

FAO: Violet Molete
Independent Communications Authority of South Africa
Block B
350 Witch-Hazel Ave
Eco-Park Estate
Centurion 0144
Republic of South Africa

vmolete@icasa.org.za
cc: pcokie@icasa.org.za

15 March 2019

Subject: Submission on the Draft Sports Broadcasting Services Amendment Regulations

I write to you on behalf of the International Cricket Council Limited (“**ICC**”), the global governing body for cricket. The ICC welcomes the opportunity to provide this submission to the Independent Communications Authority of South Africa (“**ICASA**”) on the Draft Sports Broadcasting Services Amendment Regulations (“**Draft Regulations**”) published on 14 December 2018. The ICC is pleased to make this submission in its capacity as the international federation responsible for the global governance of the sport of cricket, including as the organiser of pinnacle international cricket events for men and women.

1. Overview

a. Role of the ICC and its Members

The ICC is made up of and represents 105 national governing bodies responsible for cricket (“**Members**”) around the world. The ICC governs and administrates the game of cricket and works with its Members to grow and promote the sport globally, in accordance with the objects set out in the ICC’s Memorandum & Articles of Association.

The ICC and its Members seek to establish cricket as a sport enjoyed all around the world in order that it can help to unite, empower and inspire people and communities. Underlying this vision and purpose, among other things, the ICC and its Members seek to: stage memorable cricket events that connect, entertain and inspire new and existing fans and participants; create more competitive and meaningful international and domestic cricket structures; establish vibrant global cricket economies that preserve the sustainability of the sport and the Members; grow the number and diversity of fans, participants and women and girls engaged with the sport at all levels; have a positive social impact on millions of boys and girls around the world; and protect the integrity of the sport.

The ICC has two membership categories which are as follows:

1. Full Members – the ICC has 12 Full Members (Afghanistan, Australia, Bangladesh, England and Wales, India, Ireland, Pakistan, New Zealand, South Africa, Sri Lanka, West Indies and Zimbabwe); and
2. Associate Members – the ICC has 93 Associate Members in territories in which cricket is firmly established and organised and where the relevant national governing body meets the relevant Associate Membership Criteria.

b. ICC Events

The ICC is responsible for the organisation, sanctioning and scheduling of all ICC events (“**ICC Events**”) including (without limitation) the ICC Men’s Cricket World Cup, ICC Women’s Cricket World Cup, ICC Men’s T20 World Cup, ICC Women’s T20 World Cup, ICC World Test Championship Final and ICC Under 19 Cricket World Cup.

2. Commercial Rights

Like many other sports, cricket is heavily reliant on the revenues generated from its exploitation of the media rights associated with its most high-profile fixtures and events in order to be able to continue its investment in the growth and development of the sport around the world.

a. Model

As part of the commercial exploitation of the ICC Events, the ICC contracts with official broadcasters, commercial partners (including sponsors) and licensees and, in turn, grants them exclusivity of association with the ICC and the ICC Events, as well as exclusivity of usage of proprietary ICC-related intellectual property rights and commercial rights, all of which are owned by the ICC. The ICC generates its revenues primarily through the grant of exclusive media/broadcast/digital rights, sponsorship, ticketing (gate receipts) and hospitality, licensing and merchandising rights to third parties.

For the 2015-2023 rights cycle, the ICC hopes to be able to generate in the region of US\$2.8 billion in revenue (a substantial proportion of which relates to the exploitation of relevant broadcast rights). Once the ICC’s costs of its central administration and operations have been deducted, as well as the costs of staging the ICC Events, it is anticipated that this will enable many hundreds of millions of dollars to be distributed to the 105 Members around the world for the purposes of developing the sport in their respective national territories.

b. Investment

The ICC invests (whether directly or through its Membership distributions) all of the revenues it generates in operating a professional organisation, and in programmes, facilities and initiatives designed to develop and safeguard the future of cricket.

To illustrate this point, the ICC (in conjunction with its Members) is tasked with helping to grow participation rates around the world. The sorts of activities that this may involve include the provision of assistance on governance, commercial and strategic issues, high performance support, programmes and competition structures, coaching, training and officiating tools and programmes, mass participation and entry-level programmes, as well as marketing and communications expertise. Over the past 20 years, the amount of cricket being played around the world has increased significantly, to the point where there are now more than 450 million people (between the ages of 6-69) who have played some form of cricket within the past 12 months.

Full and Associate Members utilise the revenues received from the ICC (and the revenues that they generate themselves) to develop competent administrative structures, invest in the development of cricket and grassroots programmes at communities, schools and within other groups within their respective territories, remunerate players and coaching/training staff, maintain, build and upgrade facilities, establish player development systems and high performance programmes and invest in media production and coverage to sustain a broad and diverse supporter base. For all of the ICC’s Full and Associate Members,

their share of the ICC surplus is vital to their ongoing ability to perform their day-to-day operations and develop the sport in their country.

In the Africa region in the 2016-2019 period, the ICC's ability to monetise the various rights associated with the ICC Events has resulted in it being able to make distributions in excess of 900 million South African Rand (US\$63 million), made up of distributions to Cricket South Africa and direct funding to nineteen Associate Members. This figure does not include further indirect investment made through tournament hosting fees, various ICC member services or the wider economic benefits of hosting events.

