



national film and video foundation
SOUTH AFRICA

an agency of the
Department of Arts and Culture

WRITTEN REPRESENTATIONS BY THE NFVF: NATIONAL FILM AND VIDEO FOUNDATION ON THE ICASA POSITION PAPER: REVIEW OF REGULATION ON SOUTH AFRICAN LOCAL CONTENT: RADIO AND TELEVISION; ICASA DRAFT SOUTH AFRICAN MUSIC CONTENT REGULATIONS AND ICASA DRAFT SOUTH AFRICAN TELEVISION CONTENT REGULATIONS PUBLISHED 18 JUNE 2015

1. Purpose

The purpose of this submission is to comment, generally on ICASA's Position Paper containing a Review of Regulation on South African Local Content: Television and Radio (**Position Paper**), and more specifically on those issues which have a direct impact on the audiovisual sector and the private and public broadcasting structure in the Republic of South Africa.

2. Introduction

2.1. Local content is to be developed and created said to be created in anticipation of the multichannel environment presented by broadcasting migration to stimulate content development in South Africa and to further job creation. In anticipation of the above developments the strategy discusses key interventions that will eradicate factors currently inhibiting growth of the content industry in South Africa. These include amongst others, funding and infrastructure investment so as to address developmental goals relating to the

imbalances of the past, building social cohesion, ensuring competition in the content industry and fostering regional integration.

2.2. The Regulation is meant to provide the public, government entities and private companies with an opportunity to play an active role in the shaping of South Africa's policy on the development and broadcasting of local content.

2.3. The Position Paper provides a snapshot of the responses of the stakeholders of the broadcasting sectors and establishes the position of the local authority, ICASA across various aspects of the Regulations.

3. The position, recommendations and comments of the NFVF

The NFVF

3.1. The National Film and Video Foundation (NFVF) is an agency of the Department of Arts and Culture that was created to ensure the equitable growth of South Africa's audiovisual sector. We do this by providing funding for the development, production, marketing and distribution of films and also the training and development of filmmakers. In addition, the NFVF commissions research and produces industry statistics that provide both the public and stakeholders with valuable insights into the South African film industry.

3.1.1. Our main objectives:

3.1.1.1. Increase the number of South African films and Previously Disadvantaged Individuals (PDIs) producing them

3.1.1.2. Increase audience access to South African films

3.1.1.3. Increase the number of people trained in the industry, particularly in areas of scarce skills

3.1.1.4. Promote the South African Film Industry locally and internationally

3.1.1.5. Promote social cohesion and the expression of the nation's stories through film

3.2. The NFVF supports the underlying principle that broadcasting, the provision and showcasing of local content should be regulated in the public's interest. The dual aim of content regulation – that a space for distributing local content is carved out, and that independently produced and owned local content is developed provides a suitable foundation for the regulation. The NFVF emphasises that in particular, regard to the stimulation of independently

produced and owned content, and harmonization with the intellectual property regime concurrently under review, is of paramount importance.

Platform Neutrality

- 3.3. The NFVF is in agreement that the Regulations must focus on platform neutrality and regulatory parity, particularly as the platforms used by the public to access local content moves beyond traditional streams such as television and radio. Mobile platforms are increasingly becoming the main access point for local content for most South Africans. Several broadcasters and network providers have packaged content specifically for the mobile platform. This further cements the need for platform neutrality in the Regulations.
- 3.4. The NFVF goes further to submit that platform neutrality necessitates the regulation of local content quotas within cinemas as well. Local content quotas similar to those applicable to private broadcasters should apply to local cinemas to encourage the sourcing of, showcasing and distributing of local film. Local film remains a key source of job creation and a measure of the South African identity and would benefit from robust attention from ICASA.
- 3.5. The NFVF supports the submission that programming should further a South African programming objective in recognition of the fact that local content encapsulates the South African identity in its diversity, enriches and preserves South African cultural heritage and creates a space for the South African perspective within global content. However, not enough emphasis is seen on the economic potential of local content programming, particularly when sourced from independent producers.
- 3.6. The NFVF disagrees that the definition of local content be widened to include African content. Local content programming should seek to promote a South African perspective. The NFVF supports the definition of local content as put forward by Media Monitoring Africa, however with the inclusion of locally produced and developed sports programming in the definition. Further the NFVF submits that music videos be included in the definition of local programming. The NFVF also supports the incentivizing of broadcasting of content from local, independent producers.

3.7. The NFVF rejects the notion of relaxing local content regulations to cater for the digital migration. Local quotas should be maintained to ensure the developmental foundations required to foster increased local programming, are constructed during the migration.

