



SABC SUBMISSION ON THE ICASA DRAFT REGULATIONS REGARDING ADVERTISING, INFORMECIALS AND PROGRAMME SPONSORSHIP 2022

01 June 2022

1. Introduction

On 08 April 2022, the Independent Communications Authority of South Africa (the "Authority") published Notice 959 of 2022, Government Gazette No. 46211 (*Findings Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 and the Draft Regulations Regarding Advertising, Infomercials and Programme Sponsorship 2022*). The South African Broadcasting Corporation ("SABC") would like to thank the Authority for the opportunity to make this written submission regarding the Draft Regulations Regarding Advertising, Infomercials and Programme Sponsorship 2022 ("Draft Regulations").

The SABC is the only public broadcaster within the Republic of South Africa charged with a public service mandate to inform, educate and entertain all citizens. Currently, the SABC has 19 radio stations, 5 Television Channels. In the interest of advancing universal access of public broadcasting services, the SABC has also launched a new Sports Channel on OpenView HD and a streaming service for SABC1, 2, 3 as well as, the new Sports Channel on the TelkomOne platform. The SABC digital news has been expanded to include indigenous languages. The SABC will strive to offer its services through various multiple platforms for the benefit of all citizens, in accordance with the universal service obligation.

The SABC is of the view that with the changing broadcasting landscape, it has become imperative for the Authority to protect the viability of public broadcasting services amidst the online service providers, who are largely unregulated. The public service mandate of the SABC is extensive and requires a sizeable funding. It is public knowledge that the SABC content is largely funded through commercial revenue. It is arguable that the advertising regulations can either break or make the Corporation, in that; if these regulations are conducive, they will enable the Corporation to deliver on the public service mandate; whereas if they are rigid they could yield unintended consequences. As such, the SABC calls for a conducive, enabling and flexible regulatory framework which enable free-to-air broadcasters to deliver on public service obligations.

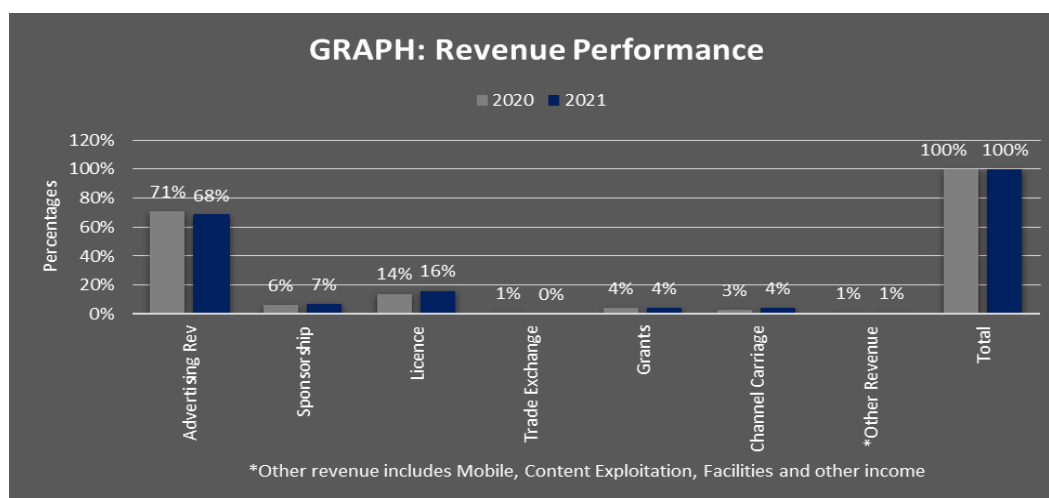
The SABC hopes the Authority will consider this submission and develop regulations that enable free-to-air services to deliver on their public service obligations.

2. Provisions of the Draft Regulations

2.1 The SABC funding model

It is the SABC’s view that the Draft Regulations cannot be considered in isolation, without consideration of the funding model of the SABC. Essentially, the SABC funding model, which is inclusive of the commercial /advertising revenue, has a bearing on the delivery of the public service mandate. The SABC public service mandate as outlined in the Broadcasting Act of 1999, as amended, is vast and requires intense capital for public interest content delivery and as such, sustainable funding must be secured for this purpose.

Section 8(b) of the Broadcasting Act of 1999, provides that the SABC should be funded through advertisements, subscription, sponsorship, licence fees or any other means of finance. As it stands, the SABC is largely funded by advertising and sponsorship revenue, as this constitutes over 70% of its annual income and this call for a greater protection of the Corporation for the optimal delivery of the public service mandate. The table below indicates the extent to which the SABC is funded by commercial revenue.



