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WRITTEN REPRESENTATIONS BY THE SOS: SUPPORT PUBLIC BROADCASTING COALITION
ON THE ICASA POSTION PAPER: REVIEW OF REGULATION ON SOUTH AFRICAN LOCAL
CONTENT: RADIO AND TELEVISION AND ICASA DRAFT SOUTH AFRICAN MUSIC CONTENT
REGULATIONS AND ICASA DRAFT SOUTH AFRICAN TELEVISION CONTENT REGULATIONS
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1. INTRODUCTION

1.1. In Government Gazette No. 38890 dated 18 June 2015, the Independent Communications
     Authority of South Africa ("ICASA") published the ICASA Position Paper on the Review of
     Regulation on South African Local Content: Television and Radio ("the Position Paper") and the
     ICASA Draft South African Music Content Regulations ("Draft Music Regulations") and the
     ICASA Draft South African Television Content Regulations ("Draft Television Regulations") and
     invited written comments. The original date for submission of written comments was 14 August
     2015. This was extended to 31 August 2015.

1.2. These written submissions are made by SOS Support Public Broadcasting Coalition ("SOS"). The SOS Coalition represents a broad spectrum of civil society stakeholders committed to the broadcasting of quality, diverse, citizen-orientated public-interest programming aligned to the goals of the SA Constitution. The Coalition includes a number of trade union federations including COSATU and FEDUSA, a number of independent unions including BEMAWU and MWASA; independent film and TV production sector organisations including the South African Screen Federation (SASFED); community TV station CapeTV; and a host of NGOs and CBOs including the Freedom of Expression Institute (FXI), Media Monitoring Africa (MMA), SECTION27 and a number of academics and freedom of expression activists.

1.3. The SOS Coalition envisages and campaigns for a digital content landscape that:

1.3.1. Includes a diversity of programming and content that reflects the full diversity of South African experiences and opinions including those marginalised through issues of race, class, gender, age, disability and sexual orientation;

1.3.2. Includes increased local content;

1.3.3. Includes increased African language programming and content;

1.3.4. Includes increased public and community programming and content;

1.3.5. Includes increased genres of programming;

1.3.6. Ensures that the majority of quality programming and content is free-to-air and accessible to all people living in South Africa;

1.3.7. Ensures dialogic communications, so that all people living in South Africa have the ability both to receive and impart information, knowledge and ideas and not just be the recipients of messages from a few information providers; and

1.3.8. Ensures the sustainability of all broadcasters including in particular free-to-air broadcasters, as these broadcasters are more accessible to all viewers.

1.4. The SOS Coalition envisages a public broadcaster and community broadcasters that:

1.4.1. Strengthen the goals of the South African Constitution, especially the Bill of Rights, including socio-economic rights;

1.4.2. Have strong institutional autonomy that is independent of sectional, political, commercial and personal interests;

1.4.3. Deliver programming underpinned by the principles of quality, fairness, credibility, reliability, variety and balance;

1.4.4. Deliver programming that reflects the full range of South African opinions and experiences at national and local levels including the views of women, the old, the youth, the poor, unemployed, rural and informal settlement residents and LGTBIAQ+ communities;

1.4.5. Lead the broadcasting sector on public service, African language and local content programming;

1.4.6. Deliver programming that includes Africa-wide and international issues from a South African perspective; and

1.4.7. Deliver programming that is commissioned and broadcast in the public interest.

1.5. The submission is broken into eight sections:

1.5.1. This **introduction**;

1.5.2. **Section two** (outlining SOS's overall vision for local content support and regulation in a converged, digital world);

1.5.3. **Section three** (outlining SOS's critique of the Position Paper in light of SOS's vision);

1.5.4. **Section four** (outlining SOS's positions and recommendations as regards ICASA's Draft Television Regulations);

1.5.5. **Section five** (outlining SOS's positions and recommendations as regards ICASA's Draft Sound Regulations);

1.5.6. **Section six** (outlining SOS's recommendations re: ICASA investigations); and

1.5.7. A **conclusion**

1.5.8. **Annexure A** – SASFED and Transmedia Africa presentation to the Digital Television Content Advisory Group, 2014.

2. SOS'S VISION FOR LOCAL CONTENT REGULATION AND SUPPORT IN A CONVERGED DIGITAL WORLD

2.1. SOS notes the reasons why local content regulations were introduced in South Africa in the first place. As reflected in the *ICASA Discussion Document on the Review of Regulation on South African Local Content: Radio and Television*, July 2014 ("the Discussion Document") regulations were introduced to deal with the structural inequalities of content provision under apartheid and further to promote national identity, national pride and social cohesion; to promote freedom of expression and cultural diversity; to promote the development of a domestic market and industry for indigenous content; and to promote the development of an export market and a globally competitive industry. SOS believes that there has certainly been progress in terms of the original goals set, but feels that more needs to be done.

2.1.1. SOS members note the continued paucity of voices that reflect the views of women, the old, the youth, children, the poor, the unemployed, rural and informal settlement residents and LGTBIAQ+ communities. (See research reports[1] drafted by Media Monitoring Africa, amongst other research).

