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GENERAL NOTICE

NOTICE 891 OF 2011



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

ISSUES PAPER:

**A REVIEW OF THE BROADCASTING REGULATORY FRAMEWORK TOWARDS
A DIGITALLY CONVERGED ENVIRONMENT**

DECEMBER 2011

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

INVITATION FOR WRITTEN REPRESENTATIONS

In terms of Section 4B of the Independent Communications Authority of South Africa Act (Act No 13 of 2000), interested persons are hereby invited to submit their written representations on the **Issues Paper: A Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment** published herewith by the Authority. A copy of the proposed regulation will be made available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), SANDTON between 09h00 and 16h00, Monday to Friday only.

Written representations with regard to the Issues Paper must be submitted to the Authority by no later than 16h00 on 16 March 2012 by post, hand delivery or electronically (in Microsoft Word) and marked specifically Attention: Mr Collin Dimakatso Mashile. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton. Where possible, written representations should also be e-mailed to: regulatoryreview@icasa.org.za or by facsimile: 011 566-3672/3802 or by telephone: 011 566-3671/3801; between 10h00 and 16h00, Monday to Friday only.

The Authority will hold its public hearings from 26-30 March 2012.

Written representation(s) received by ICASA pursuant to this notice, will be made available for inspection by interested persons at the ICASA library and such copies will be obtainable upon payment of the prescribed fee.

At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral representations.

A handwritten signature in black ink, appearing to be 'S. Mncube', written over a horizontal dotted line. The signature is stylized and extends to the right with a large loop.

DR STEPHEN MNCUBE
CHAIRPERSON

DATE: 29/11/2011

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1. EXECUTIVE SUMMARY

The Independent Communication Authority of South Africa, hereafter referred to as the Authority, carries out its regulatory policy making function in a broadcasting environment undergoing far-reaching change: it is an entirely digital environment, it is both linear and non-linear, access is free or for a charge, and all communications platforms now offer broadcasting content. It is necessary to review previous regulations governing the broadcasting industry so as to take into account these new technological, cultural, economic and social challenges.

The need to review analogue regulatory regimes as a result of the transition to digital terrestrial television broadcasting has been recognised by various policy and regulatory authorities, such as Australia, Canada, United Kingdom and New Zealand. The authorities engaged in various public processes to adapt their existing regulatory frameworks to the new market structures and dynamics of the broadcasting industry in order to achieve their respective public policy goals.

The switch-over of broadcasting from analogue terrestrial television to digital terrestrial television is scheduled to take place in 2013.

There have been two prior reviews of the regulatory landscape, The Triple Inquiry Report (1996) and The Broadcasting Act (1999), but these both took place in the analogue transmission era.

The overall objective is to ensure that regulatory framework for broadcasting services promotes the development of public, commercial and community broadcasting services which, in the context of digital convergence and migration, are responsive to the needs of the public, which promote a plurality of news, views and information and provide a wide range of entertainment and educational programmes, a proportion of which are locally produced; and provide legal and investor certainty.

This will be achieved through the strategic review and assessment of the future needs of the broadcasting regulatory framework in South Africa. The current analogue technology-based regulatory framework for broadcasting does not fit with the reality of the continued rise of digital technology and the expected influx of competing media services on the next generation networks or platforms which are not subject to the same regulatory obligations imposed on current broadcasting services licensees.

The Authority's Issues Paper first explores the context and guiding regulatory principles for the review of the broadcasting sector regulatory framework, and then outlines the legislative background and overview of ICASA regulatory mandate.

It highlights the digitally converged regulatory frameworks in international jurisdictions. In dealing with the challenges facing the current South African regulatory frameworks, specific regulatory questions are raised for consideration by all stakeholders. The paper raises general regulatory policy issues for further comment before dealing with conclusions and consolidating all consultation questions.

From January to March 2012 the Authority will engage the relevant stakeholders and the public in a comprehensive Provincial consultative process.

The Issues Paper reflects a neutral discussion of critical regulatory frameworks moving into the digitally converged environment. At this early stage of the review process, the Authority will not draw any conclusions.

2. PART A: INTRODUCTION AND PURPOSE

2.1 INTRODUCTION

2.1.1 The Republic of South Africa will be embarking on important changes in the broadcasting sector during next five (5) to ten (10) years. The primary change is the envisaged migration from analogue broadcasting transmission system towards the introduction of digital terrestrial television broadcasting.

2.1.2 The migration to digital broadcasting will not only affect the provision of broadcasting services, but the existing regulation concerning broadcasting services operating in this environment.

2.1.3 In 2008, the Ministry of Communication issued Broadcasting Digital Migration Policy Directive (Government Gazette No: 31408), to the Independent Communications Authority of South Africa (ICASA), herein referred to as “the Authority”. This Directive advanced a wide range of regulatory policy views relevant to how the Authority should regulate the broadcasting sector during the digital migration era, providing, amongst other things:

2.1.3.1 that the “must carry” arrangements, which require broadcasting services to carry certain public services, continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens; the Authority should ensure that universal access to public broadcasting services is sought to be achieved and the “must carry” requirements must be retained;

2.1.3.2 competition should be promoted within the limits of the available spectrum in order to ensure a smooth migration to digital broadcasting in the country and

to provide a multiplicity of sustainable services to benefit both the public and broadcasters;

- 2.1.3.3 the migration to digital broadcasting will create opportunities for the development, use and wide dissemination of local content in all eleven (11) official languages. It will also advance the expression and the efficient communication of the knowledge and experience of all communities and the country as a whole. It could contribute to the integration of people from different ethnic or racial backgrounds thus contributing to nation building;
- 2.1.3.4 although coverage limitations will be overcome in the digital environment, access to public broadcasting services by all South Africans, regardless of their economic status, remains a fundamental principle that should not be diluted by the digital migration process;
- 2.1.3.5 closed captioning is embedded in the television signal and becomes visible when a special decoder is used. The South African decoder will, as a matter of policy, enable viewers to see captions which assist them to read what is being said in that particular programme. Captioning is helpful in the following ways: to assist hearing-impaired television viewers; to assist in noisy environments; and to follow programming which is in a different language. Captioning services are therefore essential for addressing the needs of many people, especially those with hearing disabilities;
- 2.1.3.6 the traditional model for South African content regulation is based on minimum percentages and took into account factors which applied in a single channel analogue environment. Given the new digital broadcasting era, these content quotas shall be reviewed to embrace the new digital regime. The Authority shall, in the near future, review and develop appropriate local content regulations which will be relevant to the multi-channel digital environment; the manner in which requirements are imposed in relation to minimum levels of South African content is suited to a single channel analogue environment and the Authority should review the existing content quotas to reflect the multi-channel digital environment;

2.1.3.7 the development of Creative Industries will provide an opportunity for the coverage of South African stories, entertainment and cultures in multi-channel digital broadcasting, thus contributing towards building national identity and social cohesion, further providing an African perspective of South Africa as an integral part of the African continent.

2.1.4 The Cabinet decision in December 2010, later re-confirmed by the Ministry of Communications, stated that all transmission in analogue mode will cease by end of December 2013. Practically, this means the digital mode of transmission will be the sole means to broadcast programmes on terrestrial frequencies from January 2014. Beyond 2013 the regulatory framework for the broadcasting sector will have to be quite different and relevant to the digital era.

2.1.5 The Authority is now embarking on a regulatory review process of all existing analogue based regulatory frameworks, passed since 1994, to establish a new comprehensive regulatory framework for the broadcast sector, as South Africa enters a digital environment.¹

2.1.6 The objective of this regulatory review Issues Paper is to engage in a public consultation process which would assist the Authority in reviewing the existing regulatory framework to ensure effective and efficient regulatory policy beyond migration period. The aim is to engage with the relevant stakeholders to find the best ways of embracing the digital broadcasting environment and deliver viable regulatory framework that:

2.1.6.1 guarantees the public interest protection;

2.1.6.2 supports, amongst other things, social development, economic growth and job creations, whilst at the same time doing justice to cultural aspects;

¹ The Ministry of Communication Broadcasting Digital Migration Policy Directive (Government Gazette No: 31408), 08 September 2008

2.1.6.3 encourage the development of the community, commercial and public broadcasting, against the background of the digital and technological convergence of services, networks and devices; and

2.1.6.4 contribute to the integration of people from different cultural or racial backgrounds thus contributing towards nation building, moral regeneration and social cohesion.

2.1.7 In undertaking the review, the Authority will consider the current regulatory policy and legislation relating to the broadcasting sector. It will also consider current international best practice and anticipated new regulatory policy trends in regulating the digital broadcasting sector over the next three to five years.

2.2 SCOPE

2.2.1 The proposed regulatory review and its outcomes will affect all licensed broadcasting services in South Africa.

2.2.2 This Issues Paper looks at the current regulatory frameworks applicable to the broadcasting sector, seeks answers to identified questions and ensures the introduction of a new regulatory framework that supports the development of broadcasting services in the digital era.

2.2.3 The review process is not prompted by a failure in the broadcasting sector, but by the need for better broadcasting regulatory frameworks that is technological-neutral, more robust and predictable.

2.2.4 Nothing in this Issues Paper is intended to indicate a preference by the Authority for any particular outcome or regulatory approach, to cover the new digital broadcast environment, scheduled to commence at least after 31 December 2013 or the latest after 30 June 2015.

2.2.5 The paper is divided into the following sections:

- 2.2.5.1 Part A is the Introduction and establishes the context and guiding regulatory principles for the review of the broadcasting sector regulatory framework, as well as the related regulatory review initiatives;
- 2.2.5.2 Part B sets the legislative background and overview of ICASA regulatory mandate;
- 2.2.5.3 Part C highlights newly introduced regulatory frameworks for broadcasting services in the multi-channel/platform environment in international jurisdictions;
- 2.2.5.4 Part D deals with the challenges facing the current South African regulatory frameworks and raises questions for consideration by all stakeholders going into the digital environment;
- 2.2.5.5 Part E deals with the general issues for further comment;
- 2.2.5.6 Part F deals with conclusions and next steps, and explores ancillary issues that have an impact on the efficacy of the review of the regulatory frameworks for the broadcasting sector, including the timing of the review and implementation arrangements after the conclusion of this review process.
- 2.2.5.7 Part G consolidates all Consultation Questions
- 2.2.5.8 Part H outlines Annexes

2.3 METHODOLOGY

2.3.1 The review began by identifying areas where the current regulatory framework does not meet the current broadcasting regulatory policy goals.

2.3.2 The Authority engaged in a desk-top research, which involved Internet research, literature review, documentation analysis and correspondence with relevant authorities and stakeholder organisations. Information was also sourced from

various Governments and regulatory authority's web sites, academic works and public documents.

2.3.3 The Authority will engage in effective consultation with provinces, community based organisations, consumers, industry, non-government organisations, academics and researchers, and relevant government departments and agencies before holding final public hearings.

2.3.4 Subsequent to the public hearings, the Authority will analyse the issues and provide regulatory roadmap for the future.

2.4 PURPOSE OF THIS ISSUES PAPER

2.4.1 The Issues Paper is intended to:

- 2.4.1.1 address various regulatory concerns raised by the South African public and industry over the last number of years;
- 2.4.1.2 assess the continued viability and regulation of public, commercial and community broadcasters;
- 2.4.1.3 assess how to balance consumer access to public interest content (e.g. sports of national interest) while fostering and promoting competition within the broadcast environment;
- 2.4.1.4 assess what is required with regards to the promotion of broadcasting quota system and the production and distribution of independent South African programmes;
- 2.4.1.5 assess how the review process should recommend new norms for commercial interactions that confirm the ability of broadcast market participants to negotiate fairly for rights;
- 2.4.1.6 assess how to continue promoting the cultural diversity objective, through quota-type mechanisms, and ensure that they are still relevant in the digital broadcast environment;

- 2.4.1.7 assess the operation of statutory regulations, self-regulation and co-regulation in the broadcasting sector, and how/whether they have, individually or collectively, delivered effective consumer protection;
 - 2.4.1.8 debate whether the scope of the existing Broadcast regulation should be extended to cover also non-licensed new broadcasting services;
 - 2.4.1.9 examine the role of the Authority in ensuring diversity and success of new programming formats on the digital platforms;
 - 2.4.1.10 inform the Authority's periodic review processes and identify eliminate outdated regulations that unnecessarily burden market, stifle investment and innovation, or no longer serve the public interest/consumers and licensees;
 - 2.4.1.11 revisit the Authority's current regulatory framework to see how it can be adjusted to take into account the digital environment;
 - 2.4.1.12 re-examine, revisit and improve Authority's current broadcasting related regulations to factor in the new multi-platform environment through which broadcast content and programming is distributed.
- 2.4.2 A central issue for the Authority and the relevant stakeholders is the appropriate regulatory framework in the current technological environment, where there is greatly increased consumer choice and a proliferation of distribution technologies for online content that does not come under the direct jurisdiction of the Authority.