4. Broadcast Tier Differentiation

The NFVF supports the submission by the SOS that the public broadcasters and community broadcasters should have the most obligations at 60%, followed by Free to Air commercial broadcasters and subscription broadcasters at 50%, with no distinction between FTA commercial broadcasters and subscription broadcasters. However the overall tiered distinction should be kept to a minimum.

5. Audio-visual/ Television quotas

The NFVF is of the view that repeats should not be limited but the extent to which repeats may contribute to the prescribed local content quota should be capped.

5.1. Market Entry by New Role-players and SMME's

The NFVF restates the view which encourages entrance in the industry by new players particularly from the historically disadvantaged groups. However the NFVF is of the opinion that the Regulations do not suggest viable ways of ensuring market entry for new players; The issue then is not about establishment of new funding and development support but rather finding ways of enhancing the already existing mechanisms.

5.2. Shifting from a Commissioning-driven Industry

The strategy does not provide viable mechanisms that will ensure that the industry shifts from a commissioning-driven industry. The NFVF strongly believes that for the industry to move from a commissioning driven industry, the broadcasters' commissioning protocols need to be reviewed and regulated effectively and this requires the intervention of the regulator - ICASA.

5.3. Independent production

The NFVF supports the submission that independent in house producers be included in the definition of local independent producers, bearing in mind the current infrastructure deficits which persist. The NFVF however submits that further regulation is required in the interaction between independent producers and broadcasters (both private and public) regarding commissioning and licensing. Local content sourced from independent local producers should bear more weight in its contribution to compliance with local content regulations and licenses.

The struggling independent section of the audio-visual sector is largely reliant on local content quotas to grow and expand the industry. However, with the limited manner in which this provision for local content quotas has been included, the independent local producer does not enjoy the benefits of an empowering environment.

Currently, the negotiations between independent producers and broadcasters are largely skewed in favour of the broadcasters.

The current commissioning model restricts independent producers from exploiting or partitioning rights and seeking alternative sources of funding. This has resulted in several projects being fully funded by broadcasters, in which the broadcaster takes full ownership of the intellectual property rights of the content even if the broadcaster has limited or no interest in exploiting the intellectual property beyond local broadcasting. The relationship between independent producers and broadcasters should be regulated to ensure that the commissioning model does not limit the ownership potential of independent producers of exploitable rights.

The 40% quota to this regards is considered adequate for the stimulation of the independent producer sector.

5.4. Using Intellectual Property (IP) protection and Copyright Issues

The NFVF restates the benefits of content development as its 'potential to create wealth through the exploitation of intellectual property'. However, copyright was not regulated effectively as the current commissioning procedure allows the broadcasters to retain all rights of the commissioned works, and repeats remain unregulated. This practice does not allow producers to exploit copyright of their work, and neither do broadcasters exploit any other rights except the television broadcast of such programmes. The NFVF is of the opinion that the current strategy discussed does not create dialogue to address

the above issues, instead it focuses on the administration of copyright which is currently not a pertinent issue facing the industry.

5.5. Investment in Human Capital and Addressing Skills Shortage

The NFVF is of the opinion that the Regulations should have addressed the issue of capacity and resources and ways of assisting and speeding the rate at which the existing agencies operate.

6. Increasing Export Opportunities

The regulations note that there is a need to increase export opportunities of local content and has made suggestions including others “hosting of local content festivals to show case and facilitate trading in local content in the country, development of strategic relationships between overseas markets and the local content digital industry and to establish mechanisms for timely market intelligence to facilitate the building of a continuing presence in overseas markets”.

As much as the above suggestions are plausible, the regulations have failed to map out a working relationship with agencies such as the NFVF and the DTI, who currently fund national festivals. The festivals are aimed at audience development in areas where there are no cinemas and to expose South Africans to local products. Film festivals also serve as a first distribution platform for many South African films. A change to the status quo where local films have low commercial value and appeal to local and international markets requires an integrated approach by all agencies involved.

The DTI administers programmes that offer support to the export of local products, such as the Export Marketing and Investment Assistance (EMIA) which is aimed at providing financial assistance to exporters with cost incurred in respect of their efforts to develop export markets for South African products and services and as well as to recruit new foreign investment into South Africa.

Conclusion:

The NFVF proposes that the local and digital content regulations for South Africa cater for the above mentioned concerns and must bear in mind that the content industry has a concurrent competency. ICASA is therefore requested to take cognizance of already

existing policies and programmes in place that impact on digital content and it should not be seen to be proposing parallel structures that would further fragment the already fragmented sector.