2.2. SOS notes the critical importance of local content in the new digital environment. However, SOS notes that international studies point to the fact that local content including content that reflects

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[1] http://www.mediamonitoringafrica.org/index.php/resources/entry/mma_submission_to_the_print_and_digital_media_transformation_task_team_pdmt/

local issues and local languages, cultures and religions is often neglected in the new global, digital landscape. Further, public service content is particularly neglected. Also, international studies point to the overall commercialisation and deterioration of the quality of content in the multi-channel environment (Einstein, 2004; Dragomir, 2008; Mendel, 2011).

2.2.1. SOS notes that South Africa is an active participant in this global content environment and the pressures experienced globally are unfolding here too. In this regard the Coalition agrees with the research findings in the *National Integrated ICT Policy Review Report, 2015* claiming that "The public content environment (in South Africa) has been commercialised to the extent that public interest programming is often neglected" (DTPS, 2015: 126).

2.3. To counteract these global trends SOS calls for a basket of **regulations** and **incentives** to ensure that local content (including international and African content produced by South Africans) and, in particular, public service and community broadcasting content is supported.

2.4. SOS notes **regulation** needs to be appropriate to a multi-channel environment. It needs to take into consideration rapid technological advances including the fact that broadcasting and "broadcasting-like" audio and audio-visual content can now be accessed from a variety of providers including non-broadcasters such as telecoms operators and internet service providers. These new media providers are generally unregulated and unlicensed.

2.5. SOS believes that new global realities require regulators to adopt a more flexible approach in certain instances. However, this approach should not undermine the overall goal of ensuring a rich, diverse, public-service and community-orientated audio-visual and audio content environment. From an SOS perspective, a more flexible regulatory approach should include the following:

2.5.1. Regulation of audio visual local content across channel bouquets rather than regulation of content quotas for individual channels, allowing broadcasters more flexibility in terms of scheduling of content.

2.5.2. Regulating the prominence and discoverability of local content, public service and community content through giving prominence to these particular types of programming and these specific content channels on electronic programming guides (EPGs) and in on-demand catalogues as highlighted in the *National Integrated ICT Policy Review Report, 2015* (DTPS, 2015: 109)

2.5.3. Streamlining of the regulatory regime e.g. the removal of complicated format factors in the audio-visual environment from local content regulations while finding other mechanisms to ensure these areas are still addressed.

2.5.4. Introduction of innovative "play or pay" regulations as included (but never implemented) in the Electronic Communications Act, 2005 and highlighted in the *National Integrated ICT Policy Review Report, 2015* (DTPS, 2015: 107)

2.5.5. The introduction of innovative electronic tracking systems so that local content can be tracked (using the latest technology) across channels, broadcasters and platforms e.g. ICASA should explore the Canadian barcode registration system that ensures the registration (with the Regulator) of local content to allow for the tracking of content across different channels, broadcasters and platforms.
See http://www.crtc.gc.ca/eng/info_sht/tv11.htm

2.6. SOS notes that in the present broadcasting environment ICASA has two different systems for monitoring compliance with local content quotas. On the one hand ICASA uses a **time-based system** (for FTA broadcasters) and, on the other, a **percentage of acquisition budgets** (for subscription broadcasters).

2.6.1. SOS believes that the origins of this dual system was derived from the fact that the subscription market was initially more complex – it was primarily a multichannel digital satellite environment versus the FTA landscape that boasted just a handful of channels.[2] It thus made sense in the subscription environment to link local content quotas to a percentage of the broadcaster's acquisition budget rather than to monitoring time across a host of channels.

2.6.2. SOS notes that although setting aside a percentage of the acquisition budget was a simpler system, it had its challenges. One has been that it has been difficult to ascertain what exactly is included in acquisition budgets - it is easy to "fudge" and "hide" issues in terms of issues of "commercial confidentiality". Secondly, linked to the above, the reality has been that the percentage of acquisition budgets translates into much less screen time.

2.6.3. SOS believes that since South Africa is now moving into a multichannel environment for FTA this dual monitoring system needs to be investigated. SOS thus calls on ICASA to:

2.6.3.1. Clarify its reasons for using these different monitoring and compliance systems.

2.6.3.2. Clarify its reasons as to why this dual system remains appropriate for the digital age.

2.6.3.3. Investigate the possibility of formulating and enforcing a single simple monitoring system that ensures maximum coverage of local content on screens, a system that works across FTA and subscription broadcasters.

2.7. Further, to these regulatory provisions, SOS supports a series of (non-regulatory) **incentives** to promote the production of local content. These incentives include:

2.7.1. The creation of a local content fund that could be used by any audio or audio-visual content service provider planning to produce free-to-air (FTA) public service and community-orientated local content. SOS believes that particular priority should be given to local content destined for broadcast during primetime on the new DTT channels (to

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[2] The exception here was MNet.

drive DTT uptake) and piloting and development of new programming and programming formats. Further, the fund should prioritise programming that focuses on marginalised languages; productions outside the main metropolitan areas (i.e. Durban, Cape Town and Johannesburg) and programming focused on women, children, the youth, old people, workers, the poor and LGTBIAQ+ communities.