Issue(s) for stakeholder consideration:

Issue 1: Do you agree with the Part A views? Please elaborate. -

3 PART B: LEGISLATIVE BACKGROUND AND OVERVIEW OF ICASA REGULATORY MANDATE

The aim of this section is to provide a legislative background to the review and deal with other interrelated regulatory functions.

3.1 LEGISLATIVE BASIS FOR THE REGULATORY REVIEW

- 3.1.1 The broadcasting sector in South Africa is based upon a three tier system made up of "public", "commercial" and "community" broadcasting services.
- 3.1.2 The necessity of a broadcasting regulator is recognized and entrenched in section 192 of the Constitution of the Republic.
- 3.1.3 The Broadcasting Sector in South Africa is regulated by the Authority, which is the focal point of contact for economic and social regulation of broadcasting, electronic communications and postal sectors; in the Republic.
- 3.1.4 From the time of the transition to democracy broadcasting was regulated in terms of the Independent Broadcasting Authority Act of 1993 (the IBA Act) and the Broadcasting Act of 1999 (the Broadcasting Act). When the Electronic Communications Act (ECA), no 36 of 2005, came into force, it repealed the IBA Act in its entirety and also repealed the Broadcasting Act to a greater extent.
- 3.1.5 Essentially the Broadcasting Act became a statute which regulates the public broadcaster and, although there are currently other provisions which are applicable to the broadcasting sector as a whole. Chapter 9 of the ECA generally deals with the regulation of broadcasting services, essentially replicating some of the provisions in the IBA Act.

3.1.6 The core activities of the Authority focuses on:-

- 3.1.6.1 implementing of broadcast legislation and administering the broadcasting sector;
- 3.1.6.2 monitoring whether broadcasters are fulfilling their legal obligations and to impose sanctions if they fail to carry out those obligations;
- 3.1.6.3 awarding of broadcast licences;
- 3.1.6.4 developing, prescribing and reviewing code of conduct according to which complaints would be dealt with by a Complaints and Compliance Committee (CCC) and where justified, advises the Authority's Council which sanction to impose to protect audiences; and
- 3.1.6.5 promoting investment and universal access to modern global digital convergence networks and services.

3.2 INTER-RELATED REGULATORY FUNCTIONS

3.2.1 The current regulation of the broadcasting industry takes the approach of co-regulation combining self-regulation with legislation, much of which dates back from significant reforms undertaken since 1993.

3.2.2 Broadcasters have the option of either adhering to a code developed by the Authority or abiding by their own code administered by the Broadcasting Complaints Commission of South Africa (BCCSA). The public and commercial broadcasters have opted for self-regulation under the auspices of the BCCSA. Most community broadcasters have chosen to be regulated by the Authority as they do not have to make any financial contribution to its everyday operation. The Authority works with various stakeholders to develop regulations and codes of practice relating to the broadcasting sector.

3.2.3 The Advertising Standards Authority of South Africa (ASA), an independent body set up and funded by the marketing communications industry, oversees a self-

regulatory approach to advertising to protect consumers against manipulative advertising and unfair claims. The ASA cooperates with government, statutory bodies, consumer organisations and industry to ensure that advertising content complies with the Code of Advertising Practice.

3.2.4 The Authority has no interrelated legislated mandate with the Films and Publications Board (FPB). However, both institutions have a similar role in restricting and permitting content that can be viewed across various content distribution platforms. There is always the possibility that both institutions can share best mechanisms of how to better protect the public from offensive content. Moving forward it is proposed that the Authority should consider forging closer relations with FPB, since the Authority's code of conduct regulations speak of FPB classification role in the content regulation.

4 PART C: INTERNATIONAL JURISDICTIONS

4.1 THE NEED FOR REGULATORY REVIEW

- 4.1.1 The phenomenon of convergence, digitisation of platforms and the emergence of new communications networks and services has prompted regulatory policy change “in light of dramatic changes in communications technology, market structures, and the needs of a democratic society” (PIAC, 1998).
- 4.1.2 Academics, policy makers and regulatory authorities across the globe are assessing new policy actions that would help them redefine, fine-tune and restructure their evolving regulatory frameworks affecting the broadcasting sector. This is mainly within a wider context of national, regional and international approaches and responses.
- 4.1.3 It has been argued that “the market for television services has been subject to radical changes through the convergence of technologies and markets, where traditional TV broadcast services are still regulated on the basis of specific bottleneck, access and content oriented measures; and that this approach to regulation is no longer appropriate in a [digitally converged] world” (Karantanis, 2009). Furthermore, “regulators and policy makers are starting to realise that they need to engage with both industry and consumers not only to understand the changes in markets and social behaviour brought about by digital convergence, but also to respond to them in the most appropriate and effective manner” (Ariño, 2008).
- 4.1.4 Moving forward, it has been suggested that current regulatory models should be more flexible and “... involve taking a more active role in orchestrating industry self-regulation and consumer engagement [which tends to] prove superior in a context of rapid market developments” (Ariño, 2008).

- 4.1.5 Regulators today are faced with the challenge of “how broadcasting firms and markets should be organized to promote economic efficiencies and encourage a variety and plurality in programs... [as] competition policy alone does not guarantee achievement of the basic social objectives for the broadcast industry such as maintaining a pluralism of views or providing greater variety in programs”. A further submission is that “given that broadcast companies are social, cultural, economic, and political institutions, they need to be examined in that context” (Picard and Chon, 2004).
- 4.1.6 In the coming years our broadcasting systems need regulation that is enforced to the benefit of [the entire broadcasting sector], and that regulators should ensure that access for the visually - or hearing-impaired consumers to broadcasting systems is improved, rather than diminished (Milligan, 2009).
- 4.1.7 The need to revamp regulatory regimes as a result of the transition to digital broadcast has been recognized in various regions around the globe, more so in Northern America, Asia-Pacific and the European Union (EU), which have all engaged in a regulatory reform exercise, where they revisited their content regulations in light of new technological developments and changed industry landscape.
- 4.1.8 The UK Government is currently undertaking a wide-scale review of the regulatory regime framework supporting the communications sector. The review solicits views on how a communications regulatory regime can best keep pace with change, and establishes UK communications and media markets as amongst the most dynamic and successful in the world.

4.1.9 Japan acknowledged that their current analogue technology-based vertical structure and regulatory framework for broadcasting would not only inhibit the various changes, but also not fit with the reality of the continuing rise of digital technology and the IP (Internet Protocol) network. There was a need to achieve the promotion of fair competition and the strengthening of the protection of rights in the content/platform layers. These changes were first recognised in 2001, in order to make information technology (IT) a locomotive for Japan's economic revitalisation.

4.1.10 The Authority conducted its benchmark study in these countries. The regulatory policy approach in these countries is similar to that of the Authority as cultural, economic and social policy is also incorporated into their broadcasting laws that govern their broadcasting regulatory framework.

4.2 SPECIFIC COUNTRY CASE STUDIES

4.2.1 AUSTRALIA

4.2.1.1 The regulatory framework in Australia is such that radio and television are subject to a system of co/self-regulation involving broadcasters, relevant industries and the Australian Communications and Media Authority (ACMA) to ensure industry compliance with licence conditions, codes and standards. ACMA is a statutory body under the authority of the Department of Broadband, Communications and the Digital Economy within the Federal Government (DBCDE).

4.2.1.2 The ACMA carries out a range of functions under the Broadcasting Services Act 1992 and is responsible for the regulation of broadcasting sector, the internet, telecommunications and mobile devices. Australia has adopted a converged content regulation framework with statutory responsibility for

broadcasting and co-regulatory systems in place for Internet and mobile-delivered content.

- 4.2.1.3 The Australian Communications Legislation Amendment (Content Services) Act 2007 extends content regulation to live streamed internet content devices and services that provide links to content. It is also grounded in a technically complex legislative and regulatory landscape that developed as new technologies and content services came into being.
- 4.2.1.4 In 2011 the Australian Government called for submissions on terms of reference for a convergence review to take a fresh look at Australia's existing regulatory frameworks with a view to updating the framework in light of technological and market changes, including an assessment of:
- (a) the role of the regulator (the ACMA) and the views and expectations of Australian citizens;
 - (b) how to implement a transparent regulatory framework that will encourage investment in the Digital Economy; and
 - (c) whether content does not become the new competition battleground where bottlenecks and walled gardens are emerging in a converging environment.
- 4.2.1.5 This review was seen as implying platform-specific regulatory approach, rather than the regulation of particular distribution paths, where the new regulatory frameworks should not reflect a passive twentieth-century regulatory model for content, but take the opportunity to broaden the definition of Australian content (Ericsson, 2011).
- 4.2.1.6 There was also criticism that the review failed to address key issues (such as the concentration of media ownership and competition issues); "tip-toes" around significant issues such as the extended erosion of diversity in the Australia media market; is too fragmented and does not go far enough; avoids

the controversial topic of sporting rights – as the anti-siphoning list for sports was reviewed in 2010; the scope is narrowed to delivery media and content issues; and not to the regulatory environment for data and voice telephone services (Crawford and Lumby, 2011).

- 4.2.1.7 It was further stated that the Review should consider the recommendations of the Australian Law Reform Commission (ALRC), which is reviewing the Australian content of audience National Classification System to address emerging technologies and see how these two processes will inform each other where possible.
- 4.2.1.8 The above makes it clear that Australia has started addressing the same issues the Authority is looking at, for example, what are potentially contentious areas of regulation of broadcasting services where the existing free-to-air and pay television services are facing new TV-like services such as IPTV, internet TV and video on demand, all of which emerging services compete with traditional free-to-air and pay TV services for viewers; and what should be the treatment of advertising controls, programming classification and Australian content obligations that are directed to “the development of national and cultural identity”. It is expected that the existing players will argue for positions that achieve a ‘level’ regulatory playing field across the different media technologies that can deliver TV or TV-like services.
- 4.2.1.9 The other encouraging point is that the Australian Government, just like the South African counterpart, has recognized the need to develop a coherent approach to the regulation of content which can be delivered over a variety of different platforms; especially digital content and the safety of that content. Australia has noted that the practical issues surrounding regulation of digital content suggests that a self-regulatory approach would be the most appropriate response.

- 4.2.1.10 In August 2011, the ACMA released a consultation paper on the review of the privacy guidelines for broadcasters, to assist broadcasters to better understand their obligations relating to privacy as set out in the various broadcasting industry codes of practice. In reviewing the guidelines, the ACMA considered the relevant provisions of the broadcasting codes of practice, which are in line with the law establishing a co-regulatory scheme that allows the commercial, subscription and community sections of the broadcasting industry to develop codes of practice and submit those codes to the ACMA for registration. Before registering a code, the ACMA must be satisfied that the code provides appropriate community safeguards for the matters that it covers. The code must be endorsed by a majority of providers of broadcasting services in that section of the industry and members of the public should be given an adequate opportunity to comment.
- 4.2.1.11 The co-regulatory scheme gives broadcasters an opportunity to respond to any complaints that citizens might have about non-compliance with codes of practice. Where citizens are dissatisfied with the broadcaster response, they may complain to the ACMA, which will then investigate the matter. The ACMA research into community attitudes to broadcasting and media privacy that arise in broadcast news and current affairs programs and radio competitions confirmed that the ACMA's approach to the codes (as reflected in the draft revised guidelines) is in step with current community attitudes.
- 4.2.1.12 In 2008, the Australian Senate Standing Committees on Environment, Communications and the Arts also engaged in an inquiry and an examination into the effectiveness of the broadcasting codes of practice operating within the radio and television industry, with particular reference to the frequency and use of coarse and foul language (swearing) in programs; the effectiveness of the current classification standards as an accurate reflection of the content contained in the program; the operation and effectiveness of the complaints process currently available to members of the public; and any

other related matters. The Committee indicated that because ACMA has a responsibility to conduct and commission research into community attitudes on issues relating to programs and datacasting content; [and] to assist broadcasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards.

- 4.2.1.13 Another Senate Inquiry examined the effectiveness of the regulation of advertising standards and existing complaints mechanisms, particularly the performance of the Advertising Standards Board complaints system as an indicator of the effectiveness of advertising regulation. The Senate Inquiry noted that Australia has a variety of regulatory systems and this makes it difficult and complex to make complaints; resulting in low numbers of complaints, which mean that they do not adequately or accurately reflect prevailing community standards or concerns (Statham, Mooney, and Phoenix, 2011).