Source: SABC Annual Report 2021 (at page 36)

It is submitted that the Draft Regulations should be cognizant of the SABC funding model, with the view to develop regulations which safeguards and allow free-to-air services to access advertising revenue so as to enable delivery of public service obligation.

It is further submitted that the SABC should have access to sponsorship on TV news and current affairs for content production and development. This point is discussed further below. Thus, it is submitted that the Authority should consider light touch regulations which allows the public broadcaster to perform and deliver on its mandate.

2.2 Protection of the financial viability of free- to-air services

It is the SABC's considered view that the section 2(t) of the Electronic Communications Act ("ECA") and clause 3.2 the Broadcasting Policy White Paper of 1998, call for the protection of the viability of public broadcasting services.

Section 2 (t) of the ECA specifically provides that when the Authority develops regulations in accordance with this Act, it should also protect the integrity and viability of public broadcasting services.

Broadcasting Policy White Paper of 1998, in clause 3.2 provides that:

"Revenues for private broadcasting should come primarily from advertising and sponsorships for free-to-air broadcasters whereas the primary source of revenues for subscription services should come from subscription fees.

Free-to-air services must have access to revenues that are sufficient to allow them to meet their public service obligations (own emphasis)."

The SABC operates both public and private broadcasting services. Flowing from the policy prescription and section 2(t) of the ECA, the SABC still maintains that the Authority's regulations should ensure that free-to-air services have sufficient access to advertising revenue in order to deliver on public service obligations.

2.3 Advertising revenue regulation for subscription broadcasting services

The SABC notes the Authority's position which states that the scope of the current inquiry is based on section 55(1) of the ECA and that section 60 (4) of the ECA falls outside the scope of this Inquiry. It is further noted that the Authority commits to review compliance with respect to section 60(4) of the ECA so as to gauge the effectiveness thereof.

It can further be argued that the intention of the Policymaker, in terms of clause 3.2 of the Broadcasting Policy White Paper of 1998, has from the onset been to protect the financial viability of free-to-air services. Since section 60(4) is obsolete, there is a need to align this provision with the dictates of the Broadcasting Policy White Paper through the introduction of regulatory interventions. Section 4(2)(j) of the ICASA Act of 2000 empowers the Authority *"to make regulations on any matter consistent with the objects of this Act and the underlying statutes or that are incidental or necessary for the performance of the functions of the Authority"*. This provision is important for the Authority's consideration in ensuring that the objective of section 60(4) of the ECA is achieved and that it is able to monitor performance of pay television on advertising.

The SABC has also suggested to the Authority to consider various regulatory options, such as, reduction of advertising minutes per hour for subscription broadcasting services, restrictions on the rate card discounts and any other necessary regulatory intervention.

2.4 Light touch regulation and prime-time regulation

The SABC believes that the advent of online content service providers requires of the Authority to apply the light-touch regulation for this ever-changing environment, as rigid advertising regulations could yield unintended negative consequences. Fundamentally, more restrictions will inhibit growth rather than enabling it.

It is worth restating that the concept of prime time regulations is slowly becoming redundant and problematic. For example, in the 24hour News Channel environment, daytime is primetime and primetime news is not watched by many as it competes with entertainment news. Furthermore, some programmes which are broadcast during prime time and repeated during daytime, perform so well during daytime, as audiences watch and track content at their convenient time. Thus, it is submitted that the Authority should really consider deregulation of prime time restrictions.

It is noted that the Authority, in its Findings Document has taken a position that it will continue to regulate prime time, i.e. infomercials will still not be permissible during prime time. However in the digital environment, audiences will be in the position to fast-forward advertising; meaning provision of more infomercials during primetime could be a turn-out factor. Essentially, this possibility will compel broadcasters to self-regulate with the view to retain audiences. Therefore, prime-time regulation is no longer necessary for the digital for the digital environment.

Thus, the SABC submits that light touch regulation and removal of primetime regulations will advance and assist in the provision of public service mandate.

2.5 Impact of online services in regards to advertising revenue

The advent of online services brings a myriad of challenges to broadcasters. Amongst other things, some advertisers' budgets are also directed to online content providers, as such, there is a need to regulate online services in order to foster regulation parity. It is noted that the Authority, in its Findings Document has committed that it will continually monitor trends and the impact of online services on broadcasting services, so as to develop policies and regulations which enable broadcasters to be sustainable. The SABC supports the Authority's continuous monitoring of the impact of online services on broadcasting services so as to create a conducive regulatory environment for broadcasters.