    2.7.1.1. Please note that this fund should not replace current funding available from DTI, NFVF, IDC etc. The fund would require additional funding.[3]

    2.7.1.2. Public funding is also required for content hubs and provincial film commissions in all provinces.

2.8. To ensure easy acquisition of local content, SOS strongly supports the strengthening and growing of our independent TV, film production and music industries. SOS supports the development of robust, diverse, independent production and music industries that reflect the demographics and diversity of our country in terms of race, class, gender, sexual-orientation, language and religion.

    2.8.1. SOS thus calls for ICASA to conduct an investigation into South Africa's local content industry and its capacity to deliver content across all local languages and provinces. SOS calls for this investigation - including detailed recommendations - to be concluded by the end of 2016 and to be updated annually. The investigation could be conducted in conjunction with the National Film and Video Foundation (NFVF)

    2.8.1.1. SOS notes that this investigation could rely, as a starting point, on the NFVF's *South African Film Industry Economic Baseline Study, April 2013*.

2.9. Alongside the support for the growing of a robust, diverse production industry, the SOS Coalition also supports the building of creative internal TV / audio-visual production capacity within broadcasters. These internal departments should include a particular focus on development work including the development of new formats and the conducting of pilots.

2.10. SOS notes the joint responsibility of all broadcasters and content providers to shoulder local content responsibilities. In broad brushstrokes, SOS supports the current regulatory system that ensures regulation of all broadcasters and content providers but with a hierarchy of obligations. In terms of audio-visual / TV content, SOS believes that public broadcasters should be at the top of the pyramid with the most obligations, then free-to-air commercial broadcasters followed by subscription broadcasters. SOS believes that a specific regime needs to be created for the emergent community television sector. In this regard, SOS believes that for specific time periods (i.e. during the dual illumination period), it is important to ensure greater flexibility for this sector.[4]

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[3] Please see research conducted by SOS on the possibilities of establishing a local content fund
www.soscoalition.org.za

[4] There are many new costs for community TV in the digital environment. For instance national signal distributor, Sentech, said in Parliament on 11 August 2015 that community broadcasters would use as many 12

2.10.1.   In terms of radio / audio content, SOS believes that there should also be a hierarchy of obligations with public and community broadcasters at the top of the hierarchy, followed by commercial broadcasters.

2.10.2.   SOS supports one of the key principles that underpin the Electronic Communications Act (ECA) – "technological neutrality". The ECA calls for ICASA to create a licensing regime that ensures that all licenses granted are technologically neutral. SOS thus believes that free-to-air (FTA) satellite TV and FTA terrestrial TV services should have the same regulations. Also, subscription satellite and subscription terrestrial services should have the same regulatory regime.

2.10.2.1.   ICASA should explore the application of this principle for the regulation of radio – including the regulation of FM and AM Radio, digital radio and radio-like services delivered over the internet.

2.11.   As stated above SOS believes that increasingly all broadcasters will be delivering on-demand services. Further, SOS notes that over time more "broadcasting-like" content will be delivered over the internet. To ensure that this content reflects local, public-service and community content needs, SOS believes this content should be regulated. (Please note that this is not a call for general regulation of the internet but only for specifically defined "broadcasting-like" content). SOS calls for the re-opening of discussions that were started in ICASA in 2010 with the Authority's *Position Paper in Relation to Internet Protocol Television (IPTV) and Video on Demand (VOD) Services, 2010.* SOS notes that in terms of present policy and regulations ICASA has not defined "on-demand" content as broadcasting content. This content thus falls outside ICASA's regulatory purview. This debate needs to be urgently re-opened.

2.11.1.   SOS supports investigation of the definitions of "broadcasting-like" content and the broad regulatory principles that underpin the European Audio Visual Media Services Directive (AVMSD), 2010.[5] This Directive has created a regulatory framework that brings "television" broadcasts on a number of platforms and on-demand services into a single regulatory framework. SOS believes strongly that ICASA should investigate this further.

2.11.2.   The AVMS Directive defines an "audio visual media service" as a service which is under the editorial responsibility of a media service provider with the principal purpose of providing for the general public, programming in order to inform, educate and entertain by means of an electronic communications network. It excludes all user-generated content.

2.11.3.   An AVMS can be either a linear AVMS or a non-linear AVMS. A linear AVMS is a service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule. A non-linear AVMS is a service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at

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transmitters in the digital environment compared to just one in the analogue environment. For example Cape TV will pay R1.738m a year to reach its audience, compared to the R474 567 it pays now (an increase of 366%)!

[5] Please see the following website for further details on the Directive.
http://epthinktank.eu/2014/03/25/the-avmsd-implementation-and-future-perspectives/

his/her individual request on the basis of a catalogue of programmes selected by the media service provider i.e. on-demand content.