4.2.2 CANADA

- 4.2.2.1 In 2007, the Canadian Radio-television and Telecommunications Commission (CRTC) commissioned a report to conduct a comprehensive review of the existing regulatory framework for broadcasting services in Canada, The Canadian Broadcasting Corporation's (CBC), equivalent of the SABC, special mandate was specifically noted and stated to be beyond the scope of this review.
- 4.2.2.2 The objective of the review was to assess the effectiveness of the existing regulatory and policy framework in meeting Canadians' requirements for broadcasting services, and to recommend ways in which these requirements can be better served, with either more efficient regulation or with less regulation. The study was required to make recommendations to maximize

the reliance on market forces, always keeping in mind the overriding twin objectives of Canadian content and access to the system.

4.2.2.3 The report reviewed the CRTC's policies and regulations with respect to broadcasting, and with a detailed understanding of the industry and market conditions; and stated the following:

- (a) regulation will still remain pervasive even in areas where undertakings compete: Examples include: limits on market entry; regulated formats; restrictions on advertising; genre protection; restrictions on program content; restrictions on program production; and restrictions on program distribution and marketing;
- (b) questioned the need for genre protection between Canadian services and recommended that the CRTC stop enforcing genre protection among Canadian programming services, unless there is reason to believe that competition in respect of specific genres would not advance the policy objectives in s. 3(1) of the Act;
- (c) recommended that the Commission reassess the current advertising restrictions that apply to various classes of television services, in light of the realities of the market and new trends in narrowcast advertising, and consider whether the existing restrictions limit the revenues available to the broadcasting system. It should then consider the feasibility of removing the restrictions and allowing broadcasting undertakings to decide how best to offer their services to the public - whether through an advertising-based model, a subscription service, or on a transactional basis;
- (d) recommended that the Commission study the pros and cons of reducing the requirements on broadcasting undertakings to use high percentages of independently produced programming. This review should include consideration of economies of scale and scope in production, rights management issues, and incentives to maximize

returns from Canadian programming. At the same time, the Commission should consider rationalizing the independent production requirements of different classes of television undertakings and, in the absence of clear regulatory distinctions, impose common obligations on these services. It was also recommended that this be done in a staged manner and that following any such reduction or rationalization, the CRTC should carefully monitor the impact of the changes on Canadian content production and independent producers;

- (e) noted that market forces should have a role to play in determining the value of the service being carried. However, the Commission should be prepared to engage in a dispute settlement or adjudicative role when there is an inequality in bargaining power on either side; favouring strengthened anti-discrimination provisions and increased enforcement powers to deal with these types of disputes.

4.2.2.4 In 2008 the CRTC issued Broadcasting Notice of Public Hearing where it initiated a proceeding to consider issues pertaining to Canadian broadcasting in new media. The CRTC considers broadcasting in new media to be the distribution of audio or video content over new technologies such as the Internet or mobile devices. In 1999, the CRTC had exempted broadcasting delivered or accessed over the Internet from regulation due to its limited impact on traditional radio and television and its finding that regulation was not necessary to achieve the objectives of the Broadcasting Act. More recently, it had similarly exempted broadcasting over mobile devices.

4.2.2.5 The CRTC asked interested parties to respond to questions and to provide comments, with rationale and supporting evidence, on the following matters: the definition of broadcasting in new media; the significance of broadcasting in new media and its impact on the Canadian broadcasting system; whether incentives or regulatory measures are necessary or desirable for the creation and promotion of Canadian broadcasting content in new media, including

consideration of the potential requirement for direct financial contribution from content aggregators, ISPs and portal operators; if there are issues concerning access to broadcasting content in new media; what other broadcasting or public policy objectives should be considered; and the appropriateness of exemption orders for the new media broadcasting undertakings and mobile television broadcasting undertakings. Comments were filed on December 5, 2008 and a public hearing concluded on March 11, 2009.

4.2.2.6 The CRTC considered the circumstances that led to the need for regulation of Canadian content in traditional broadcasting, as they do not currently exist in the Internet environment. It believed that market forces were providing a Canadian presence on the Internet that was also supported by a strong demand for Canadian new media content. If Canadian content on the Internet diminishes, is under threat, or disappears altogether, the CRTC maintains the power to intervene and regulate to support the production/creation of Canadian Internet content.

4.2.2.7 The Standing Committee on Canadian Heritage decided to undertake a study on the state of the Canadian broadcasting system and how successful it has been in meeting the objectives of the Broadcasting Act of 1991. As with previous studies by this Committee, the issues of Canadian content and cultural diversity were central in the study of broadcasting. The Standing Committee identified two major subject areas; the present state of the Canadian broadcasting system, and the future directions for the Canadian broadcasting system.

4.2.2.8 The Authority is interested in your responses to the adapted questions posed below²:

² Adapted from the questions posed by the Standing Committee on Canadian Heritage to the Canadian stakeholders.

- (a) Is the method of determining local content requirements still appropriate and viable in promoting distinctively South African programming for the digitally converged environment?
- (b) In light of recent trends, how can the regulatory framework for local content maintain and promote a distinctive and diverse sense of local, provincial, national cultural identity?
- (c) Will globalization and technological change, especially the growing importance of the borderless Internet, undermine current ownership restrictions in broadcasting?
- (d) How has growing concentration and cross media ownership affected broadcasting?
- (e) Should South African broadcasting companies be allowed to form alliances with foreign firms if size becomes a requirement for survival in the broadcasting market?

4.2.2.9 According to von Finckenstein (2011) there is a need for a conceptual rethink of the whole Canadian regulatory system, related to the following questions:

- (a) Is the present CRTC model the best for Canada?
- (b) Should the powers of ex ante regulation be curtailed, while ex post powers of enforcement are increased? The aim should be to favour competition, with intervention limited to cases of market failure.
- (c) Should the relationship between the CRTC and the Competition Bureau be more clearly defined?
- (d) What about the CRTC and the Copyright Board? This question is also key to the Authority's current review, which is related to commissioning of programmes and ownership of rights.

EUROPEAN UNION (EU)

4.2.3 THE EUROPEAN UNION (EU) GENERAL VIEW

- 4.2.3.1 During the analogue era, **the European Union (EU)** adopted the Television Without Frontiers (TWF) Directive in 1989, which was applying to television broadcasting across EU. This Directive also contributed to the fulfilment of wider complementary cultural, social, and economic aims while contributing to the protection of fundamental human rights and pluralism.
- 4.2.3.2 In 2003 EU realised that convergence had raised serious questions, amongst other things, on the effectiveness of the TWF Directive in protecting consumers, stimulating the competitiveness of the European audio-visual industry and levelling playing field.
- 4.2.3.3 It is within the above context that the EU decided, amongst other things, to review the TVWF Directive, including more flexibility in relation to advertising and an update of the definitions, to make sure that all services similar to television are covered by the revised directive; and the establishment of a comprehensive framework for any form of electronic delivery of audio-visual content. The majority of experts consulted supported the more comprehensive approach applicable to all audio-visual content services and the following public policy objectives: protection of minors and human dignity; identification of commercial communications; minimum qualitative obligations regarding commercial communication; right of reply; maintaining and developing media pluralism crucial for the democratic process; ensuring that broadcasters reserve a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works; and cultural diversity.

- 4.2.3.4 The new directive, the Audio-Visual Media Service Directive (AVMS Directive) was approved by the European Parliament in November 2007. The AVMS, which came into force on 19 December 2007, replaced the TWFD that was operational since 1997, provided for a set of rules for Europe's audio-visual industry that covers all audio-visual media services – traditional, as well as online and on-demand audio-visual content. The AVMS Directive rebooted EU rules on traditional TV broadcasting for the digital age, and the EU countries had until 19 December 2009 to turn the modernised rules for Europe's audio-visual industry into national law.
- 4.2.3.5 One of the most important changes from the TWF Directive is that the AVMS Directive no longer differentiates between services based on distribution platforms (cable, mobile, internet, etc.). This platform-neutral approach allows traditional broadcasting services (that were regulated, e.g. with respect to advertising) to compete with similar services on the internet (that were not regulated). This level playing field objective is linked to the objective of consumer protection. Because different platforms can support the same type of services, it did not make sense to the Commission to only protect consumers that use traditional platforms.
- 4.2.3.6 The Directive ensured that the distinctive feature to determine the rules that apply to audio-visual media services, is whether the service is considered linear (traditional scheduled television broadcast services) or non-linear (on-demand services). The Directive ensures that linear services are regulated more strictly than non-linear services, and also defined a minimal set of qualitative rules that are applicable to both linear and non-linear services. This was expected to provide a basic level of consumer protection; with additional (quantitative) rules for linear services, e.g. with respect to advertising and European content/products.

- 4.2.3.7 Furthermore, the AVMS Directive loosened the rules for specific types of advertising such as product placement; where because product placement would be allowed (with certain restrictions) audio-visual media service providers then it would increase product placement revenues, to compensate for declining revenues from spot-advertising (commercial breaks between programmes and within programmes). The other issue related to the issue that editorial independence and responsibility should not be compromised by commercial interests.
- 4.2.3.8 The lessons that the Authority learnt from this analysis is that the TVWF Directive, like most of the Authority's regulatory frameworks, stipulated that television channels (public and private) are subject to a certain number of rules relating to the content of programmes in terms of, for instance, the protection of minors, advertising, sponsorship and promotion of European works. Like the South African situation, the development of DTV and new interactive audio-visual services raised the question of whether the current scope of the current analogue based regulations for the broadcasting sector are still adequate.

EUROPEAN UNION SPECIFIC COUNTRIES CASE STUDIES

4.2.4 FRANCE³

- 4.2.4.1 In **France**, the French's Conseil supérieur de l'audiovisuel (CSA) 2010 Annual Report states that CSA's regulatory frameworks:
- (a) have adapted to the rapid shifts in the new broadcasting environment;
 - (b) have taken into account new technological and economical challenges, as well as the industry's, and the public's, expectations; and

³ Largely drawn from Conseil supérieur de l'audiovisuel 2010 Annual Report.

(c) takes place in a new entirely broadcasting environment, both linear and non-linear, where access is free or for a charge, and all media now offer broadcasting content.

- 4.2.4.2 Similar to the Authority, the CSA pays special attention to ensuring that the digital switch-over guarantees minimum digital terrestrial television coverage in each and every French region. This is intended to ensure that the process does not create any divide, and combats any geographical divide caused by social circumstances.
- 4.2.4.3 In 2007, the CSA faced a situation where digital terrestrial radio, like in South Africa, could not join in broadcasting's digital switch-over. The CSA engaged operators, regarding digital radio implementation, and managed to address the financial and technical issues as a prerequisite to issuing licenses. This is similar to CSA's previous decision, which reviewed several policies to help operators reach financial stability.
- 4.2.4.4 In anticipation of the possible developments and the future of a fully digital broadcasting world, the CSA opened a public consultation in 2009. The consultation dealt with the proposed future for digital broadcasting and the possible usage of airwaves freed by two off-air digital pay services as more multiplexes will be freed by analogue switch-off.
- 4.2.4.5 In line with the France (2009) Law n°2009-258 - 5 March 2009, which sets forth the general framework relating to the regulation of on-demand audio-visual media services, the CSA dealt with the practical implementation thereof, where all aspects of its regulatory activity had to include non-linear services. CSA found that as the broadcasting platforms expand the public calls for regulation on all media services. Furthermore, society's expectations in respect of broadcasting regulatory policy goes beyond pluralism, ethics,

and youth protection, but also includes programme accessibility for those with disabilities, society's diversity being reflected, and obesity being combated.

- 4.2.4.6 The CSA implemented the above law and took decisive action and adopted a new pluralism simplified principle to govern the balance of politicians' speaking time on television and radio regarding national political issues. The CSA also reviewed means available to combat racism and anti-Semitism in the broadcasting media, by taking stock and making proposals in this respect. With regards to accessibility, sub-titling was made a general rule in 2010, and specific provisions in the law of 5 March 2009 were introduced setting forth obligations in terms of audio-description.
- 4.2.4.7 Another important action by CSA is with regards to their 2008 study on the portrayal of diversity on television, where they involved the entire broadcasting industry. The ultimate result was the creation of a refined methodology for the half year diversity index, setting forth commitments to be made by each editor, and monitored by the CSA, while respecting their editorial line and their freedom to create broadcasting works. The principle of annual commitments was included in each channel's license conditions, where channels started providing the CSA with their first commitment letter, with CSA monitoring compliance with such commitments very closely, and with a specific stock taking exercise taking place. It is these kinds of tools, which the Authority can learn from, that enabled CSA to fulfil its legislative mandate (i.e. guaranteeing social cohesion and ensuring that all French citizens feel broadcasting reflects who they are).
- 4.2.4.8 In 2009 the CSA realised that health issues played an increasing part in French society's expectations regarding broadcasting regulation, and its work started to reflect on this development. CSA set forth the conditions for the broadcasting of health-related announcements during the swine flu epidemic by implementing the Charter to promote a healthy diet and physical exercise

on television. Furthermore, it assessed the role of broadcasting in raising awareness regarding sustainable development issues.

