



INTERNATIONAL
OLYMPIC
COMMITTEE

CONFIDENTIAL

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Lausanne, 15 March 2019

Draft Sports Broadcasting Services Amendment Regulations, 2018 (the “Draft Legislation”) to amend the Sports Broadcasting Regulations, 2010 (the “Existing Regulations”)

Dear Ms. Molete,

The International Olympic Committee (the “IOC”) has been made aware of the Draft Legislation and the request for written representations made by your office dated 14 December 2018.

Given the “Summer Olympic Games” is included in the Existing Regulations as a “listed national sporting event” (a “Listed Event”) and is proposed to be included within the scope of “Group A: Compulsory Listed National Sporting Events for a Free-to-air licensee with full live coverage” (“Group A Events”) pursuant to the Draft Legislation, the IOC considers it appropriate to provide feedback on the proposals. Our comments are set out in detail below.

Background

The IOC’s media policy is fundamentally based on the Olympic Charter, which states in its Rule 48: “The IOC takes all necessary steps in order to ensure the fullest coverage by the different media and the widest possible audience in the world for the Olympic Games”. Broadcast coverage is one of the principal means for the IOC to fulfil its mission of promoting Olympism throughout the world, but also for people around the world to experience the magic of the Olympic Games. Olympism blends sport with culture and education, seeking to create a way of life based on the joy of effort, the educational value of good example, social responsibility and respect for universal fundamental ethical principles. It places sport at the service of the harmonious development of humankind, with a view to promoting a peaceful society concerned with the preservation of human dignity.

The IOC is the owner of the global broadcast rights for the Olympic Games – including broadcasts on television, radio, mobile and internet platforms – and is responsible for allocating broadcast rights to media companies throughout the world through the negotiation of media rights agreements. The IOC generates substantial revenue from the sale of these broadcast rights and this revenue constitutes a material proportion of the funding required

to support the Olympic Movement. As reported in the IOC's Annual Report (which is available from the Olympic.org website), the IOC distributes over 90 per cent. of its income to the Olympic Movement, helping to support sports development objectives. Payments are made to (amongst others) the various International Federations and National Olympic Committees (including the South African Sports Confederation and Olympic Committee) to support their athletes.

Free to air coverage of the Olympic Games

Consistent with the IOC broadcast policy and notwithstanding the requirements of the Existing Regulations, the IOC ensures that extensive coverage of the Olympic Games is made available via free-to-air television in South Africa. To this end, the IOC has granted free-to-air broadcast rights for the territory of South Africa for the 2018 Winter Olympic Games, 2020 Olympic Games, 2022 Winter Olympic Games and the 2024 Olympic Games (collectively the "2018-24 Games") to the South African Broadcasting Corporation ("SABC").

This grant of free-to-air broadcast rights has, however, been complemented by a grant of rights to broadcast the 2018-24 Games on pay television to Supersport International (Pty) Ltd. Accordingly, the IOC has ensured that South African viewers have access to coverage of the Games available via free-to-air television, while those who can view Supersport services also benefit from the extra choice afforded by their comprehensive offering. This approach strikes an appropriate balance between access to the Games while protecting the critical revenue stream from the sale of broadcast rights which supports the wider Olympic Movement.

Considering the above, the IOC does not believe it is necessary to include the Olympic Games as part of any legislation to ensure free-to-air broadcast of certain sports events. Nonetheless, the IOC respects the decision of ICASA to have included the "Summer Olympic Games" as a Listed Event within the Existing Regulations. However, as a matter of principle and practicality, the IOC considers that including the entire Olympic Games as a Listed Event is entirely disproportionate.

The Draft Legislation

The IOC has taken the opportunity to review the Draft Legislation. In a number of respects, the drafting is particularly unclear, inconsistent or else serves to produce what are presumably unintended results. Accordingly, in this response we have elected not to make comments on a detailed basis with respect to the Draft Legislation. In the circumstances, we believe it would be more productive to outline what we see as unjustifiable approaches which appear to have been taken as part of the Draft Legislation.