3. Broadcast Rights

a. Importance

Like other sports, media and broadcast rights serve as the foundations upon which the commercial and development framework of cricket is built and sustained worldwide. The broadcasters effectively act as the underwriter for marquee sports properties and development programmes, taking on significant financial risk and enabling the event organisers to plan events and activities with certainty and precision. Further, the broadcast and dissemination of event content across multiple platforms not only provides an opportunity for new and existing fans to engage with the sport, but also enables the on-ground sponsorship structure of the sports property to assume significant value through wider exposure and coverage, which also attracts event sponsors and partners.

As highlighted above, a substantial proportion of the ICC's commercial revenues are comprised of broadcast income. As the popularity of the sport has grown, the value of broadcast rights in cricket has increased significantly, and the sport's development efforts have become increasingly reliant upon them.

b. Acquisition

The nature of sports broadcasts is such that the need for the broadcast to be made available 'live' is more pronounced than in the case of almost any other audio-visual broadcast. As a result, exclusivity of the right to broadcast is highly prized and underlies the business model of sport and its monetisation.

With respect to the ICC Events, the sale of broadcast rights for ICC Events during the 2015-2023 rights cycle was conducted through an invitation-to-tender process, which was undertaken in a transparent and non-discriminatory way, to allow as many broadcasters as possible (whether subscription or free-to-air) the opportunity to consider acquiring the rights on offer.

c. Monetisation

Sports broadcasters constantly compete with each other and engage in competitive bidding in order to secure broadcast rights for particular events. Broadcasters have the opportunity to recover the amounts paid to secure such rights through advertising revenues and/or subscription-based distribution across platforms and syndication of rights to other platforms/broadcasters. In certain cases, sports broadcasters may use the revenues received from marquee properties which attract wide viewership and advertiser interest (such as the major ICC Events) to support the costs of broadcasting other sports or events that may have lower viewership or interest. This is factored into the way the ICC licenses its media rights, which is structured with a view to ensuring the future sustainability of the sport.

d. *Access & Viewership*

In 2018-19, the ICC unveiled the results of the largest ever market research project into the sport which revealed cricket has over 1.2 billion fans between the ages of 6-69 years and more than 450 million active cricket participants (in the surveyed age category of 6-69) globally. The research was undertaken to enable the ICC and its Members to understand the growth potential of cricket, help shape the development of the growth-focused global strategy for the game, drive decision-making and to provide a benchmark upon which to measure the outcomes of the strategy. The results also support the ICC and its Members in shaping and implementing their fan engagement strategies, and clearly present cricket as a vibrant and popular sport globally.

Being mindful of the fact that cricket caters to a global and diverse audience, the ICC and its media rights licensees have ensured that viewers' access to the ICC Events is paramount. For instance, live and highlights coverage of the recent ICC Women's World Twenty20 2018 held in the Caribbean was made available in more than 180 countries worldwide across platforms through a range of strategic tie-ups. Similar efforts in the past have yielded record viewership. The ICC Champions Trophy 2017 had a unique global television reach of 600 million, while the ICC Women's World Cup 2017 and the ICC Under 19 Cricket World Cup 2018 had a unique global television reach of 180 million and 73 million respectively.

Cricket has also played a leading role in bringing state of the art production techniques, values and the latest technology to sports broadcasting. This includes multi-camera set ups, multi-lingual commentary, HD and multi-media broadcasts and innovations such as virtual reality. Both event organisers and broadcasters have maintained the priority of bringing the personalised and high-quality viewing experience to the homes of the viewers through investments in media production.

In addition to acquiring media rights, private broadcasters also invest significantly in leveraging and activating their rights through promoting and marketing sports events (advertising campaigns across media platforms), fan engagement initiatives (such as spectator contests), grassroots / school participation programmes, high quality production and distribution technology (such as aerial cameras and encryption), engagement of top quality commentators (across languages and gender), making the event available on non-sports and regional channels (to increase access), and the creation of programming that caters to all nature of fans, each of which play a vital role in increasing the awareness and reach of the sport, presenting a premium viewing experience for fans and making the sport aspirational in nature.

4. Submission

a. *The Draft Regulations*

It is the ICC's understanding that the Draft Regulations would impose a requirement for all matches from major ICC Events such as the Men's Cricket World Cup and Men's T20 World Cup to be broadcast within South Africa, live and in full, on a public, free-to-air broadcaster (whereas currently this requirement is only in place for matches in which the South African national team are involved, as well as one semi-final and the final).

b. *Listing of Events*

The ICC recognises that cricket has a central place within the sporting culture of South Africa. Having witnessed the spectacular success of ICC Events in South Africa such as the ICC Cricket World Cup in 2003, the inaugural ICC World Twenty20 in 2007, and the ICC Champions Trophy in 2009, the ICC understands that these have a profound cultural and social impact beyond being merely sporting events.

In addition, they form an important part of the national conversation, capturing the collective imagination of the nation and creating national pride, uniting the population in ways very few other events can.