4.2.4.9 CSA holds a view that there is a need for a strong, diversified and independent production and distribution industry. This should make it possible for audio-visual works to circulate and be known domestically and internationally.

4.2.4.10 In 2009 CSA reached a conclusion on the following issues, which the Authority has also taken into account when engaging in this review:

- (a) Multiple reviews by the CSA have shown that French private broadcasting companies have not reached the necessary size to compete on an equal footing with foreign groups. It is essential, however, for the private broadcasting industry to be strong, so that it may support French creativity, and, thereby contribute to the richness of the broadcasting supply, which must also be varied. Concentrations, therefore, must be analysed, and justified, taking into account the broadcasting environment of today, as opposed to what it was five years ago.
- (b) The CSA intends to help public and private broadcasting companies to meet the new economic and competition challenges. To achieve this, the CSA uses an adaptive approach to economic regulation, increasingly based on contractual relationships.
- (c) The CSA has adapted regulation to the new broadcasting environment in the public's interest and in co-operation with the industry to support the technological and competition developments.

4.2.5 IRELAND

- 4.2.5.1 In 2011, the Broadcasting Authority of Ireland (BAI)⁴ published the Draft BAI Broadcasting Services Strategy, for public consultation, outlining the BAI's proposed approach to the licensing of broadcasting services that are additional to those currently operating.
- 4.2.5.2 The strategy would have to present the BAI's vision regarding the optimum mix of broadcasting services and identifies a number of factors that may facilitate and constrain the achievement of that vision.
- 4.2.5.3 Furthermore, the strategy must inform the BAI's approach to the development of a licensing plan, ownership and control, the regulation of services, the cost of making applications for commercial sound broadcasting services, the requirement for 20% News and Current Affairs content on radio services and a review of other regulatory policies and practices.
- 4.2.5.4 Lastly, the strategy had to assist BAI to make informed decisions and fulfil the key statutory objectives of endeavouring to ensure that the number and categories of broadcasting services in the State will best serve the needs of the Irish people. It must also bear in mind their languages and traditions and their religious, ethical and cultural diversity.
- 4.2.5.5 BAI also commissioned an economic and environmental review of contemporary broadcasting landscape of Ireland to assist with the development of the Strategic Statement 2010-2013 and explore issues

4 The Broadcasting Authority of Ireland (BAI) is the body responsible for the regulation of broadcasting in Ireland. Its functions and responsibilities are set out in the Broadcasting Act 2009 ("the 2009 Act"). Section 26 (1)(a) of the Act requires the BAI to prepare a strategy for the provision of broadcasting services in the State.

related to market services; economic and revenue models for digital broadcasting; Public Service Broadcasting funding; and the shift online content services. Similar to the South African regulatory context, BAI had realised that whilst it does not regulate online content services, the media landscape was being shaped by high speed broadband. The report had to reflect on the challenges and opportunities this digital broadband environment presents, give guidance on some of the dominant trends in media convergence and their impact on broadcasting, and outline an economic and market tracking methodology to assist the BAI's strategic planning process for the future work.

4.2.5.6 The review took place at the end of two years of an economic recession which had seen broadcasting revenues significantly fall and some new services were described as being in a 'distressed financial state'. The key concern across the sector was sustainability and evidence based regulations. The review had to look at trends over ten years and compare trends in Ireland with those in comparative small nations, in order to provide a proper context.

4.2.5.7 The review noted that the BAI needs to:

- (a) take into account the economic, social, technological and cultural drivers; and
- (b) adopt an evidence-based approach to policy and strategy, which has to involve research on relevant markets, identification of market and regulatory issues, cost-benefit analysis on proposed policies and impact assessment on existing ones.

4.2.6 PORTUGAL

4.2.6.1 The Portuguese Parliament amended the Television Law, implementing the EU's AVMS Directive, through Law 8/2011, updating the Television Law (Law 27/2007), the Advertising Code and the Law on Radio and Television Public

Service Broadcasting (Law 8/2007). The law contains several provisions where, amongst others, it encourages media service providers to develop codes of conduct to co-regulate alongside the new provisions. The other debates centred on how the regulator will actively enforce the new provisions.

4.2.6.2 The major changes brought about by Law 8/2011 includes media ownership and management, which introduced a new set of guidelines in order to increase transparency regarding property and editorial responsibilities, with an obligation to provide online information about the ownership structure.

4.2.6.3 Changes were made to advertising regulation, a matter previously regulated in the Advertising Code with provisions that dated back to 1998. These changes contained several restrictions on the possibility of including sponsorship in television programmes and had no clear regulation in respect of non-linear (on-demand) services nor product placement (although it was considered by some to be included in the definition of sponsorship). Product placement and aid to production are now regulated for the first time in Portugal.

4.2.7 NEW ZEALAND

4.2.7.1 Following the launch of digital free-to-air broadcasting in New Zealand, the Government undertook a wide-ranging Regulatory Review of Digital Broadcasting. The central focus of the review was to solicit views on the future of regulation for digital broadcasting, but the terms of reference also required an assessment of the broader regulatory issues that affect broadcasting, such as the impact of convergence, developments in the telecommunications industry and the changing role of intellectual property in the sector.

- 4.2.7.2 In 2008 the Regulatory Review of Digital Broadcasting: Report-back on options following public consultation ("Cabinet Paper") was publicly released. Cabinet directed the Ministry of Economic Development ("MED"), in consultation with the Ministry for Culture and Heritage ("MCH") to conduct a competition study to address access to premium content, platforms and networks for related television channels and services.
- 4.2.7.3 In 2009 the MED and MCH released their Report to the Minister of Broadcasting and the Minister for Communications and Information Technology on competition issues in television broadcasting (the "Competition Report"). Some of the key findings of the Competition Report concluded that:
- (a) all other main OECD countries take a much more pro-active approach to regulating their broadcasting markets than New Zealand, which appears to be unique in relying on ex-post-application of general competition law to regulate the broadcasting market;
 - (b) there was no strong case at that time for the introduction of specific regulation for the broadcasting sector; and
 - (c) there were some risks relating to competition in the broadcasting market in the future, including in relation to access to premium content and transmission platforms.
- 4.2.7.4 As a result of Competition Report:
- (a) the MCH favoured an amendment to the Telecommunications Act 2001 to include broadcasting so that a widened Telecommunications Commission could undertake market studies of broadcasting and make recommendations to Ministers as to whether particular services (e.g access to broadcasting platforms or premium content) should be regulated; and
 - (b) the MED favoured taking no further action as it considered that there was no strong case for regulating the broadcasting market at that time

as it appeared adequately competitive and there were no compelling indications of future issues.

- 4.2.7.5 Despite the preference for regulation by the MCH and the previous Labour-led Government's preference to conduct a competition study to address access to premium content and access to platforms, the new National-led Government announced on 7 April 2009 that the Regulatory Review would not proceed any further as it was preparing a new programme of action for broadcasting aligned with National's pre-election commitments, namely a successful digital switch-over and supporting public broadcasting.
- 4.2.7.6 The new National-Party led Government quoted a departmental analysis of submissions made during the review process concluded that the current market appeared workably competitive and that there were no compelling indications of future issues; and also noted that there was no strong case for the introduction of specific new regulation for the broadcasting sector. The National-led Government stressed that they wished to maintain a competitive and diversified broadcasting market; will continue to monitor market developments; noted that some useful information emerged from the research and submissions process, but have agreed that the review, as a whole, goes beyond the priorities set out in pre-election broadcasting commitments and the new Government's subsequent policy announcements.
- 4.2.7.7 The National-Party led Government Ministers explicitly stated that they are preparing a new programme of action for broadcasting policy aligned with pre-election commitments of achieving a successful digital switch-over and supporting public broadcasting through contestable funding and that "with the exception of policy development on post-digital switch-over spectrum allocation and regional television broadcasting; and on options for sensory

disabled viewers, the remainder of the regulatory review's work programme will not proceed⁵.

4.3 SUMMARY OF INTERNATIONAL BENCHMARKING

- 4.3.1 The above international benchmarking exercise indicates that some countries began the migration from analogue to digital broadcasting as far back as 2001. The migration necessitated the development of regulatory frameworks that would address new policy issues in a technologically converged environment. Countries have their unique circumstances and a new approach must therefore be appropriate to the economic, social and political aspects of the specific countries.
- 4.3.2 Furthermore, the emergence of new services and possibly new players in a technologically converged environment will affect the current regulatory policy approach. The current focus on linear services will have to be reviewed and the growing importance of non-linear services be considered. This will ensure policy predictability, viability and the continued diversity and plurality of the broadcasting sector.
- 4.3.3 In conclusion, the new regulatory policy framework should not shift the fundamental objective of regulating in the public interest and ensuring effective competition. Moving into a digital era, the regulators need to strike a balance between these two. The non-linear services should be regulated less strictly than linear services. The regulatory approach should be geared towards promoting effective and efficient competition but not negate social objective of regulating the broadcasting industry.

⁵ Joyce, S and Coleman, J. 2009. **Press Conference Address: Government concludes broadcasting regulatory review.** Ministry of Economic Development (MED) and the Ministry of Culture and Heritage (MCH), Wellington.

Issue(s) for stakeholder consideration:

Issue 2: What is your analysis and view on the above benchmarking, and which lessons do you believe are relevant to the Authority's Issues Paper and future issues?

Issue 3: Is the current benchmarking relevant or sufficient? Please elaborate.

Issue 4: Which other countries and issues do you believe should have considered for the benchmarking exercises and which ones do you consider being irrelevant?

5 PART D: ISSUES FOR THE SOUTH AFRICAN BROADCASTING REGULATION

The aim of this Section is to provide a general analysis of the existing regulations that govern the broadcasting sector. The Section also raises questions arising from both the international benchmarking and issues raised by stakeholders over the years when the Authority engaged in its review of specific regulations passed since 1994.

This section of the Issues Paper focusses on existing regulations that govern the broadcasting sector.

5.1 REVIEW OF OWNERSHIP AND CONTROL OF COMMERCIAL SERVICES AND LIMITATIONS ON BROADCASTING

5.1.1 In 2011, the Authority published the Findings Document on the Review of Ownership and Control of commercial services and limitations on broadcasting, Electronic Communications Services and Electronic Communications Network Services, in Gazette 34601 of 15 September 2011. The purpose was to enforce the relevant sections of the ECA; preserve and encourage a diversity of voices/views within the broadcasting system; promote the cultural values, economic and social goals; enhance, maintain, permit and promote efficient and effective economic competition; and help the industry navigate the negative impact of the economic downturn. The other purpose was to update the Review of Ownership and Control Position Paper: Position Paper on the Review of the Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting Licences, of 13 January 2004, which was largely based on Sections 48, 49 and 50 of the repealed IBA Act and bring the recommendations in line with the new sections of the ECA.

- 5.1.2 The findings document was released at a time when the South African Parliament⁶ was also debating the broader ownership and control issues within the convergence environment.
- 5.1.3 It is evident that most of the newly introduced communications laws and policies within Asia-Pacific⁷, Europe⁸ and the USA aim to reduce (ownership) regulation, promote competition and cope with the challenges posed by convergence. This is coupled in part with protections of media pluralism through custom-developed indices for measuring concentration in media markets and tests for assessing media plurality in merger cases.
- 5.1.4 Evidence suggests that, with the convergence of transmission platforms, the current regulatory framework for cross-ownership between two broadcasters with similar footprints and between print media and broadcasting media has become obsolete. There is concern that in the past decade media owners have used sophisticated ownership structures to hide their ownership and the real ownership of broadcasters remained a mystery. It is this lack of transparency of

6 South Africa's Parliament Portfolio Committee on Communications Hearings on Ownership and Control, 22-23 September 2011.

7 The Australian Government acknowledges that convergence is challenging the effectiveness of the existing media ownership rules, which have limited scope and do not apply to subscription television, national newspapers, telecommunications companies or online media services; and this limited narrow definition means that the rules may not adequately reflect the degree of influence of all medium or the diversity of voices (or lack thereof) available to consumers (Department of Broadband, Communications and the Digital Economy, 2011(D):p15).