2.11.4. The AVMS Directive brings these linear and non-linear services together and creates a two-tier system of regulation with stricter regulation for the linear tier. The common rules that affect both tiers include prohibitions around hate speech, a focus on making services available to people with visual and hearing disabilities, and some commercial regulations around sponsorship and product placement. The rules applicable to linear services include stronger protection for minors and regulations for the promotion and distribution of European television programming.

2.11.5. As discussed above, SOS calls on ICASA to investigate these issues further, and as soon as possible. SOS refers ICASA to the excellent work done in this regard as part of the Department of Telecommunications and Postal Services ICT policy review process captured in Chapter five *Audio and Audio Visual Content Services* in the *National Integrated ICT Policy Review Report, March 2015.*

2.12. Finally, SOS notes the critical importance of ICASA playing its monitoring and compliance role. SOS notes the increased complexity of the new monitoring and compliance environment and thus believes it is essential that all monitoring and compliance processes are streamlined for ICASA *and* for all broadcasters. Ideally broadcasters should play a more self-regulatory role, with the Regulator playing more of an auditing role. Please note that the Canadian barcode system mentioned in 2.5.5 above is largely a self-regulatory system. Producers and broadcasters play important roles in terms of the furnishing of information to the Regulator and the Regulator does spot checks.

2.12.1. SOS notes the important role the Digital Television Content Advisory Group (DTCAG) should be playing in issues of monitoring. Part of its core mandate is to assist in the development of a monitoring methodology for the digital environment. SOS calls on DTCAG to expedite this process,

2.12.2. Finally, on issues of monitoring and compliance SOS needs to stress that the passing of regulation is entirely meaningless if ICASA fails to monitor and enforce compliance. In this regard, SOS notes the independent production industry's ongoing battles with ICASA to ensure monitoring and enforcement of compliance by broadcasters. Please note the very detailed presentation prepared by the South African Screen Federation (SASFED) and Transmedia Africa for the Digital Television Content Advisory Group (DTCAG) presented in 2014 and entitled, *Content Creation and Demand for Content in the Digital TV Environment*. (Please see document attached as Annexure A) The presentation outlines the local production industry's ongoing campaigns to ensure / compel ICASA to monitor quotas on an annual basis.

2.12.2.1. SASFED, for instance, points to the fact that from 1999 to 2015, a period of 16 years, ICASA has produced only 4 reports on local content compliance for the SABC. SASFED states that only one report in fact specifically addresses the SABC's compliance with prescribed TV local content requirements.

3. SOS CRITIQUE OF THE POSITION PAPER

3.1. SOS notes the time and effort that has gone into the drafting of the Position Paper. The Coalition acknowledges a number of positive aspects, chief being:

    3.1.1. ICASA's decision to retain the use of quotas as a regulatory tool. SOS believes that this will continue to encourage the further production and distribution of local content in the country.

3.2. However, despite these positives, the Coalition is disappointed by the following:

    3.2.1. **Firstly**, as mentioned above, the Position Paper does not clarify the thinking behind the dual system of monitoring local content in South Africa. In fact further confusion is added by the Draft Regulations' call for 50% of the "annual independently produced programming budgets" of public, commercial FTA and commercial subscription broadcasters to be spent on programming sourced from outside the main metropoles and / or on marginalised African languages etc.

        3.2.1.1. As discussed above SOS calls on ICASA to clarify its reasons for these dual systems and to investigate the possibility of creating a single system.

    3.2.2. **Secondly**, a number of important issues specifically raised in the Discussion Document seem to have been (arbitrarily) dismissed in the Position Paper. SOS notes, for instance, the questions raised in the Discussion Document about the definitions of "local content" (should it include local sport), "independent production" etc. However, the Position Paper concludes that the issue of definitions "can't be dealt with" as the matter needs legislative amendments to the Electronic Communications Act ("ECA"). SOS understands that a legislative amendment needs to be made. However, SOS believes this does not preclude the Regulator from taking a position on these critical issues. SOS believes the Regulator *should* have an opinion and *should* put this forward to the public, the sector, relevant Ministries/ Departments and Parliamentary Committees.

        3.2.2.1. One key area in which this issue is clearly demonstrated is ICASA's attitude towards the expansion of the definition of "local content" to include local sport.

            3.2.2.1.1. In this regard, SOS wants to note debates happening within the Coalition. A number of SOS members have specifically called for a shift in the position SOS put forward in its last submission i.e. on the *Local Content Discussion Document, 2014*. Here SOS stated that local sport should be included in the definition but that the amounts of local sport should be capped. The concern SOS had at the time was that there wasn't sufficient minority and women's sport, and that an amendment to the definition of local content, to include sport, might ensure better coverage. This issue has now been re-opened and re-debated in the Coalition.

3.2.2.1.2. The majority position is strongly opposed to local sport being included. This position aligns itself with the argument that there is significant coverage of local sport without quotas and that it is, in fact ,other genres of programming that need to be promoted e.g. documentaries, children's programming. The supporters of this position argue that the issue of minority sport and women's sport is critical, but should be dealt with through other regulatory mechanisms and not through amendments to the local content definition.