2.6 Other matters

2.6.1 Product placement disclaimer

Ad Regulation 6.8 provides that “*product placement must be signaled clearly, by means of a logo, at the beginning of the programme in which the placement appears, and at the end of the programme.*”

For the labelling of product placement, it would be practical to have the labeling at the end of the programme (end credits) rather than at the beginning of the programme, so as to not interrupt the story or the programme material. In other cases the programme come pre-recorded and it would be impractical to have the labelling prior the broadcast of the programme material.

2.6.2 Protection of children

In the quest to protect and promote children’s rights and interests, the SABC has incorporated protective mechanisms in its Editorial Policies to ensure that content is suitable for children, across all platforms.

Amongst other things, the SABC ensures that:

- a) exceptional care is exercised when reporting about children,
- b) harmful and disturbing content are not broadcast in times when a large number of children are likely to be part of the audience,
- c) great care, sensitivity and caution exercised when interacting with children on all platforms, and
- d) editorial staff are encouraged to familiarise themselves with the various laws aimed at protecting children and the SABC’s legislative, regulatory and policy frameworks.¹

¹ SABC Editorial Policies, clause 4.5, page 18

Flowing from the abovementioned protective mechanisms, it is clear that the SABC is committed to the protection of the rights and interests of children and will continue to provide suitable content to children across its various platforms.

That said, the SABC understands the rationale behind the Authority's position to prescribe that product placement targeted at children's programming should be age specific and relevant to children. The SABC supports this position as it safeguards and ensures that children are not exposed to inappropriate content.

2.6.3 Contravention and Penalties

Ad Regulation 7

The SABC submits that the three million rand (R3 000 000, 00) fine for instances of contraventions is very steep. It is noted that other regulations, such as the ICASA Must Carry Amendments Regulations of 2022 and the ICASA Sports Broadcasting Services Amendment Regulations of 2021 have prescribed a fine of up to R1 million rand.

It is respectfully submitted that reasons for such a hefty fine should be provided and circumstances under which these fines will be applied should also be provided. It is submitted that such fines should be applicable very extreme circumstances of continuous and very substantial contraventions; i.e. cases wherein a broadcaster repeatedly refuses to comply with the CCC order or findings.

2.6.3 Sponsorship on news and current affairs

It is noted that the Draft Regulations only permits radio services to take sponsorship for news and current affairs programming. The SABC supports this position and further encourages the Authority to conduct a regulatory impact assessment prior out-phasing sponsorships on radio news and current affairs, as radio services require sponsorship revenue for content production and for their financial sustainability.

It is further noted that the Draft Regulations still prohibits sponsorship on news and current affairs for television services. The SABC still submits that sponsorship restrictions on TV news and current affairs should not apply or extend to soft news, such as, sports, weather, JSE financial market news, nature and lifestyle news and any other informal knowledge building news, as this type of content is largely meant to inform and educate audiences and often does not require right of reply. Primarily, the relaxation of restrictions will enable broadcasters to fund content production for its audiences.

The SABC wishes to indicate that preservation of editorial integrity and control is vital to the Corporation, hence it is provided in the Editorial Policies to ensure attainment of editorial independence on all content of the Corporation.

Fundamentally, clause 2.2.3.2 of the SABC Editorial Policies² provides that SABC journalists, its editorial and programming staff, enjoy the prerogative to make editorial decisions on programming, scheduling and publishing content. Furthermore, the SABC has systems in place to ensure that editorial independence of the newsroom, and editorial integrity of SABC News.

Besides the provisions of editorial independence for news content, the SABC further has made a commitment to delivering content of highest editorial standard across all services and genres, has to uphold its editorial independence and promote freedom of expression in providing factual content, as well as accurate, impartial and ethical news and current affairs services.³

The SABC acknowledges that the lack of content integrity and editorial independence will irritate audiences and lead to a tune out factor which translates into advertising revenue decline. Thus, provision of objective and impartial news is very essential to the SABC and this standard practice that will be maintained.

² The SABC Editorial Policies of 2020, at clause 2.2.3.2 , at page 3

³ *Ibid*, at clause 4.1.1.5, at page 8

3. Conclusion

The SABC would like to thank the Authority for the opportunity to make this submission and would like to participate in oral hearings.