8 The UK Government, having noted the limitations with cross-media ownership rules in a converging environment, signaled that it will ask Ofcom to establish an agreed means of measuring cross-media power in the UK across all platforms with a view to introducing a new set of cross-media ownership rules. (Department of Broadband, Communications and the Digital Economy, 2011(D):p15).

media ownership that has often hidden the conflicts of interests and owners' interference with the stations' programming (Dragomir, 2008:p14). To enhance compliance and make the ownership and control issues of the broadcasting sector more transparent, there have been calls for:

- 5.1.4.1 the introduction of legal provisions empowering broadcasting regulators to examine all the ownership layers;
 - 5.1.4.2 the establishment of a central publicly available databases of media owners;
 - 5.1.4.3 the introduction of more drastic sanctions for broadcasting companies that hide ownership data or provide false data (ibid).
- 5.1.5 Moving forward, one of the regulatory policy issues will be the compliance manual and the periodical submission of correct ownership industry data, the latter applies to the community and commercial broadcasting sectors.
- 5.1.6 Regulatory attention has traditionally focused on threats arising from media ownership, resulting in narrowly tailored anti-concentration rules, in combination with specific content obligations and safeguards for editorial independence. These rules are criticized for being an anomaly in an era of media abundance (where basically every citizen can become a media supplier) – they are being called a legacy from the past which should not spill over to the new media context, but to the contrary be lifted as soon as possible (Valcke, 2011).

Issue(s) for stakeholder consideration:

Issue 5: What will be the best cross-media ownership rules that may provide a vital boost to the broadcasting industry? Should the Authority broaden, retain, abolish or change the scope of current Ownership and Control of Commercial services and limitations on broadcasting rules?

Issue 6: How should the Authority strike a balance between ensuring plurality of ownership and allowing broadcasting licensees freedom to expand and innovate?

Issue 7: How should the Authority deal with listed companies in relation to Historically Disadvantaged Individuals?

5.2 THE REGULATION OF ELECTIONS BROADCASTING

- 5.2.1 This section relates to regulations on Party Elections Broadcasts, Political Advertisements, the equitable treatment of political parties by broadcasting licensees and related matters during municipal, national and provincial elections; respectively published in Government Gazette 34086 of March 2011 volume 549 and GN R.247 in Government Gazette No 31980 of 3 March 2009. Their main purpose is to prescribe the framework and guidelines under which PEBs and PAs shall be conducted and carried by the broadcasting service licensees during the elections. These regulations are applicable to broadcasting service licensees and political parties contesting the elections during the election period.
- 5.2.2 In South Africa, there are currently political discussions of possibly unifying the National and Local Elections periods into one. During the Authority's public consultations on local government elections regulations, it became evident that the Authority's elections regulations had to be merged into one regulation, to even include issues around by-elections.
- 5.2.3 Another issue related to fair allocation of airtime in the form of free-of-charge election programmes broadcast on the public radio and television programme services at the cost of these broadcasters in order to improve the quality of political discourse.
- 5.2.4 Various jurisdictions, for example Ireland, do not have separate regulations for local government elections and national elections.

Issue(s) for stakeholder consideration:

Issue 8: In the interest of assisting broadcasters, political parties, candidates, the general public and other interested parties to interpret and apply the elections regulations, the Authority seeks your comments or advise on how these regulations should be improved and whether it would make sense to allow one regulation to apply to coverage of the General National, Provincial, Local and Bye-elections, especially in preparation for the 2014 general elections.

Issue 9: Should the Authority make any changes to the Municipal and National Elections broadcasting regulations? Please elaborate on your answer.

Issue 10: Is the regulation of current affairs during Elections well placed within the Code of Conduct for broadcasters?

Issue 11: How should the issue related to equitable treatment be interpreted in the ECA and by the Authority's regulations during elections?

5.3 REGULATIONS IN RESPECT OF THE PRESCRIBED ANNUAL CONTRIBUTIONS OF LICENSEES TO THE UNIVERSAL SERVICE AND ACCESS FUND

5.3.1 In 2011 (Government Gazette No 34010 of 10 February 2011) the Authority published regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), which prescribed the Annual Contributions to be paid to the Universal Service and Access Fund by persons issued with licences in terms of chapter 3 and 9 of the Act; and specify the date when such contributions to the Fund become payable and the manner in which they must be paid.

Issue(s) for stakeholder consideration:

Issue 12: Are there any USAF regulatory issues going into the digitally converged environment that should be brought to the attention of the Authority for consideration?

5.4 SPORT BROADCASTING SERVICES REGULATIONS

- 5.4.1 In 2010 the Authority published Sport Broadcasting Services Regulations in Government Gazette No 33079 of 7 April 2010 to regulate the broadcasting of national sporting events in the Republic; determine the criteria to be used in the listing of national sporting events; identify and list national sporting events; and provide dispute resolution mechanisms.
- 5.4.2 The Authority remains committed to the principles and measures that will ensure that subscription broadcasting services do not broadcast, on an exclusive basis, national sporting events as identified and listed by the Authority from time to time. This allows South Africans to watch nationally significant events on free-to-air television or listen to them on radio.
- 5.4.3 The issue of Sport Broadcasting Services regulations is currently on the public agenda. The competition by broadcasting service providers for the acquisition of transmission rights is affecting prices and access by the public. The market for sports rights is also impacted by the anti-siphoning regime, where recent examples of sports rights deals show movement towards rights packages shared between free-to-air television, subscription television, IPTV and mobile broadcasting services.
- 5.4.4 The continued relevance of the above regulations continues to be debated, considering the challenge related to ownership of rights, especially those related to and owned by the Confederation of African Football (CAF). Most African

countries and broadcasters are currently facing the challenge of not being provided with the rights to broadcast their national teams, as most free-to-air broadcasters claim that these rights are unfairly over-priced and unaffordable⁹. This brings challenges to the spirit and intention of the legislature and regulatory framework.

5.4.5 In Australia, the Government has been circulating draft legislation to reform their anti-siphoning scheme, where key changes include:

- 5.4.5.1 Must offer requirements: free-to-air broadcasters will be required to use the rights they acquire or offer these rights to other broadcasters; and
- 5.4.5.2 Extension of the scheme to new media providers- Internet Protocol Television (IPTV) or other online service providers will be prevented from acquiring exclusive access to anti-siphoning listed events¹⁰.

Issue(s) for stakeholder consideration:

Issue 13: What is your current view around list of sporting events that should be available on free-to-air television? What do you consider to be the long-term effectiveness of Sport Broadcasting Services Regulations in a digitally converged environment?

Issue 14: Do you believe that there should be a detailed regulation establishing a detailed procedure for dealing with listed event and their selling to free-to-air broadcasters or should the Authority leave this to the market players to determine, if yes why, if no, why not?

9 South African Football Association. 2011. **Press Statement, SAFA refutes broadcasting rights claim**, 26 September 2011.

10 Department of Broadband, Communications and the Digital Economy. 2011. **Convergence Review Discussion Paper: Media Diversity, Competition and Market Structure**. Department of Broadband, Communications and the Digital Economy, CANBERRA ACT.

Issue 15: Considering the legislative requirement that the Authority should not interfere in commercial agreements, what should happen when the broadcasters involved cannot reach an agreement, resulting in South Africans not being able to watch a specific listed national sporting event?

Issue 16: How should the assessment of prices be modelled, for example Ofcom¹¹ has developed such a model?

5.5 REGULATORY APPROACH TO IPTV AND VOD POSITION PAPER

5.5.1 In 2010 the Authority published a position paper in Government Gazette No 33436 of 3 August 2010 which outlined the Authority's position on better and innovative ways to regulate IPTV and VoD; and the optimal conditions of competitiveness and legal certainty for the provision of these services in the Republic.

5.5.2 IPTV/VoD in South Africa is in its infancy, and has traditionally not been subject to regulation. The regulatory challenges related to the IPTV/VoD services are a subset of the general convergence process and result in new requirements to its general regulatory framework.

5.5.3 Regulatory discussions tend to be embedded in debates relating to traditional broadcasting and the public interest. Focus on content related issues like cultural, language and industry protection have become as important in the IPTV/VoD world as in other technology areas. The same goes for standardisation and interoperability, where there is a huge challenge for the industry and regulation to create open standards as well as creating interoperability between different standards.

11 Ofcom. 2010. **Pay TV Statement**. 31 March 2010. Ofcom, London.

5.5.4 Karantanis (2009) highlights that most of the EU and OECD countries introduced horizontal regulatory frameworks which apply minimum broadcast regulations to broadcasting audio-visual services and allow new services such as IPTV/VoD to be provided without being subject to ex ante regulations before the services prove to be substitute services in the relevant communications markets.

Issue(s) for stakeholder consideration:

Issue 17: Is it necessary to review the current Position Paper, and what would be the rationale for that?

Issue 18: Is the current Position Paper ready for large scale developments of IPTV/VoD?

Issue 19: Given the limited take-up of IPTV/VoD so far, when and how should IPTV/VoD regulation deal with ownership and cross-ownership issues; must carry or must offer obligations issues; code of conduct/transmission of offensive content issues; and public interest issues like consumer protection?

5.6 DIGITAL TERRESTRIAL TELEVISION REGULATIONS

5.6.1 In 2010 the Authority published its Digital Migration Regulations in Government Gazette No 32956 of 15 February 2010, to regulate the digital migration of the existing television channels; prescribe the conditions for the allocation of channel capacity in Multiplex 1 and Multiplex 2 for the purposes of digital migration; prescribe the procedure for the authorisation of digital incentive channels; and set the time frames within which digital migration is to be achieved by the incumbent broadcasting service licensees. The current Draft Digital Terrestrial Television Regulations repeal process is of technical nature, focuses on the current incumbents and does not provide a regulatory framework for licensing of new players. These regulations would require another amendment after dual illumination.

5.6.2 The above were based on the Digital Migration Policy Directive of 2008. In 2011 Government made its intentions clear of revising the above directive, and published a draft amendment Digital Migration Policy on 19 August 2011 in Government Gazette 34538. Following this publication, the Authority also published its intention to repeal the previous regulations on 28 September 2011 in Government Gazette 34642, aiming to facilitate and ensure a smooth migration, which will be in the interest of all stakeholders.

5.6.3 During the Digital Migration Progress reports in Parliament¹², the following regulatory issues related to access parameters were raised:

5.6.3.1 Regarding access to infrastructure: there is a huge challenge for the industry and regulation to create open standards as well as creating interoperability between different standards;

5.6.3.2 Regarding access to content: there is a need to implement non-discriminatory access to all services; free-to-air compatibility of set-top-boxes; and to impend tight vertically relations between receiver equipment and the service provision as minimum so that all receiver equipment can access the non-encrypted services.

Issue(s) for stakeholder consideration:

Issue 20: How should the Authority licence new players in the digitally converged environment?

Issue 21: Are there any new regulatory issues going into the digitally converged environment that should be brought to the attention of the Authority for consideration?

12 See South Africa's Parliament Portfolio Committee on Communications Hearings on the Digital Migration Progress reports, 21-22 September 2011

5.7 REGULATIONS RELATING TO THE DEFINITION OF ADVERTISING AND THE REGULATION OF INFORMERCIALS AND PROGRAMME SPONSORSHIP IN RESPECT OF BROADCASTING ACTIVITIES

- 5.7.1 In 2009 the Authority initiated a process to review the 1999 Regulations on Advertising, Infomercials and Programme Sponsorship published in Government Gazette No 19922 of 1 April 1999, to align them with the ECA provisions and lay down detailed rules concerning the identification and scheduling of advertising, programme sponsorship and infomercials.
- 5.7.2 The outcome from the consultation processes was that the Authority should not go ahead with the process. The decision was published in Government Gazette No 32826 of 18 December 2009.
- 5.7.3 A very important regulatory issue emerged related to “regulatory creeping” or “forum shopping” by broadcasters, where there was a misunderstanding related to the powers and relationship between the Authority and ASA. The issue that emerged was the extent to which the Authority can play a role in regulating advertising content, as the ECA dealt with the scheduling and placement of advertising. The Authority was advised to refer the issue back to the legislature, especially during the proposed amendments to the ECA, for clarity and re-drafting.
- 5.7.4 The UK Communications Act of 2003 provided OFCOM with backstop-powers, clarified and codified in law the regulatory powers and relationship with the British Advertising Standards Authority.

Issue(s) for stakeholder consideration:

Issue 22: What lessons should the Authority learn from the international best practise and new trends of dealing with advertising?