First and foremost, the Draft Legislation appears to suggest that as a Group A Event, the IOC would only be entitled to licence broadcast rights to the "Summer Olympic Games" to a pay television broadcaster in the event that a "Free-to-air licensee cannot acquire" the relevant rights (the "FTA Non-acquisition Condition"). Leaving aside the lack of clarity in determining when the FTA Non-acquisition Condition would actually be satisfied, implementing legislation which effectively precludes the IOC from granting any rights to a pay television broadcaster is a completely unjustifiable and inappropriate restriction on the IOC's right to exploit content which it is the lawful owner of. It would also place South Africa completely out of step with any "listed events" legislation across the world of which the IOC is aware.

To have a legislative obligation which requires the licensing of broadcast rights to a limited subset of free-to-air broadcasters in a territory is already a substantial encumbrance on the freedom of the IOC to exploit its rights in the manner it determines. To completely exclude the possibility to license broadcast rights to any other party within the territory however is an indefensible approach.

Ironically, the proposed structure of the Draft Legislation may actually encourage rights holders of Group A Events to set a price for the broadcast rights which free-to-air broadcasters will be unable to meet, simply to avoid the restriction against licensing broadcast rights to “subscription service broadcasters”. This is surely contrary to the public policy objectives of ICASA.

As a secondary point, the IOC does not comprehend how the free-to-air broadcast services of SABC will be capable of fulfilling the legislative requirement proposed in the Draft Legislation to provide “full live coverage” of the “Summer Olympic Games”. The IOC expects that in excess of 5,000 hours of live competition and ceremonies content will be produced for the Olympic Games Tokyo 2020. This means that, in order to broadcast all of this content for the 16 days of the Olympic Games, 26 television channels would have to broadcast live Olympic content 12 hours each day, assuming such content was available 12 hours a day. This is clearly an unrealistic situation. Considering the substantial amount of content available, preventing the IOC (in the event the FTA Non-acquisition Condition was actually satisfied) from granting any rights to the Olympic Games to a “subscription” broadcaster on an exclusive basis (as provided for in the Draft Legislation) is an unreasonable and unbalanced approach.

It cannot be an objective of ICASA to effectively reduce the breadth of content available to South African viewers by preventing the licensing of broadcast rights to the Olympic Games to both free-to-air and “subscription” broadcasters. This is without even considering the impact on content not being available on internet-delivered media platforms given the Proposed Legislation only contemplates television distribution, thereby likely limiting exposure to the Olympic Games to younger demographics and stifling the development of the South African technology and digital media sector.

Considering the points noted above, the IOC is extremely concerned about the consequences of the Draft Legislation should it be implemented. It is clear that the impact will be a significant degradation of the value of the Olympic Games media rights, a reduction in the breadth of coverage available to South African viewers and a licensing structure which actually encourages higher pricing of free-to-air broadcast rights by rights holders.

As described previously, the IOC considers that in relation to coverage of the Olympic Games, the Existing Regulations are unnecessary and far broader in scope than is practical or appropriate. However, as compared to the Draft Legislation, they at least strike some balance between the interests of all stakeholders. Accordingly, we are unclear why this proposal to amend the Existing Regulations is being pursued.

Conclusion

As detailed above, the IOC has significant concerns regarding the Draft Legislation. The IOC should not be restricted from freely licensing its broadcast rights to pay television

broadcasters in the manner contemplated in the Draft Legislation. To do so would be a completely unjustifiable and inappropriate restriction on the IOC's right to exploit content which it is the lawful owner of. Furthermore, the structure and process outlined in the Draft Legislation is likely to not only reduce the quantity and quality of Olympic Games coverage available to viewers in South Africa, but to impose a broadcast obligation on SABC which it cannot comply with.

Given the above, the implementation of the Draft Legislation is highly likely to have a significant impact on the IOC's valuable broadcast rights for South Africa and future negotiations for the sale of those rights.

While the IOC appreciates the opportunity to provide this submission, as the ultimate rights owner of a Listed Event, the IOC requests that it be kept informed of any developments moving forward and be consulted in a meaningful way about the Draft Legislation.

To conclude, the IOC would be happy to discuss this submission further with you or respond to any further questions you may have as part of this consultation.

Yours faithfully,



Ms. Anne van Ysendyck
IOC Legal Director

cc: Mr. Timo LUMME, Director, IOC TMS SA
Ms. Anne-Sophie VOUMARD, VP Broadcast and Media Rights, IOC TMS SA
Mr. Andrew RYAN, Head of Media Legal and Business Affairs, IOC TMS SA