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The South Africa Screen Federation represents the interest of the independent screen sector organisations of South Africa as a collective federation.

This submission is made by the following industry organizations

7th June 2021

Department of Communications and Digital Technologies
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Dear Sir/Madam

RE: SUBMISSION OF SOUTH AFRICAN SCREEN FEDERATION (SASFED) THE INDEPENDENT PRODUCER'S ORGANISATION (IPO) AND THE INDEPENDENT BLACK FILMMAKERS COLLECTIVE (IBFC) COMMENTS ON ICASA'S REVIEW OF ADVERTISING, INFOMERCIALS AND PROGRAMME SPONSORSHIP

1. INTRODUCTION

1.1 The Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999 was published on 26th March 2021 as contained in Notice 44333 published in Government Gazette No. 264 (the Discussion Document).

Executive Summary

1.2 As the audio-visual sector tries to emerge from the tribulations of the pandemic, and as the world moves increasingly towards new ways of shooting to accommodate health and safety protocols and digital content platforms are on the ascent along with a local and global appetite for South African content, it has never been more important than now for the production sector to receive adequate support so that it may not only survive but thrive, to the ultimate benefit of the country and its people.

1.3 This sector has significant potential to contribute to the country's economic recovery and growth. It creates thousands of jobs, from world-class cast and crew to new unskilled entrants to the workplace who can create a sustainable successful career in the industry, with 67% of workers being under the age of 35 (playing a meaningful role in the NDP 2030 goals); it attracts billions in foreign direct investment; it rapidly injects capital throughout the economy (67% of production spend flows to other sectors, the bulk of which is spent during the shooting period of the production); throughout the value chain and supplier network it contributes substantial taxes; the immense 'soft' but critical value of promoting our stories, national identity and culture, locally and globally, which only this sector can do; and it promotes brand South Africa. We therefore welcome any initiatives aimed at helping the sector reach its fullest potential.

1.4 The Independent Production Sector (IPS) welcomes ICASA's focus on local content and support of the domestic audio and audio-visual production and creative industries sector and we would like to thank the Department for the opportunity to comment on this review.

1.5 SASFED

The South African Screen Federation (SASFED), known as "the leading voice and champion of the South African Screen Industry," is the national federation of independent film, television and audio-visual industry organisations in South Africa. Founded in 2006 in response to Government's call for the independent screen industry to speak with a united voice, SASFED represents many guilds, professionals and companies that are operating in an increasingly diverse and growing sector. The membership of these organisations operates in all the provinces of South Africa, making SASFED's membership truly national.

SASFED represents the audio-visual sector across the value chain. Amongst our members are writers, filmmakers, animators, actors (and their managers), producers and editors. All of our membership, with the exception of the talent managers, are content creators.

Current SASFED membership includes the Documentary Filmmakers' Association (DFA), The Independent Black Filmmakers Collective (IBFC), Independent Producers' Organisation (IPO), Personal Managers' Association (PMA), Animation South Africa (A.S.A), South African Guild of Actors (SAGA), Sisters Working in Film and Television (SWIFT), South African Guild of Editors (SAGE) and Writers Guild of South Africa (WGSA).

1.6 This submission represents the views and needs of the film and television production sector's representative organisations. It is our general submission that:

1.6.1 Any review by ICASA should be future- looking.

1.6.2 The Broadcasters generally adhere to the provisions of the current Advertising, Infomercials And Programme Sponsorship, 1999

1.6.3 A 'soft approach' to regulation in this area is necessary for although the regulations focus on the broadcasters, the regulations affect both the ability of the broadcasters and content creators and producers to earn revenue, with these alternative funding mechanisms an increasingly important enabler of the production of local content.

1.6.4 ICASA should not over-reach its mandate with respect to content in terms of Advertising Regulatory Board's (ARB) mandate. It is our understanding that the Electronic Communications Act, states that ICASA's role in this respect is in respect of scheduling while the ARB mandate includes the regulation of the content of advertising; and

1.6.5 Kindly note that we are not responding to all the questions, but only those we believe have an impact on the local independent production sector.

2. CONTENT OF THE SUBMISSION

2.1 Question 1:

Are the current Regulations of Advertising, Infomercials and Programme Sponsorship effective? Please elaborate.

While the independent production sector welcomes the review and updating of the current Advertising Regulations, we would like to note:

(a) It is our understanding that ICASA's mandate in this respect is limited to scheduling and not the content of advertising as this sits within the remit of the ARB;

(b) ICASA, in discharging the above mandate, should provide for as much flexibility as possible – we propose that we do not look for problems where none have been evident. This is even more so in light of a post-Covid-19 environment and all the challenges and pressures the independent production sector, and the audio-visual sector at large, is under.