The ICC, as a general principle, is supportive of initiatives and laws that enable as many people as possible to have the opportunity to watch events which have national resonance in their respective countries and which increase the social and cultural impact of such occasions. For this reason the ICC is comfortable with the current position in the South African broadcast regulatory framework, which ensures that all matches played by the South African Men's cricket team at major ICC Events are able to be viewed by households who do not have access to subscription TV channels.

We are aware that laws having similar objectives to the Draft Regulations are present in other jurisdictions in which cricket is popular and has an important role in the national culture. These include:

1. *Australia.* The Broadcasting Services Act 1992 grants free-to-air broadcasters a statutory right of first refusal to acquire the broadcasting rights to certain sporting events, the televising of which should be available free to the general public. The legislation imposes a licence condition on pay TV providers that prohibits them from acquiring broadcast rights to certain sporting events unless a national broadcaster or a network of commercial television broadcasters have the right to televise the events. These events are delisted at least 12 weeks before they start in order to ensure pay-TV broadcasters have reasonable access to listed events, especially if free-to-air broadcasters decide not to purchase the broadcast rights for a particular event. Any rights to listed sporting events that are not acquired by free-to-air broadcasters are available to Pay TV.
2. *United Kingdom.* The Broadcasting Act 1996 and the Code on Sports and Other Listed and Designated Events restrict the acquisition by Pay TV providers of exclusive rights to the whole or any part of the live television coverage of listed events and the broadcasting on an exclusive basis of such events without the previous consent of Ofcom. The rights to broadcast listed events must be first offered to qualifying broadcasters, i.e., those broadcasters whose channels are available without payment to at least 95% of the population in the UK. However, qualifying broadcasters are not obliged to bid for these rights.

The practice of listing of events, as undertaken in these jurisdictions, seeks to balance the interests of sports bodies and broadcasters with the wider public interest in reserving events of national importance for viewership and participation by the maximum number of people. In so doing, the broader principle of exclusivity of rights continues to retain primacy and receive legal protection.

c. *Implications*

Exclusivity is an essential element of rights and it is essential that the broadcaster has adequate opportunity and time to market the broadcast, monetise the rights, and gain returns on their investments through subscriptions and advertising revenues. It is our understanding that the practical result of the Draft Regulations would be to limit private ("**Pay TV**") broadcasters within South Africa to non-exclusive rights in respect of major ICC Events. This would have a substantial negative impact on the revenue which rights holders earn from selling such rights exclusively (through a process in which a range of broadcasters compete for these rights).

The placement of legal constraints on sources of revenue and monetisation capabilities through the legislative dilution of exclusivity would severely limit the price that broadcasters would be willing to pay to acquire rights in the South African market in the future (as the value of non-exclusive rights to sporting events is generally perceived to be a small proportion of that demanded by exclusive rights to comparable

content). This would be likely to have a direct negative impact on the value of the rights associated with the ICC Events and, as a consequence, the money that would be available to the sport for event organisation, player compensation, administration, infrastructure, game development, grassroots and community programmes, media production and fan engagement around the world. In the long term, lower levels of broadcaster investment in the sport will adversely affect the ability for the sport to be accessed and enjoyed by all of its stakeholders, including viewers, fans, players and other participants, and accordingly will adversely impact upon the sport's ability to grow and develop around the world.

As such, the Draft Regulations propose a legal regime that, in our view, would adversely impact both subscription and advertising revenue opportunities for private broadcasters and thereby reduce their ability to effectively monetise the rights that they have acquired. In turn, and as set out above, this has the potential to threaten the current mechanism by which the ICC is able to financially support the sport, both within its Full Member countries and through the work of the ICC Development Programme.

5. Conclusion

The vision of the ICC and its Members for global cricket has been set out above. Broadcasting revenues are of critical importance in bringing about that vision and securing the future sustainability and growth of the sport worldwide. Adopting the position proposed in the Draft Regulations would have an extremely negative impact upon the ICC's ability to generate the revenues that allow investment of the magnitude made in the region over the past four years, which approaches a billion South African Rand.

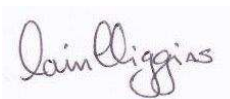
Therefore, the ICC would like to respectfully submit that the Draft Regulations in the currently proposed form be reconsidered, with a long-term and progressive view that balances public and private interest in sports broadcast regulation and the balanced growth and development of sports ecosystems.

The ICC reiterates its desire to widen access, enhance viewership and promote fan engagement, but remains deeply conscious of the importance of private broadcasters and their investments to the commercial and development model for cricket. The inability of private broadcasters to fairly and competitively leverage and monetise the rights licensed to them would be likely to have grave implications for the growth and future of the sport of cricket within South Africa.

We are confident that our sport will continue to thrive and deliver value to all of its stakeholders in a legal and regulatory environment that appropriately rewards those that invest in the sport with due regard to public interest considerations.

Thank you once again for providing us the opportunity to offer our feedback on the Draft Regulations. Please feel free to contact us in the event that you have any questions or require any clarifications in relation to this submission.

Yours Sincerely,



Iain Higgins
Chief Operating Officer & General Counsel
International Cricket Council Limited