3.2.2.1.3. The minority position is that SOS's original position should be maintained. The argument here is that community broadcasters in particular are struggling to fulfil their local content quotas and that it is critical that local sport is included within these quotas. The argument is that local sport *is* local content and therefore should be included in the definition.

3.2.2.1.4. SOS calls on ICASA to pursue a thorough investigation of this issue, including the possibilities of creating a different local content dispensation for community television broadcasters to 1) allow them to possibly include local sport as part of their local content quotas or 2) to significantly reduce their local content obligations so that an additional small local sport quota will not adversely affect them. Further, the investigation should look at the issues of "minority sport" and "women's sport".

3.2.2.1.4.1. In terms of the issues of minority sport and women's sport the Regulator should look at how many hours broadcasters should be broadcasting per sporting code, which codes and on what broadcasters. Should it be a free-to-air obligation only or should pay-TV also be obligated? Further, ICASA would need to canvass the views of the associations governing various sporting codes. ICASA needs to look at what would be the most appropriate regulatory mechanism to deal with these issues.

3.2.2.1.5. In summary SOS believes that ICASA *must* take a view, after weighing up the various opinions.

3.2.3. **Thirdly**, in some instances, decisions seem to have been taken without clearly argued and rational reasons and, in fact, despite calls for the opposite to be implemented.

3.2.3.1. SOS notes, for instance, that ICASA's own research conducted for the *Local Content Discussion Document, 2014* points to serious problems with format factors (the broadcasters canvassed in this research stated that they simply ignored these factors because they were too onerous to calculate because of the detailed calculations required). However, despite this research, ICASA has decided to retain this regulatory mechanism.

3.2.3.2. This is also true in terms of various calls for amendments to the repeat regime (including from the independent producers who were originally pushing for

this). Again, the Authority appears to have simply dismissed these arguments without explanation.

3.2.3.3. Another example includes the arguments made for a more flexible regime for emerging community television broadcasters. However, despite strong calls from community broadcasters themselves and SOS for a more lenient regime, the Authority states that it intends raising community broadcasters' local content obligations from 55% to 65% and that at least 50% of its local content quotas must be locally sourced.

3.2.3.4. This is also the case with the Authority's decision to raise the local content quotas on community sound broadcasters. Specific inputs were made as part of ICASA's provincial consultation process (note strong inputs made In the KZN workshop) that the process to raise quotas in the community radio sector should be incremental. In direct contradiction to this, ICASA then recommended a 100% increase of local content from 40% to 60% to 80% in less than 4 years and for, at least, 20% of that quota to be sourced from the coverage area.

3.2.4. **Finally**, SOS is very worried about ICASA's seeming refusal to acknowledge problems with its monitoring of local content quotas in the analogue environment. The issue of monitoring is dealt with in section 13.3 of the Position Paper. The section barely touches on problems / challenges. Its focus is forward-looking - the Position Paper looks at potential challenges to monitoring in the digital multi-channel environment. The Position Paper states that the Authority will adopt an "audit approach" to monitoring and in line with this approach licensees will have to submit audited monitoring reports. The Position paper goes on to say that no complaints or suggestions were made as regards the monitoring of sound broadcasting licensees so the current monitoring system will remain in place.

3.2.4.1. SOS reiterates its disquiet. The Coalition believes that it is critical for the Regulator to acknowledge problems in the analogue environment. A lack of acknowledgement will mean key problems will simply go unaddressed and will then be compounded in the new digital environment.

3.2.4.2. Although SOS, in principle, agrees that ICASA should be moving in the direction of the "auditing" of monitoring reports, SOS feels that the approach needs to be unpacked. The Position Paper leaves a number of important questions unanswered. The Paper, for instance, does not define "audited monitoring reports". It does not define who will audit these reports and on what authority - there is an implicit assumption that this will be done by outside parties. But SOS believes strongly that this audit function cannot be outsourced. This is a key internal ICASA function. SOS calls on ICASA to:

3.2.4.2.1. Define "audited monitoring reports"

3.2.4.2.2. Make public the required format for reports.

3.2.4.2.3. Confirm who will be doing the auditing of these reports. In this regard SOS stresses the importance of this remaining a key internal function.

3.2.4.3. SOS is also concerned with ICASA's comments in section 13.1.16 of the Position Paper. The Paper states that there were "no complaints or suggestions with regards to monitoring of sound broadcasting licensees" and that the current monitoring system will thus remain in force. This is simply incorrect. SOS pointed out in some detail the problems with monitoring in the sound broadcasting environment and put forward a number of concrete suggestions. These suggestions included the following:

3.2.4.3.1. Allowing stations to compile and send reports electronically. ICASA should do random audits of broadcasters' reports.

3.2.4.3.2. Encouraging ICASA to hold annual information sessions with stations, particularly community stations to educate and update station managers on monitoring and compliance requirements. (This will deal with the high turnover of staff in stations.)

3.2.4.3.3. Encouraging ICASA to implement a system of ranking stations. Stations with a good compliance track-record should be labelled 'green' for instance. They would then be monitored less regularly, yet still effectively. This would allow the Authority to focus its capacity on those ('yellow' and 'red') stations with a known track record of difficulty with compliance or non-compliance.