The current regulations are effective. However, they can be updated to provide more flexibility. For example, the SABC airs news for 30 minutes three times/day. Excluding advertising during such period is not considered reasonable, due to the fact that broadcasters – especially the SABC – are extremely reliant of advertising revenue, much of which is generated during peak viewing times which include news broadcasts. There are also currently 24-hour news channels. How do these channels earn any advertising revenue if they are not permitted?

Paragraph 4.17 of the Discussion Document states that:

> "*Regulation 5.3 of the Advertising Regulations requires that broadcasters who provide television broadcasting services shall not obtain or accept any programme sponsorships from any person in respect to any news or current affairs programme. However, Regulation 5.4 of the Advertising Regulations provides that broadcasters are allowed to obtain or accept programme sponsorship in respect of weather forecast or sports results bulletin that constitutes part of a news programme broadcast by that broadcaster. The Regulations are silent on obtaining programme sponsorship for sound broadcasting service licensees on news*".

It is proposed that more flexibility be permitted in this regard.

2.2 **Question 2:**

Is there a need to revisit the definition of Advertising, Infomercials and Programme Sponsorship? If the response is yes, how should they be redefined?

We believe that no changes are necessary to the above definitions and no new restrictions should be introduced.

2.3 **Question 3:**

Kindly see our response to Question 1 above regarding news channels. We propose a review of the regulations in this respect – that advertising be allowed for television, with tightly regulated number of breaks and duration for both the advertisements and the breaks.

2.4 **Question 6:**

Does the current labelling of advertising make it easy for viewers/listeners to differentiate it from normal programming?

In general, it does. However, there can be blurred lines. For example, Life Buoy engaged in a campaign at the beginning of lockdown telling the nation to wash its hands. Would a hand-washing campaign, during a pandemic, sponsored by a soap brand considered a commercial or a PSA? In our view, such a campaign can be both in that it serves in the public interest

2.5 **Question 7:**

What is your view on advertisements that supersede programming?

We have seen no evidence of this.

2.6 **Question 9 and 10:**

Should the Authority regulate the duration of infomercials? Please elaborate; Should the Authority regulate the frequency of infomercials? Please elaborate.

Yes, to both questions, outside of dedicated tele-shopping channels.

We have seen no evidence of the concern the Authority has that infomercials and programming are often confused.

2.7 **Question 11:**

What indicators of infomercials can be used so that they are easily identifiable?

Although the broadcaster ensures that all infomercials transmitted by it are presented and labelled in a manner that will be clear to the audience that such infomercials do not constitute programme material, an on-screen static copy for the duration of the infomercial that clearly identifies it as such, as is done in print (e.g. "This article was paid for by…", identifying the article as a paid editorial) is proposed to clear up any concern the Regulator has concerning infomercials.

2.8 **Question 13:**

How should the Authority deal with push advertisement (squeeze-backs)?

The size, duration and number of squeeze-backs should remain regulated as they are designed to interrupt your viewing.

2.9 **Question 14**:

How should the Authority regulate product placement and promotional material inside a programme in a way that it does not supersede programming or tamper with editorial control?

The broadcasters and producers enforce this properly – product placement and integration does not tamper with editorial control or with the editorial integrity of the programming.

2.10 **Question 15:**

What mechanisms should be put in place to ensure that programme sponsorship does not influence programmes?

There may be a limit on, or use of, the sponsorship elements that can be sold in respect of a programme. For example, only on-screen logos, advertisements and squeeze-backs.

e.g. Rugby show Phaka (sponsor, Hollywood Bet)

Presenters wear branded items; a television screen is shown in the background with branding – those elements may start to influence the editorial of the show. For example, if *Carte Blanche* (or other consumer show) was similarly sponsored by the same brand and there arose an issue with the sponsor, would Carte Blanche investigate the matter? The sponsorship elements should not be integrated into the show – but remain outside the show (i.e. onscreen logos, adverts, squeeze-backs).

This is not the position in short or long-form televisions content (such as dramas, features, doccies) where the broadcasters are very good about letting product integration not influence the editorial integrity of the content. In other words, they adhere to regulation 3(3) of the Advertising Regulations which states that any broadcaster who transmits a programme competition, a branded promotional spot, branded filler material, a self-promotion promo or a sponsorship element in the form of the air depiction of, or referral to any brand, product or name, shall ensure that the primary purpose of the broadcast of such material is to promote the broadcaster or the programme concerned, rather than the commercial interest of the person, product or service referred to in the course of such transmission.

