty four (24) months of issuing of a licence to a new licensee or within such longer period as the Authority may determine, a minimum weekly average of 65% of its programming, measured over the period of a year, during the South African television performance period consists of local television content and that such local television content is spread evenly throughout the said performance period and prime time.
- (2) In complying with its obligations in terms of sub-regulation (1) a public television broadcasting licensee must ensure that a minimum of **all genres** listed below is broadcast:

- (a) 35% of its drama programming consists of South African drama;
- (b) 80% of its current affairs programming consists of South African current affairs;
- (c) 50% of its documentary programming consists of South African documentary programming;
- (d) 50% of its knowledge building programming consists of South African knowledge building programming;
- (e) 60% of its educational programming consists of South African educational programming; and
- (f) 55% of its children's programming consists of South African children's programming.

- (3) The commercial service of a public television broadcasting licence is subject to the provisions of regulation 5.

4. Community Television Broadcasting

- (1) A community television broadcasting licensee must ensure that after twenty four (24) months of the gazetting of these regulations in the case of an existing licensee or within twenty four (24) months of the issuing of a licence to a new licensee, or within such longer period as the Authority may determine, a minimum weekly average of 65% of its programming during the television performance period must consist of local television content. At least 30% of the 65% quota must be produced from the licensee's coverage area, increasing by 10% annually until reaching 50% measured over the period of a year and such local television content must be spread evenly throughout the said performance period and prime time.

5. Commercial Television Broadcasting

- (1) A commercial television broadcasting licensee must ensure that after twenty four (24) months of the gazetting of these regulations in the case of an existing licensee or within twenty four (24) months of the issuing of a licence to a new licensee, or within such longer period as the Authority may determine, a minimum weekly

average of 45% of its programming, measured over the period of a year, during the South African television performance period consists of local television content.

- (2) In complying with its obligations in terms of sub-regulation (1) above, a commercial television licensee must ensure that a minimum of **all genres** listed below is broadcast:
- (a) 20% of its drama programming consists of South African drama;
 - (b) 50% of its current affairs programming consists of South African current affairs;
 - (c) 30% of its documentary programming consists of South African documentary programming;
 - (d) 30% of its knowledge-building programming consists of South African knowledge building programming; and
 - (e) 25% of its children's programming consists of South African children's programming.

6. Subscription Television Broadcasting

- (1) A subscription television broadcasting licensee must ensure that within twenty four (24) months of gazetting of these regulations in the case of existing licensee or within 24 months of issuing of a licence to a new licensee or within such longer period as the Authority may determine, a minimum of 15% percent of their annual content acquisition budget is spent on local television content programming.
- (2) A subscription broadcasting service licensee that acquires channels must ensure that, a minimum of 15% of their total annual channel acquisition budget, measured across its service as a whole, is spent on channels with local television content that are compiled and up linked from South Africa.
- (3) The broadcasting by a subscription television broadcasting licensee of licensed free-to-air public television broadcasting services, licensed free-to-air commercial television broadcasting services and licensed community television broadcasting services will not count towards its compliance.

7. Independent Television Production

- (1) Public, commercial, community, and subscription television broadcasting licensees must ensure that a minimum of 40% of their local television content programming consists of programmes which are independent television productions and the independent television productions are spread evenly between, South African arts programming, South African drama, South African documentary, South African knowledge-building, South African children's and South African educational programming.
- (2) A public, commercial and subscription television broadcasting licensee must ensure after twenty-four (24) months of the gazetting of these regulations or such longer period as the Authority may determine, that fifty percent (50%) of annual independently produced programmes budget is spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities.

8. General Provisions

- (1) Local Television Content requirements will apply per bouquet and not per channel.
- (2) Broadcasters shall obtain genre points only for one category of genre.
- (3) Licensees must submit audited monitoring reports.
- (4) Submission of false, misleading or inaccurate information will be dealt with according to Section 17 H of the ICASA Act.

9. Formulas (Format Factors)

In order to assist a broadcasting service licensee not meeting the local content quotas, Format Factors only apply to the following listed categories:

- (1) The Drama Score for a South African drama is calculated using the following formula:

Drama Score = Format Factor (unit) x Duration (hours weekly);

- (a) for a South African drama program that is a once-off (including feature films, telemovies, and mini-series) = 4
- (b) for a South African drama that is a series/serial produced at the rate of one hour or less per week = 3
- (c) for a South African series/serial produced at the rate of more than one hour per week = 2

The formula for scoring drama points is:

Drama Score = Format Factor x Duration.