4. SOS'S POSITIONS AND RECOMMENDATIONS – DRAFT TELEVISION REGULATIONS

4.1. As argued in section 3, above, SOS believes that ICASA should not ignore discussions on definitions – rather it should collate discussions and inputs and put forward a position. SOS reiterates its positions on definitions below:

4.1.1. That the definitions of local content, including whether local sport should be included, should be thoroughly debated as suggested in 3.2.2, above.

4.1.2. That the definition of "television content" should now refer to "audio-visual content services", in keeping with the emergence of broadcasting-like content services and providing for regulatory parity in a rapidly converging audio-visual content service environment.

4.1.3. That the definition of "independent TV production" must emphasise the issue of *control*. Independent producers and independent production companies need to ensure genuine control over their **creativity**, **intellectual property** and **working conditions** if their work is to be seen as independent. This should be emphasised in the definition.

4.2. As stated above SOS believes the retention of quotas is important as a regulatory tool.

4.2.1. SOS supports ICASA's decision to raise the quotas from 55% to 65% for the public wing of the public broadcaster. SOS notes ICASA's decision that new licensees should start at

30% and increase by 10% each year until they reach 65%. These proposals are in line with the proposals put forward in SOS's submission on *ICASA Local Content Discussion Document, 2014.*

4.2.2. SOS supports ICASA's decision to raise the quotas from 35% to 45% for the public-commercial wing and commercial FTA broadcasters. SOS notes that e.TV's licence conditions in fact already stipulate a 45% quota. This regulation will simply bring the SABC's public commercial channel SABC 3 in line with eTV. SOS is also in agreement that new licensees should start at 20% and increase by 10% each year until they reach 45%. Again, these are in line with the proposals put forward by SOS in its submission on *ICASA's Local Content Discussion, 2014.*

4.2.3. SOS, however, disagrees with community television broadcasters' local content quotas being increased from 55% to 65% and for community television broadcasters to source 50% of their local content from their coverage area. SOS believes that these quotas are presently too onerous for community broadcasters as an emerging sector, particularly in the face of lacking sustainable financial support mechanisms. Community broadcasters should be given greater flexibility during the dual illumination period. .

4.2.4. SOS also disagrees with ICASA's proposals around subscription TV Licensees. These quotas have been raised from 10% to 15%. SOS believes that the quotas should be increased to at least 20% of acquisition budgets. As argued in 2.6 and 3.2.1 above and in our submission on *ICASA's Local Content Discussion Document, 2014* percentages of acquisition budgets work out to substantially less airtime.

    4.2.4.1.   Please note that SOS believes that, subject to an ICASA investigation, there should be a single system to monitor local content quotas which should either be time-based or acquisition budget based. However, in the meantime, the very least that can be done is for the percentage of the acquisition budget to be raised.

4.3. SOS notes ICASA's decisions to retain the present genre categories and genre quotas. SOS agrees with the present genre categories, but reiterates its demand to add animation as a further category for public and commercial FTA television.

4.3.1. Animation is a new, creative and technologically cutting-edge form of expression that is being developed in the country with a number of benefits to society and to broader audio visual industry development. This art form is particularly effective for children's programming. It generally ensures a long shelf-life for programming.

    4.3.1.1.   The Department of Trade and Industry and National Film and Video Foundation have given specific support. Young talent is being developed in this field through programmes in film schools such as AFDA. SOS believes that to ensure this (substantial) investment is well spent and to further boost South African creative, technological and cultural innovation this new genre / content form should be supported. SOS calls for ICASA to do an investigation as to the

best ways to incentivise this form of programming - SOS notes the fact that "animation" is not a traditional genre, it cuts across genres.

4.3.2. SOS is worried that despite certain genres being stipulated and percentages being allocated, certain genres of programming continue to disappear such as documentaries. The problem is bigger than the quotas. Most broadcasters show little to no documentaries so 50% of zero is still zero! To mitigate this, the Coalition believes that a clause should be added to push for a balance of genres across programming so that no genres will be left out in the cold!

4.4. SOS notes ICASA's recommendations that 40% of local content production should be sourced from independent producers. SOS, however, feels that this should be raised to 50% to further boost the growth and sustainability of the independent production industry. SOS believes that a strong independent production industry will ultimately bolster the quality and, in particular, the diversity of content in the country. However, SOS believes that this increased percentage needs to go hand in hand with the bolstering of the independent production sector's capacity to operate outside the three main metropolitan areas and further its capacity to produce programming in all South African languages. See 4.5 below for further arguments.

4.5. SOS notes ICASA's stipulation that all public, commercial and subscription broadcasters must spend 50% of their annual local production budget on previously marginalised African languages and/or on programming outside the three metropolitan centres of Durban, Cape Town and Johannesburg.