Broadcasters adhere to their obligations in terms of clearly stating the nature of sponsor's association with the relevant sponsored programme. In addition, however, the Regulator has sight of the copies of sponsorship contracts concluded between the broadcasters and their sponsors and in addition to its monitoring responsibilities, the Regulator is best placed to determine that editorial control remains with the broadcaster in respect of this programming.

2.11 **Question 17:**

Should the Authority request that product placement be signalled? How should it be signalled?

No, product placement should not be signalled. ICASA does not seem in favour of product placement but does not provide any reason for its view and states that it is reviewing whether product placement should be allowed, and if allowed, the extent to which it should be allowed and whether complete prohibition may have unduly negative effect on the broadcasters' revenue and <u>potentially</u> on local content production. It is our submission that a complete prohibition on product placement *will* have a significantly adverse effect on the independent production sector, a sector already stressed in terms of production financing and exposed to a significant amount of risk as it is, and that the current practice is generally good in terms of how product placement is integrated into content (in other words, it does not compromise editorial content or control).

[The position is similar, in general, with respect to sponsor funded programming – But for one or two circumstances as cited in our response to Question 15, we do not have knowledge of any example that is indicative of any concern ICASA would seem to have in this respect].

2.12 **Question 18:**

Should product placement and sponsorship be allowed during children's programme? If so, what mechanisms should be put in place to ensure that there is a clear distinction between product placement and the programme?

Both should be permitted - Sponsorship should be permitted and product placement should be permitted but the *type* of product placement permissible may need to be regulated (i.e. no sugary or salty products but placements of books, children's magazines, yogurt etc. - products that might encourage good practices for example) should be permitted. Sponsorship, ordinarily, does not impact on the editorial if it is kept largely outside of the programming.

2.13 **Question 19:**

Product placement is a component of branding. What other elements of branding should the Authority be concerned with?

Again, it is our understanding that ICASA should not over-reach in terms of its mandate with respect to this area and we propose that ICASA should take a soft-approach to regulation, and not seek to over-extend its mandate in this regard.

By its own admission, ICASA states in paragraph 4.6 of the Discussion document:

> *"The Authority does not regulate advertising content but has a regulatory mandate to prescribe the duration and frequency of advertisements, infomercials and programme sponsorships. This mandate also covers issues of:*
>
> *(a) ensuring compliance by broadcasters;*
>
> *(b) regulating the amount of advertising that may be transmitted; and distinguishing material which is considered advertisement from that which is not, to provide clarity to broadcasting service licensees such as distinction made in terms of regulation 3(3) of the Regulations"*.

2.14 **Question 23:**

What is your view in terms of promotional material inside programmes and advertising during the breaks on whether these amount to excessive advertising?

It is our view that these do not amount to excessive advertising.

2.15 **Question 27:**

To what extent should the Authority regulate Advertising, Infomercials and Programme Sponsorship in the digital environment to ensure that the regulations protect consumers?

We propose that ICASA should regulate no more than is necessary.

In conclusion, while we have many producers who produce advertiser-funded programming and who use product placement within their productions as part of their business model, this discussion is both welcomed and timely in light of the challenges facing our screen sector. That said, it is the broadcasters whom the regulations affect the most meaningfully (i.e. as the regulations will have a larger impact on their revenues) and the independent production sector is mostly guided within the parameters of the broadcasters. It is our view that the broadcasters generally stick within the parameters of the regulations already. No further restricting measures should be taken to enable both the broadcasters and the independent production sector to continue to thrive and to earn as much revenue as possible from their programming.

Once the authority has completed its review and considered inputs from all relevant stakeholders, we would be interested in the outcome in terms of the Findings Document and further assess the impact of any proposed measures.

The underlying issue is that regulations should balance the public interest with, which is also in the public interest, the country's economic realities (which include a significant drop in advertising revenues throughout the pandemic) in terms of the broadcaster's ability to commission and acquire quality programming in all genres, while ensuring that the local production sector – and the multiple values it brings to South African audiences, job creation and the economy at large – is not compromised.

To this end, we noted that the focus of the Discussion Document is really on broadcasters and the public with little to no mention of the potential impact of more restrictive regulations on the local content production sector. We are concerned about the use of phrases such as "*or other valuable* *consideration...*" as being too broad (i.e. Does this include trade exchanges too?) And, again, believe that current regulations are adequate in terms of the regulation of the subject-matter.

Lastly, we believe that ICASA should regulate no more than is necessary and should, in fact, relax the limitations and create maximum flexibility as has been done in other jurisdictions such as Europe, to stimulate the industry rather than hamstring it.

Sincerely

UNATHI MALUNGA
EXCUTIVE OFFICER