Issue 23: What do you believe should be the nature of the relationship between the Authority and the ASA?

Issue 24: Which issues should be left to self-regulation and which ones should be left to co-regulation, and how should the legislature codify or clarify this role?

Issue 25: How should the Authority deal with issues related to advertisements, sponsorships, and product placement? What lessons should be learnt from the comprehensive approach undertaken by various jurisdictions?

5.8 REGULATION FOR THE CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES

5.8.1 In 2009 the Authority published regulations regarding the Code of Conduct for Broadcasting Service Licensees in Government Gazette No 32381 of 6 July 2009, to set standards according to which Broadcasting Service Licensees will be monitored by the Authority and adjudicated upon in terms of Section 17A-E of the ICASA Act, subject to Section 54(3) of the ECA.

5.8.2 In its 2010-2011 annual review, the BCCSA indicated that direct content feeds from foreign countries broadcast on South African TV have presented problems as they do not always adhere to South African age restriction requirements. This has led to a risk of an age-restricted film being shown without proper age restriction warnings¹³.

5.8.3 The BCCSA requires the advisory to be continuous, where broadcasters need to include an advisory for the first 90 seconds at the commencement of a

¹³ Broadcasting Complaints Commission of South Africa (BCCSA). 2011. **Annual Reviews Chairman's Report Sept 2010 – September 2011**. Broadcasting Complaints Commission of South Africa (BCCSA), Craighall.

broadcast, repeating it after each advertisement break for 30 seconds. The BCCSA has indicated that once South Africa has completed the migration from analogue to digital, they will encourage broadcasters to make continuous age restriction advisories available as attached information text.

- 5.8.4 As the range of platforms for content multiply it becomes apparent that industry groups commit to updating codes of practice and that compliance with these codes, whether in a self/co-regulatory manner, is properly monitored.
- 5.8.5 Another issue that has since emerged after the publication of the current code relates to the right of reply, where there is a need for broadcasters to provide for the correction of incorrect facts or information that has been broadcast about a natural or juristic person, where the assertions of such incorrect facts or information have impugned that person's honour or reputation. For example, in Ireland, a member of the public may request the Compliance Committee of the BAI to review a decision of a broadcaster not to grant a Right of Reply¹⁴.
- 5.8.6 The issue addressed by Agcom (the Italian Communications Authority) relates to the risks that arise from making a show of ongoing judicial processes in TV programmes, such as docu-dramas and docu-fictions, which reconstruct legal cases in spectacular and attractive ways, in order to increase the audience by creating a sort of media tribunal that almost replaces the real one and compromising objectivity and impartiality of information. Agcom set out the guiding principles for a correct representation of judicial processes on TV. This code was adopted into concrete rules for a proper representation of judicial processes in TV, providing for the establishment of a specific Committee charged

¹⁴ Broadcasting Authority of Ireland (BAI). 2011. **BAI Right of Reply Scheme**. Broadcasting Authority of Ireland, Dublin.

with monitoring their compliance, as well as adopting measures in cases of infringement¹⁵.

5.8.7 In 2011 Ofcom published a new guidance on the TV watershed, warning broadcasters to be more careful about programmes they show before 9pm that could be unsuitable for children. The new guidance follows a series of meetings OFCOM held with broadcasters to ensure and help broadcasters comply with the Broadcasting Code rules for pre-watershed content, with specific focus on programmes broadcast before and soon after the watershed; and music videos broadcast before the watershed. Ofcom advised broadcasters to take particular care with post-watershed content which has been edited for pre-watershed viewing, for example by masking or editing offensive language. Broadcasters are expected to pay particular attention to family viewing programmes, trailers and soaps.

Issue(s) for stakeholder consideration:

Issue 26: What are your views on the Audience Advisories and in what form should these be flighted? Please justify your response. In which form should broadcasters flight the advisories?

Issue 27: Is the current Code of Conduct sufficient and relevant for a multichannel, digital and converged environment?

Issue 28: Should a single code apply to all new digital channels, irrespective of the platform?

Issue 29: Should the Authority continue developing the code or should it be left to the industry, with the Authority being provided with back-stop powers, like in the OFCOM example?

15 IRIS Legal Observations of the European Audiovisual Observatory. 2011. **Italy: AGCOM Regulation and Self-Regulatory Rules on the Representation of Judicial Processes in Television.** Information by Manuela Branco of the Autorità per le garanzie nelle comunicazioni (AGCOM). European Audiovisual Observatory, Strausborg.

Issue 30: What do you believe should be the legislative recommendations the Authority should make to ensure that the issues of co/self-regulatory models are implemented and acknowledged?

Issue 31: Should broadcasters be required to provide tapes and transcripts to groups and/or individuals that have lodged a complaint against broadcast material?

Issue 32: Should the Authority consider regulating secret filming and recording of members of the public; hypnotism, occult and psychic practices; and showing of ongoing judicial processes in TV programmes?

Issue 33: Are there concerns regarding the watershed period?

Issues 34: Is there a need to strengthen the regulatory framework around the broadcast of news reports and the right of reply?

5.9 COMMISSIONING OF INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING REGULATIONS.

5.9.1 In 2009 the Authority published regulations on the Commissioning of Independently Produced South African Programming in Government Gazette No 32767 of 1 December 2009 to ensure that broadcasting service licensees submit commissioning protocols to the Authority for approval; monitor the commissioning practices of independently produced South African programming; ensure that commissioning practices of independently produced South African programming are conducted in a manner that is fair, transparent and non-discriminatory, without hampering the flexibility of licensees to deal with the pertinent commercial issues in any manner they deem appropriate, independent producers' entrepreneurial, creative, managerial and financial flexibility and control.

5.9.2 Moving into the digitally converged broadcasting environment, the issue that seems to be prominent relates to how or in what specific ways regulators should

promote the production of local content, to benefit the independent production sector, without endangering the financial viability of the broadcasters.

5.9.3 After the publication of the current regulations, the independent producers believe that they are at a disadvantage in negotiations over broadcasting rights. Producers are concerned about getting paid fairly for the use of their programmes across the multiple platforms that have sprung up in the digitally converged broadcasting environment¹⁶.

5.9.4 Similar issues were raised in Canada, where there was a need to clearly clarify the relationship between the CRTC and the Copyright Board, involving issues around copyright and the work related to commissioning of programmes and ownership of rights and the work of the Copyright Commission. The same holds for the Authority and the Companies and Intellectual Property Commission (CIPC), and the interpretation of the Copyright Act of 1978 and its amendments, as it relates to commissioning of programmes and ownership of rights.

Issue(s) for stakeholder consideration:

Issue 35: Is the Authority's current commissioning code in line with the evolving market? If there are changes required which ones are those?

Issue 36: Should the Authority consider giving broadcasters an opportunity to amend the protocol without the Authority's approval, provided the changes do not contradict the regulations?

16 The South African Screen Federation (SASFED). 2010. **Unburdening costly Terms of Trade & unlocking Economic Potential: TVIEC Proposals to SABC Board 24/03/2010**. The South African Screen Federation (SASFED), Melville.

5.10 MUST CARRY REGULATIONS

5.10.1 In 2008 the Authority published regulations regarding the extent to which Subscription Broadcasting Service Must Carry the Television Programmes provided by the Public Broadcast Service Licensee, in Government Gazette No 31500 of 10 October 2008, to provide for terms and conditions under which the Subscription Broadcasting Services (SBS) Licensees will carry the programmes of the Public Broadcasting Services (PBS) Licensee; determine the transparent, equitable and reasonable terms and conditions under which the PBS Licensee may offer its programmes to the SBS Licensee; and provide exemptions for certain SBS Licensees from compliance with these regulations.

5.10.2 The 2008 Ministerial Policy Directive on Digital Migration provides that:

5.10.2.1 the “must carry” arrangements, which require broadcasting services to carry certain public services, continue in the new digital environment, fulfilling the important aspect of providing public broadcasting services to all citizens; and

5.10.2.2 the Authority should ensure that universal access to public broadcasting services is sought to be achieved and the “must carry” requirements must be retained.

5.10.3 The Department of Communication, in Government Gazette No 34455 of 12 July 2011, requested for comments on the must-carry regulations with regards to mobile broadcasting services.

5.10.4 During the 21-22 September 2011 Parliamentary hearings on the Digital Migration Progress reports, TopTV questioned the relevance of must carry regulations within a digital environment¹⁷. The SABC has, in various presentations to Parliament, presented must carry regulations issue as imposing

¹⁷ Balancing Act. 2011. **Nobody - Not Even ICASA - Has Any Idea Of What Public TV Channels Who Will Have To Carry After DTT.** In Issue No. 115 – 13 October 2011. Balancing Act, London.

an onerous burden on the finances of the corporation¹⁸. Multichoice and sport rights holders have raised concerns that, due to the must carry regulations, the sport rights sold to the SABC makes it possible for their competitors' subscribers to view their exclusive content, without them paying remuneration to the underlying owners of copyright. The Authority has been requested to address this issue in the interests of fairness for the parties concerned (Department of Broadband, Communications and the Digital Economy, 2011:29).

5.10.5 Research supports the above view that digital must-carry has turned out to be another major regulatory issue in the transition to digital television:

- 5.10.5.1 Malta Communications Authority (MCA) is not imposing must-carry obligations on the digital terrestrial commercial network, as it believes that to do so would amount to unnecessary duplication, given that the viewers of that network can access the PBS-run network over the same set top box.
- 5.10.5.2 In Portugal the new Television Act of 2007 established a technologically-neutral approach with regard to must carry rules, where obligations are imposed upon all operators of electronic communications networks used for television broadcasting. However, mobile and internet broadcasting services are not covered as such services are only starting to develop. The new media platforms have to obey the must-carry rules, but as there are no must-offer rules, the programme providers are reluctant to offer their programmes due to the above mentioned reasons;
- 5.10.5.3 In Finland, the Ministry working group proposed to extend must-carry from cable to other communications networks that are "mainly used for broadcasting" and must-carry programming to freely available commercial channels (including advertisements and related programme services).

18 South African Broadcasting Corporation (SABC). 2010. **South African Broadcasting Corporation Limited Corporate Plan: MTEF 2010 – 2013 (page 10)**. South African Broadcasting Corporation Limited, Auckland Park.

- 5.10.5.4 France reviewed its must-carry rules to consider whether to include mobile TV via terrestrial networks (having previously extended them to IPTV and 3G mobile TV).
- 5.10.5.5 Other countries have considered experimenting with market-based approaches, where their reviews of must-carry included an assessment of the need to continue must-carry obligations as a means to correct market failure. The debate was that without such rules, certain network operators could misuse their dominant position by giving special treatment to particular programmes and services, thereby unjustifiably restricting consumers' choice. An increasing number of network operators who want to become content service providers may give rise to conflict of interest and the risk of abuse, given that the operators would be inclined to give priority to their own content.

Issue(s) for stakeholder consideration:

Issue 37: Should the public broadcasting services continue to have a must-carry status?

Issue 38: How would must-carry regulations assist in addressing the universal access to broadcasting services in a digitally converged environment?

Issue 39: Should the must-carry rules also apply to IPTV/VoD and mobile broadcasting services; and what kind of principles should be established which allow broadcasters to negotiate for the retransmission of their broadcast signal on IPTV services? Please justify your response.

Issue 40: What is your view on the must carry and must offer regulation of listed national sporting events that should be available on free-to-air?

Issue 41: Should the argument of payment of fees for carriage be revisited?

5.11 SUBSCRIPTION BROADCASTING SERVICES REGULATIONS

5.11.1 In 2011 the Authority published Subscription Broadcasting Services regulations in Government Gazette No 28452 of 31 January 2006 to regulate subscription broadcasting services in South Africa; impose payment to the Authority of charges and fees in respect of subscription broadcasting licences, including applications of all description, the issue, renewal, and amendment of subscription broadcasting licences; prescribe the procedure and the appropriate conditions for the authorisation of channels in a multi-channel environment for subscription broadcasting services; and ensure that subscription broadcasting services' largest source of revenue is not advertising or sponsorship, or a combination thereof.

5.11.2 The subscription broadcasting services position paper adopted the principles of the Triple Inquiry report, by distinguishing between services utilising terrestrial frequencies and non-terrestrial subscription broadcasters. The Authority then issued an invitation to apply for satellite and cable subscription broadcasting services on 31 January 2006.

5.11.3 Since 2006, the market for broadcasting services in South Africa has been subject to radical changes through the digital convergence of technologies and markets. Subscription broadcasters in South Africa are now competing with broadcasting offered through the Internet and other IP networks service providers, which can either select the TV channels offered in different subscription bouquets or compile the catalogue of content offered by VoD.