For example, a feature film is calculated as Format Factor (4 points) x 2 hours = 8 points.

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

- (2) The African Language Drama Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for drama in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 4

The formula for scoring African language drama points is:

African Language Drama Score = Format Factor x Duration.

For example, a Tshivenda drama is calculated as Format Factor (4 points) x 1 hour = 4 points.

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

- (3) The Children's Programming Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for South African children's drama = 3
- (b) for South African children's knowledge-building programme = 2

The formula for scoring children's programming points is:

Children's Programming Score = Format Factor x Duration.

For example, South African children's drama is calculated as Format Factor (3 points) x 2 hours = 6 points.

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

(4) The Arts Programming Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly):

- (a) for South African performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture, and music (excluding programmes that exclusively feature music videos) = 2

The formula for scoring arts programming points is:

Arts Programming Score = Format Factor x Duration

For example, a programme on South African literature is calculated as Format Factor (2 points) x 1 hour = 2 points.

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

(5) The Score for Diversity in Commissioning is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for programming produced by an independent production company based in Mpumalanga, the Northern Province, the North West, the Northern Cape, the Free State, and the Eastern Cape = 3
- (b) for programming produced by an independent production company based in Kwazulu-Natal = 2
- (c) for programming produced by independent production company controlled by historically disadvantaged persons = 3

The formula is:

Independent Production Company Score = Points x Duration

For example, the formula for commissioning a Mpumalanga-based company is calculated as Format Factor (3 points), plus controlled by historically disadvantaged person(s) (3 points) x 1 hour = 6 points.

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

(6) The Score for the production of the following genres in African Languages, specifically for public regional and community television broadcasting services, is calculated using the following formula: Format Factor (unit) x Duration (hours weekly):

- (a) for any documentary produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3;
- (b) for any children's programming produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3; and
- (c) for any Arts programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa, and isiZulu = 3.

(7) The Score for any programme that do not fall under any category or genre as contemplated in these regulations such as magazine, talk shows, religious and game show programmes:

Programme = Format Factor (unit) x Duration (hours weekly)

One hour or less per week = 2

Ten points are worth 1% towards the South African television content quota calculated on a weekly basis.

(8) The Repeats Score is:

- (a) for first repeat of a South African programme = 50%;
- (b) for a South African programme originally screened on another South African television channel = 50%;
- (c) for a rebroadcast of the week's episodes = 50%; and

- (d) any further repeats of the programme shall not count towards compliance with the South African content quota.

10. Records

- (1) Public, community, commercial and subscription television licensees must keep and maintain logs, statistical forms and programme records in a format prescribed by the Authority:-
 - (a) full particulars of all South African content programming broadcast in each week, indicating each category of South African television content;
 - (b) full particulars of name(s) of the author(s) of the drama script indicating their nationalities, or that of the adaptor if it is drawn from a literary source;
 - (c) full particulars of the name(s) of the drama director(s) indicating their nationalities;
 - (d) a list of the creative and technical personnel involved in drama production indicating their nationalities and, in the case of performers, the roles they play; and
 - (e) such other particulars as may be required by the Authority.
- (2) The logs, statistical forms and records contemplated in sub-regulation (1) must be preserved for a period of not less than 36 months after the last date of entry.
- (3) Subscription television broadcasting licensees must keep audited record of the amount of their expenditure as contemplated in regulation 6.

11. Contraventions and penalties

- (1) A licensee that contravenes any provision set out in these Regulations, except for regulation 4, is liable to a fine not exceeding the greater of R5 000 000 (five Million Rand) or 10% of the licensee's annual turnover for every day or part thereof during which the contravention continued.
- (2) A licensee that contravenes regulation 4 of these Regulations is liable to a fine not exceeding R50 000 (fifty Thousand Rand).

12. Repeal

These Regulations repeal the 2006 ICASA South African Television Content Regulations in Government Gazette No. 28454 of 31 January 2006.

13. Short Title

These regulations are called the ICASA Local Television Content Regulations and shall commence twenty four (24) months after the date of publication in the government gazette.

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Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

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