4.5.1. The first critical issue to clarify is what is meant by "marginalised" languages. Does this include all languages except for English and Afrikaans, **or** is it only specific smaller and marginalised African language groups e.g. TshiVenda, XiTsonga? Which African languages is ICASA referring to? This has a material bearing on ICASA's recommendations - production of local content in smaller African language groups, is more challenging due to the present structure of the industry. The term "marginalised African languages" thus urgently needs to be defined in the regulations. With this clarification in place SOS is in support of this principle. As stated clearly in section 2 of this submission, SOS campaigns for the production of African language content and content that represents the voices outside the three metropolitan areas of Cape Town, Johannesburg and Durban.

4.5.2. To further strengthen diversity SOS believes that a clause must be added to the Regulations to ensure that broadcasters ensure an even spread across all African languages.

4.5.3. SOS notes, however, some of the independent production industry anxieties about production of local content outside the three main centres. SASFED argues that vast

majority of the production industry is based in Durban, Cape Town and Johannesburg.[6] Due to broadcasters' irregular commissioning of programming, the independent production industry needs to scale up and scale down quickly. In order to do this the sector needs access to a pool of actors and crew usually managed by professional agents. These are all based in the main centres. All the post production facilities are based here too. Also, again due to the seasonal and irregular nature of television work, TV producers need to share resources with the advertising and feature film industries to ultimately ensure sustainable businesses. The film and advertising industries are also based in the main centres. Further, most of the new talent is based in these centres as the film and television schools are based here. Finally, the only functioning film commissions are based here. In terms of these challenges SOS believes that the following needs to be put in place:

4.5.3.1. As mentioned in section 2 of our submission, SOS believes that it is critical that an investigation is conducted into the independent production industry's capacity to produce programming in all African languages and across all provinces. This investigation needs to include clear recommendations for the building of the industry to achieve this. The research and recommendations need to be updated annually.

4.5.3.2. The broadcasters need to play a leading role in driving this provincial strategy. Broadcasters need to start to open provincial offices. The public broadcaster needs to up-scale its established provincial offices to cater for TV. These offices need to be available for pitching and commissioning.

4.5.3.3. New provincial film commissions need to be set up to support productions in provinces outside Gauteng, the Western Cape and KwaZulu Natal.

4.5.3.4. The broadcasters need to ensure that their big budget productions including long running soaps include mentorship programmes to train new young script-writers, actors and crew that come from areas outside Johannesburg, Durban and Cape Town.

4.6. SOS notes ICASA's call (under "general provisions") for licensees to submit "audited monitoring reports". SOS has discussed this problem in detail in 3.2.4 above. As discussed the problem is that the "audited monitoring reports" are not defined in the Regulations. Also, most importantly there is an implicit assumption that these reports will be audited by an outside, unspecified body. SOS reiterates its deep disquiet on both fronts.

4.6.1. SOS calls on ICASA to define what is meant by "audited monitoring reports"

4.6.2. Make public the required format for auditing reports.

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[6] This has been calculated by SASFED by looking at its membership across its different constituent organisations. SASFED membership covers actors, scriptwriters, documentary film makers etc. Please see SASFED submission for details.

4.6.3. Finally, SOS calls on ICASA to monitor reports as a key internal function and not to outsource its duties.

4.7. SOS notes a number of problems with the existing Regulations' conflation of format factors and repeats. SOS believes that format factors have nothing to do with repeats - these are completely separate issues. SOS thus calls strongly for these issues to be dealt with separately.

4.8. In terms of format factors SOS notes the research that ICASA did to inform its *Local Content Discussion Document, 2014*. This research points clearly to the fact that format factors have not worked. Broadcasters have simply ignored them because they are too complicated and onerous to calculate. SOS believes that the digital, multi-channel environment will only reinforce this complexity.

4.8.1. SOS, however, is aware of the fact that two of the central issues dealt with in format factors are important and must not be lost. The first is boosting African language content – particularly marginalised languages. The second is the boosting of the production of content outside the three main metropolitan centres. To ensure that these critical issues are covered SOS believes the following needs to be put in place:

4.8.1.1. **firstly** ICASA needs to go ahead with its proposals in its Draft Regulations that 50% of independent local content production must be produced in African languages and /or in centres outside Johannesburg, Durban and Cape Town. (However, the issues discussed in 4.4. above must be taken on board.)

4.8.1.2. **secondly**, ICASA needs to craft a specific set of language clauses that call for a certain percentage of all local content programming – including that produced in-house - to be dedicated to African languages.

4.9. As stated above SOS opposes ICASA's decision to retain its position on repeats. SOS believes there should be greater flexibility in a digital environment. [7] SOS concurs with the positions put forward by SASFED on repeats. In line with this, SOS calls for:

4.9.1. The first repeat of a South African programme on a public or commercial television broadcaster to count 50%;

4.9.2. The first repeat of a South African programme on a community television broadcaster to count 100%;

4.9.3. For a South African programme originally screened on another South African television channel within the same broadcaster's bouquet of a public or commercial television broadcaster to count 50%;

4.9.4. For a South African programme originally screened on another South African television bouquet of a public, community or commercial television broadcaster to count 100%;

4.9.5. For a rebroadcast of the week's episodes to count 50%; and

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[7] Please note that repeats do not apply to subscription broadcasters. This is due to the fact that their local content quotas are calculated differently – not on a time-based system but re acquisition budgets.