5.11.4 Since the digital switchover date was postponed to 31 December 2013, the 2008 Digital Migration Policy Directive had set a moratorium on the licensing of new commercial free to air broadcasting services to end by the same date. By that date some of the subscription broadcasting services would be delivered over platforms other than normal satellite channels, such as wireless, terrestrial and

IPTV or broadband networks. Therefore, it would be appropriate for the Authority to reconsider the development of subscription broadcasting within the broader topic of digital migration and broadband.

5.11.5 From January 2014, the Authority is obliged to reform and open the broadcasting sector by licensing more and new players to enter the industry and new television-like services to be developed over new and emerging platforms taking the public interest into consideration.

Issue(s) for stakeholder consideration:

Issue 42: What kind of licensing/allocation process and framework should be adopted or developed for these new services or potential licensees?

Issue 43: What kind of regulatory framework changes would create certainty in the market and encourage investment in and development of subscription broadcasting services?

5.12 SELF HELP STATIONS REGULATIONS

5.12.1 In 2006 the Authority published the Review of Self Help Stations Position Paper in Government Gazette No 28577, to regulate self-help stations in South Africa; clarify the residual relations and the responsibilities of the signal distributors, broadcasters, and self-help stations operators; and impose payment to the Authority of charges and fees in respect of self-help stations licences, including applications of all descriptions, and renewal of self-help stations licences.

5.12.2 In terms of the ECA, the Authority can only define self-help station as licensable broadcasting service regulations and not by policy, as ECA does not provide for self-help stations.

5.12.3 Whilst the above provided for the retransmission of television broadcasting programs by self-help providers in areas where broadcasters have not established transmitters or where the signals from broadcasting transmitters serving the area are not adequate; the Digital Migration Policy in South Africa, in its approach to deal with migration from analogue to digital indicated that South Africans that have access to analogue terrestrial free-to-air television, should have the same access to a terrestrial digital signal.

5.12.4 There are analogue self-help retransmission sites in South Africa and these have to be converted from analogue to digital in order to watch free-to-air television.

5.12.5 Other issues of concern relate to how the public or relevant stakeholders should avoid the need to install both terrestrial and satellite digital reception equipment to access the full range of digital television services, when upgrading or installing digital terrestrial services, especially in remote areas.

5.12.6 In Australia, broadcasters who have undertaken to convert a transmission site from analogue to digital or to establish new digital transmission facilities, or gap fillers, are required to have the site active six months before the digital switchover date. This six-month time frame is critical in providing residents and businesses with the necessary time to ensure they have adequate digital television reception and to properly convert their current equipment and free-to-air television aerials¹⁹.

5.12.7 It will be in the public interest to both improve the technical reliability of the service and reduce the cost of receiving the new digital services for householders that use self-help stations or transmission sites, irrespective of their numbers.

19 Department of Broadband, Communications and the Digital Economy. 2010. **Statement to the Senate committee examining the Broadcasting Legislation Amendment (Digital Television) Bill 2010.** Department of Broadband, Communications and the Digital Economy, Canberra ACT.

Issue(s) for stakeholder consideration:

Issue 44: What is your view with regards to self-help stations regulations in the digital converged environment? Should the Authority make provision for self-help stations regulations in the digital converged environment?

Issue 45: When and how should the Authority make frequency band available to self-help providers for digital television retransmission services?

Issue 46: In South Africa, who should ensure, observe and watch closely the six-month rule as applied in Australia?

Issue 47: Should the same procedures that applied in the analogue era apply when communities wish to establish their own digital terrestrial self-help retransmission?

Issue 48: What should USAF's role be in relation to payment of charges and fees imposed by the Authority in respect of self-help stations licences, including applications of all descriptions, and renewal of self-help stations licences?

5.13 SOUTH AFRICAN LOCAL CONTENT REGULATIONS

5.13.1 The Authority has in place two regulations that relates to South African Local Content. These are ICASA South African Television Content Regulations published in Government Gazette No 28454 of 31 January 2006 and ICASA South African Music Content Regulations in Government Gazette No 23389 of 10 May 2002. These have been operational since 25 April 1997 largely based on the recommendations of the 1996 Triple Inquiry report, which focused on the South African content rules for radio and television, which had recommended music quota for all sound services broadcasting and content quota for all television broadcasting services.

5.13.2 Their purpose is to:

- 5.13.2.1 preserve South African content;
- 5.13.2.2 develop diverse, high quality and predominantly South African music to cater for the diverse interests in the audience;
- 5.13.2.3 increase airing and recording of live music to expose new entrants without the experience or finances to record to gain exposure;
- 5.13.2.4 develop and support new South African musical talent in all forms of music;
- 5.13.2.5 impose local content quotas on radio and television in order to develop, protect and promote a national and provincial identity, culture and character;
and
- 5.13.2.6 create vibrant, dynamic, creative and economically productive local industries, promote programming that is identifiably South African, is developed for South African audiences and which recognises the diversity of all cultural backgrounds.

5.13.3 The Ministry of Communications in the Broadcasting Digital Migration Policy Directive (Government Gazette No. 31408), issued on 08 September 2008 provided that, amongst other things:

- 5.13.3.1 The migration to digital broadcasting will create opportunities for the development, use and wide dissemination of local content in all eleven (11) official languages. It will also advance the expression and the efficient communication of the knowledge and experience of all communities and the country as a whole. It could contribute to the integration of people from different ethnic or racial backgrounds thus contributing to nation building;
- 5.13.3.2 The Authority shall, in the near future, review and develop appropriate local content regulations which will be relevant to the multi-channel digital environment; the manner in which requirements are imposed in relation to minimum levels of South African content is suited to a single channel analogue environment and the Authority should review the existing content quotas to reflect the multi-channel digital environment.

5.13.4 The Department of Communication, in Government Gazette No 34455 of 12 July 2011, asked for comments on the local content regulations with regards to mobile broadcasting services.

5.13.5 Key local content regulatory issues moving into the digitally converged environment includes the preservation of quotas, classification of different genres, and the distribution of such content within different delivery platforms. Europe adopted positive content regulation, such as investment quotas for European and independent production, for television and for 'linear' internet services will be retained; also on-demand services must, just like classical TV, promote European works.

Issue(s) for stakeholder consideration:

Issue 49: How and when should the Authority review the existing local content quotas to reflect the multi-channel digital environment, including mobile digital broadcasting and IPTV/VoD?

Issue 50: Should local content quotas apply to a service or to all new digital channels within a service? Please elaborate.

Issue 51: Should the Authority impose local content quotas on music specific television channels?

Issue 52: Should the Authority merge South African Television and Music Content Regulations into one regulation covering all platforms and services? Please elaborate.

5.14 COMMUNITY BROADCASTING SERVICES REGULATIONS

5.14.1 The Authority has in place two regulatory approaches to Community Broadcasting, namely; Community Sound Broadcasting, published in gazette no 28919 of June 2006; and the Position Paper on Community Television

Broadcasting Services, published in Government Gazette No 27036 of 30 November 2004. These regulations are already repealed by Licence Fees Regulations of 1 April 2009 Gazette No. 32084.

5.14.2 Their purpose is to:

- 5.14.2.1 prescribe the amounts payable to the Authority of fees in respect of community sound broadcasting licenses, including applications of all descriptions, the issue, renewal, and amendment of community sound broadcasting licenses;
- 5.14.2.2 prescribe the procedure and the appropriate conditions for the application, renewal and amendment for sound broadcasting license;
- 5.14.2.3 ensure that programme syndication/networking and programming sharing between community sound broadcasting licenses do not exceed 20% of a community sound broadcasting licensee's programming;
- 5.14.2.4 define persons who cannot participate in the Board, management and staff of a community sound broadcasting licensee;
- 5.14.2.5 outline key issues surrounding the introduction and regulation of Community TV broadcasting services;
- 5.14.2.6 provide programmes that highlight grass-roots community issues, including developmental issues, health care, basic information and general education, environmental affairs, local interest matters and the reflection of local culture; and
- 5.14.2.7 determine public demand for and the financial sustainability of Community TV.

5.14.3 The South African Community Broadcasting sector acknowledges that lack of resources and severe governance challenges have and continue to hamper growth of the sector despite the support from various institutions²⁰.

5.14.4 Governance issues have been noted where most of the community stations are controlled by private trusts, thus leading to conflict with communities when annual general meetings are supposed to be held in line with license conditions and all other legal requirements. The owners of these trusts believe that they are owners of the stations and therefore have the right to run the annual general meetings the way they deem fit and therefore are not accountable to the communities as originally envisaged.

5.14.5 To address governance challenges, the Australians encouraged community broadcasters to develop internal disputes mechanisms which should be part of the stations detailed written policy and procedure document accessible to all their staff members.

5.14.6 The Canadian Regulator (CRTC) has come up with creative ways to deal with lack of resources and production of quality programming. There is collaboration between the community broadcasting sector and terrestrial broadcasting distribution undertakings (BDUs). The BDUs are direct to home subscription broadcasters.²¹

20 See Communications 2000 (Comtask Report): Chapter 4: The South African media environment; and the South African Department of Communications call for comments on Public Broadcasting Bill 2010.

21 CRTC. 2010. Broadcasting Regulatory Policy CRTC2010-622, <http://www.crtc.gc.ca/eng/archive/2010/2010-622.htm>.

5.14.7 The BDU operated community licenses get direct funding from BDUs. The licensees have to involve the community served in content creation and programming in order to provide relevant local programming.

Issue(s) for stakeholder consideration:

Issue 53: How should the Authority review the community broadcasting regulatory model to help ensure that the community broadcasting sector is effectively managed and sustained in the digitally converged environment?

Issue 54: Is the current community broadcasting regulatory model sustainable?

Issue 55: Should the Authority continue to regulate the scheduling and placement of advertisement and sponsorships that are broadcast by community broadcasters?

Issue 56: What is your view with regards to current licence application processes within ICASA? What should the maximum licence period and timing condition be for licensees, temporary or permanent?

Issue 57: How should the Authority deal with community subscription broadcasting services in the digitally converged environment?

Issue 58: How should the Authority deal with satellite free-to-air community broadcasting services in the digitally converged environment?

Issue 59: How should the Authority deal with management contracts between the community broadcasters and the commercial entities, for example external administrative and programming support, in the digitally converged environment?

5.15 SPECIAL EVENTS LICENSES REGULATIONS

5.15.1 The Authority published regulations relating to applications for special event licences for community broadcasting services in Gazette no 27973 of August

2005, to set out the criteria and terms and conditions for application of a special event license; to allow community television broadcasting licensees, in cases where there are unallocated frequencies and demand can be shown to exceed 30 days, to apply for a non-renewable temporary community television broadcasting licence for a period not exceeding 12 months.

Issue(s) for stakeholder consideration:

Issue 60: How should the Authority deal with the special event licensing and technical issues moving forward? Is there a need for self-help stations beyond December 2013?

Issue 61: Are these regulations still needed in view of the Processes and Procedure Regulations of 14 June 2010 which prescribes licensing processes and Standard Terms and Conditions for Class licences?

Issue 62: Does the Authority still need to licence temporary television for a period of one year?

5.16 LOW POWER SOUND BROADCASTING REGULATIONS

5.16.1 The Authority published a position paper and regulations, dated 24 October 2003, to regulate Power Sound Broadcasting; and licence the categories of low power sound broadcasting services.

Issue(s) for stakeholder consideration:

Issue 63: How should the Authority deal with the low power sound broadcasting licence moving forward?

Issue 64: Is there a need for the Authority to make a recommendation to the Minister of Communications to increase the power of low power sound broadcasting service?

5.17 REGIONAL TELEVISION BROADCASTING SERVICES POSITION PAPER

5.17.1 The Authority published a position paper on the Regional Television Broadcasting Services Position Paper in Government Gazette No 25784 to promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information; promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public; ensure that broadcasting services develop and protect a national and regional identity, culture and character; provide for regular news services; provide actuality programmes on matters of public interest; provide programmes on political issues of public interest; and provide programmes on matters of international, national, regional and local significance

5.17.2 In South Africa, two new public regional television stations are currently on hold until the SABC can secure funding. These stations will broadcast in indigenous African languages.

Issue(s) for stakeholder consideration:

Issue 65: How should the Authority deal with the Regional Television Broadcasting Services in the new digitally converged environment? -

5.18 POSITION PAPER FOR THE INTRODUCTION OF THE FIRST FREE-TO-AIR PRIVATE TELEVISION SERVICE IN SOUTH AFRICA

5.18.1 The Authority published a Position Paper for the introduction of the First Free-to-Air Private Television Service in South Africa on 12 May 1998 to introduce the

policy and licensing framework for free-to-air television service. This led to the licensing of one free-to-air channel, e-tv.