4.9.6. That any further repeats of the programme should not count towards compliance with the content quota. (This obviously doesn't stop the broadcasters repeating this programming further, however the issue is that it won't count towards local content quotas.)

    4.9.6.1. In addition to the repeats captured here, SOS calls for ICASA to include further repeats for children's programming. As discussed in its previous submission, SOS calls for the first repeat to count a 100% and the second 50%. And as discussed above for the first repeat on a different bouquet to count 100%.

4.9.7. To monitor this SOS, , calls for the Authority to devise an accurate and fool-proof way, to track every production for the life of that production, and as it moves from one broadcast network to another and is repeated within each bouquet within a broadcast network over several years. SOS proposes that the Authority sets up and manages a register for every production, whether produced by a broadcaster or independently, from which it issues a unique and traceable reference code, which the broadcaster then is compelled to enter into an electronic system which in turn reports back to the Authority. This would need to happen on a daily basis, as the program is aired. The system would then track repeats over many years for each unique production, and allow and encourage the broadcasters to track productions licenced from other broadcaster networks accurately. A system based on these principles is in use in Canada.

    4.9.7.1. SOS calls for ICASA to thoroughly investigate such a monitoring methodology and implement something similar as soon as possible.

5. SOS'S POSITIONS AND RECOMMENDATIONS – DRAFT SOUND BROADCASTING REGULATIONS

5.1. Currently, radio broadcasters need to play a specified quota of South African music within the performance period (5am – 11pm), spread reasonably evenly over the whole broadcasting period. This quota is presently at a minimum of 40% for public and community sound broadcasters and 25% for commercial and public commercial sound broadcasters. Subscription sound broadcasters have a minimum quota of 10%. Beyond this, specific local content requirements are set out in licence conditions.

5.1.1. ICASA is now proposing that the minimum quota for community radio be increased to 60%, 18 months after the Regulations have come into effect and then increasing by 10% each year to reach 80%; the minimum quota for public radio to be increased to 60% after 18 months and then to 70% the following year; the minimum quota for commercial radio to be increased to 35% after 18 months; and the minimum quotas for subscription radio to be increased to 20% after 18 months and then to 30% the following year. SOS notes that these are significant increases.

    5.1.1.1. SOS sees these increases as high but is in broad agreement. The increases are generally in line with SOS's previous submission on local content issues. However, SOS is opposed to the steep increases for community radio. SOS notes

the comments made at ICASA's own provincial workshops that community radio should be given more time to increase its local content quotas. SOS thus believes that the time periods should be lengthened for community radio to reach 80%.

6. SOS RECOMMENDATIONS - SUMMARY OF PROPOSED ICASA INVESTIGATIONS:

6.1. As discussed in the submission above SOS would like ICASA to conduct the following investigations:

    6.1.1. Firstly, an investigation into the overall local content regulatory framework. SOS notes the dual system of acquisition budgets for subscription broadcasters and the time-based system for FTA broadcasters. ICASA needs to investigate the possibility of creating a single system.

    6.1.2. Secondly, an investigation into South Africa's local content industry and its capacity to deliver content across all local languages and provinces. SOS calls for this investigation - including detailed recommendations - to be concluded by the end of 2016 and to be updated annually. The investigation could be conducted in conjunction with the National Film and Video Foundation (NFVF)

    6.1.3. Thirdly, an investigation into amending the definitions of local content in terms of broadcasters' request for the inclusion of local sport in the definition. The investigation needs to look at the impact of this on all players and whether a specific dispensation should be created to protect and promote community TV broadcasters. Issues of ensuring coverage of marginal and women's sport need to be investigated.
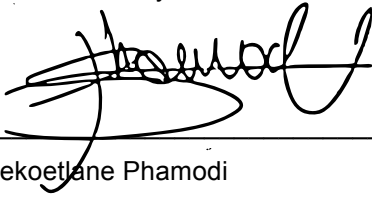
    6.1.4. Fourthly, SOS calls for the re-opening of discussions that were started by ICASA in 2010 with the Authority's *Position Paper in Relation to Internet Protocol Television (IPTV) and Video on Demand (VOD) Services, 2010.* SOS notes that in terms of present policy and regulations ICASA has not defined "on-demand" content as broadcasting content. This content thus falls outside ICASA's regulatory purview. This debate needs to be urgently re-opened to ensure that on-demand content is included under regulations. ICASA needs to be forward looking and ahead of the curve in terms of technology developments. It needs to ensure that there are no regulatory vacuums that generally operate in terms of the benefit of dominant commercial players – and not in the public interest.

    6.1.5. Fifthly, an investigation into how best to promote South African animation. SOS calls for ICASA to do an investigation as to the best ways to incentivise this new content form - SOS notes the fact that "animation" is not a traditional genre, it cuts across genres.

7. CONCLUSION

7.1. SOS thanks ICASA for giving us the opportunity to make this submission. We are happy to answer any further questions or to provide further arguments or explanations if required.

Yours Sincerely,

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