5.18.2 The Government had imposed a moratorium, through the digital migration policy process, preventing the allocation of new commercial free-to-air television licences up until the end of the dual illumination period.

5.18.3 Since then, the migration to digital migration has introduced much capacity and there has been interest shown in entering this market by various players, especially after the end of dual illumination on 31 December 2013. Beyond 2013 there is a need for an introduction of new entrants into this space.

Issue(s) for stakeholder consideration:

Issue 66: How should the Authority deal with the regulatory model for Free-to-Air Commercial Television Service in the new digitally converged environment?

5.19 PRIVATE SOUND BROADCASTING SERVICES POSITION PAPER

5.19.1 The Authority published a Private Sound Broadcasting Services Position Paper dated 16 May 1996, to promote the objects of the IBA Act; engage stakeholders in the formulation of a framework for the environment in which private sound broadcasting services will exist in South Africa; and offer additional FM and AM licences for private sound broadcasting.

5.19.2 The Isle of Man recognised the strategic uncertainty about the viability of digital radio, especially in small markets, and decided to actively monitor developments in digital radio so that when a digital solution emerges that fits the needs of the Island's broadcasters and residents it can be cost-effectively implemented.

Issue(s) for stakeholder consideration:

Issue 67: How should the Authority deal with the regulatory model for Commercial Sound Broadcasting Services in the new digitally converged environment; and when should the Authority consider licensing or addressing matters related to digital radio?

6 PART E: GENERAL ISSUES FOR FURTHER COMMENT

6.1 In addition to the formal and specific regulatory questions, there are other issues that the Authority would like to bring forward for public comment.

6.2 Recently various regulatory Authorities have started working together on self-regulatory measures. In 2011, the UK seven media regulators²² joined forces to launch ParentPort website to act as an interface between themselves and parents, to help protect children from inappropriate material and make it easier for parents to lodge complaints about material they have seen or heard across the media, communications and retail industries.

6.3 In 2011 Hungary's Media Council of the Nemzeti Média és Hírközlési Hatóság (National Media and Infocommunications Authority - NMHH) concluded public administration agreements on media co-regulation with the four Hungarian media self-regulatory bodies²³ to be handled primarily by the committee of experts of the concerned body. These self-regulatory bodies are acting as entities performing the tasks within their own scope of competence and not as tasks under the powers of authorities. Their involvement have priority to and supplement the activities of the Media Council (which exercises supervision over the activities of the self-regulatory bodies under the public administration agreements). The Media Council has the right to check the fulfilment of the provisions of the agreements on a continuous basis and their delivery in accordance with the agreement.

22 These are the Advertising Standards Authority (ASA), the Authority for Television On Demand (ATVOD), the BBC Trust, the British Board of Film Classification (BBFC), the Office of Communications (Ofcom), the Press Complaints Commission (PCC) and the Video Standards Council (VSC)/Pan-European Game Information (PEGI).

23 These are the Association of Hungarian Content Providers (MTE), the Advertising Self-regulatory Body (ÖRT), the Association of Hungarian Publishers (MLE) and the Association of Hungarian Electronic Broadcasters (MEME).

6.4 In South Africa, the Films and Publication Board (FPB)²⁴ has also proposed such co-operation, calling for uniformity of approach through the use of one Classification guideline and establishment of a Regulator's Forum to consult on the various regulatory tools used by different players within the sector. The Authority is interested in views about how this should be further developed, especially its co-operation with the Competition Commission, Consumer Commission, Media Diversity and Development Agency (MDDA) and other self-regulatory groups. Such a co-operation should contribute to providing stability and predictability for the industry investors and operators, ensuring public interest and promotion of competition.

Issue(s) for stakeholder consideration:

Issue 68: How should the Authority make use of direct regulation, co-regulation and self-regulation instruments in its enforcement of regulations? Under which conditions are direct regulation, co-regulation and self-regulation instruments to be used by the broadcasting sector? What kind of penalties should regulatory policy impose in the event of failure by the appointed self-regulation bodies?

6.5 Many regulators mostly rely on a monitoring-led approach, and in countries with a high complaints culture, the development of new communication means (email, facebook, twitter, etc.) has changed the way in which people can complain. Consideration has also been given to the introduction of more stringent procedural filters and encouraging the involvement of broadcasters in the complaints procedures. While addressing the broadcaster as a first instance before filing a complaint to the regulator is a mandatory requirement in a couple of jurisdictions, it is only informally promoted by regulators in most countries - often with a limited

²⁴ Mapula Makola. 2011. **Is Broadcasting Ready To Adopt A Single Content Classification System For The Country?** Film and Publication Board's Presentation to ICASA Discussion Forum: Highway Africa Conference, 18 September. Films and Publications Board, Houghton.

success as an effective means to reduce the number of complaints. The importance of having a full range of sanctions at the disposal of the regulator and the need to have a detailed procedure for handling cases as well as a schedule of infractions and penalties are also issues of concern (EPRA, 2011). Crawford and Lumby (2011) noted the critical role that ACMA plays in media governance and the importance of ensuring it is adequately resourced to monitor complaints about media content and codes of industry practice.

Issue(s) for stakeholder consideration:

Issue 69: What kind of measures should be promoted aimed at making monitoring less bureaucratic and more effective that is reducing the burden of monitoring on broadcasters and the regulators themselves?

Issue 70: How should complaints and sanctions be dealt with moving into the digitally converged environment, considering how the broadcasters and the Authority have dealt with public complaints and their practice with regard to the procedure of sanctions?

Issue 71: What adjustments may be made to improve the Authority's monitoring and enforcement powers to deal more effectively with breaches of rules established by legislation; for example sanctions for breaches of licence conditions, code of conduct and various other regulations?

6.6 Digital broadcasting delivers more choices to consumers and possibility of enhanced accessibility features. There is a need to dismantle barriers to access and ensure barrier-free digital broadcasting services in the new digitally converged environment, especially for people with disabilities, women, children, elderly and youth.

6.7 September (2011) argues that existing regulations must be strengthened to include a focus on appropriate descriptive language and avoiding common the stereotyping in reporting, communication and interviewing. She highlights a number of loopholes

in the Authority's regulations that need to be addressed regarding disability content on Radio and TV:

- 6.7.1 The biggest loophole in radio seems to be that there are no specific airtime quotas in the current Authority's regulations, for example, radio station can air a 1 minute pre-recorded segment on disability between 05:30am and 23:00 and still fulfil Authority's regulations. The problem is that the frequency is not stipulated, by implication, this 1 minute segment can be played out once a month and still meet the Authority's regulations. The time allocated to disabilities programming should be reflective of the size of the sector – i.e. a sufficient amount of time to be allocated. Disabilities content broadcasting should not be aired after hours but rather in prime time (06:00am – 18:00). More people with disabilities must be presenters, producers, actors and not just contributors or extras.
- 6.7.2 Most television shows are now being outsourced, the disability sector feels that the production companies should be required to have accessible facilities and the management of these companies be sensitized to the needs of people with disabilities. People with disabilities should be cast as main actors – usually the production company uses able bodied actors portraying themselves as having a disability. Also, able bodied presenters are presenting a sports show on people with disabilities, when a people with disabilities could do this. In addition, good talk shows dealing with disability issues must be encouraged²⁵.

Issue(s) for stakeholder consideration:

Issue 72: Are the current regulatory frameworks impeding or sufficiently guaranteeing or promoting access to broadcasting services for people with

25 September, R. 2011. **ICASA & Broadcasting Regulations Review - Exploring New Models of Regulation in Broadcasting.** Department of Women, Children and People with Disabilities, Pretoria.

disabilities, women, children, elderly and youth? If yes, why do you support this view; if not why do you argue that way?

Issue 73: How should the Authority improve its regulatory frameworks specific to people with disabilities, women, children, elderly and youth. How should existing regulations be strengthened to include a focus on appropriate descriptive language and avoiding common the stereotyping in reporting, communication and interviewing for people with disabilities, women, children, elderly and youth?

Issue 74: With regard to Radio, how should the Authority regulate the specific airtime quotas regulations targeted at people with disabilities, women, children, elderly and youth?

Issue 75: With regard to TV, how should the Authority regulate the programming and programme production targeted at people with disabilities, women, children, elderly and youth in the digitally converged environment?

6.8 The last number of years has seen a trend of an increase in new and changing programming formats and channels continuously reinventing themselves. There is now hybridised television formats, mixing highbrow programming, such as news or political debates, with light entertainment, such as variety shows. The typical programming of generalist commercial television consists of reality shows, commercial films, soap operas, quiz shows, local entertainment and advertising. The above holds true with regards to radio programming as well.

6.9 The current regulatory framework in South Africa could not have envisaged such developments; hence these new developments have had an impact on our broadcasting landscape and are posing serious regulatory challenges to the monitoring and compliance mandate/role of the Authority. What remains clear is that an increase in new and changing programming formats and channels is here to stay and consumers are quickly adopting them.

Issue(s) for stakeholder consideration:

Issue 76: What are the new content formats and what do they mean for programming? What has been the impact of new formats to the South African sector and how should the Authority deal with this new paradigm shift that is eventually replacing the old formats that were popular when the Triple Inquiry was carried out? What are the new and the most relevant content types and genres that the Authority should focus on in the digitally converged environment?

6.10 The Broadcasting Act in South Africa is very specific when it comes to the role of commercial, community and public broadcasting services as custodians of building moral regeneration, national identity and social cohesion. The broadcasting sector is in the position to play a very crucial role in making substantial contribution to maintaining and promoting social cohesion, culture and climate of tolerance and openness to values of others, better integration of all communities and the reflection of cultural and linguistic diversity²⁶.

6.11 South Africa has a long tradition of being one of multi-cultural and most secular societies in the world; and continues to receive immigrants and asylum-seeking refugees from outside the Republic. The broadcasting sector, for most part and in their daily news reporting, have not covered issues related to immigration and asylum seeking refugees; especially if they are not associated to domestic problems such as crime and xenophobia.

6.12 Sweden realised the sensitivity of the above issues and ensured that "obligation to offer content for minority groups is specified in the charter between the state and the public broadcasting companies, and may only be changed by a parliamentary decision" (Open Society Foundations, 2011: p41). Furthermore, the country also

²⁶ See Masokoane, Glenn Ujebe. 2011. **The role of broadcasters and regulatory frameworks in promoting social cohesion and moral regeneration**. Department of Arts and Culture, Pretoria.

noted that “this sensitive debate expanded and intensified partly on new platforms, as the digital media have enlarged the possibilities for minorities to stay informed about their countries of origin” (ibid).

6.13 In Japan, the national public broadcaster, Nippon Hoso Kyokai (NHK: Japan Broadcasting Corporation) lists “fostering social cohesion” as one of its roles as a public service broadcaster in its corporate plans²⁷.

6.14 The Council of Europe 2009 report took the view that public service media is not only a custodian of the European cultural heritage, but also a common reference point for its societies that is in the position to make substantial contribution to promoting the culture of tolerance²⁸. The general perception flowing from collected information in the report is that:

6.14.1 the general culture of tolerance has improved, in part thanks to the work of public service media;

6.14.2 while the political will to support the public service media in carrying out its remit efficiently is visible, specific problems can be signalled in relation to resources: a shortage of sufficient resources in order to provide programmes concentrating on

27 See Nippon Hoso Kyokai (NHK). 2007. **Research Report: 'Bowling Alone' and 'Watching Alone': Social Capital and Public Service Broadcasting**. In The NHK Monthly Report on Broadcast Research, March 2007. Nippon Hoso Kyokai (NHK), Tokyo. Also <http://www.nhk.or.jp/pr/english/corporate-plan/corporate-plan.pdf>.

28 Council of Europe. 2009. **Contribution of public service media in promoting social cohesion and integrating all communities and generations: Implementation of Committee of Ministers' Recommendation Rec (97) 21 on media and the promotion of a culture of tolerance**. Report prepared by the Group of Specialists on Public Service Media in the Information Society (MC-S-PSM), November 2008. Council of Europe, Strasbourg.

the issues of tolerance, discrimination, social cohesion; and a lack of qualified personnel of various ethnic origins among media professions;

6.14.3 the public service media's promotion of social cohesion and a culture of tolerance depends to a large extent on the general and/or specific legal framework which is set to govern the respective institution's work. The legal framework, in turn, appears to be depending to a considerable degree on the general approach of the country at hand as regards minorities and the reflection on diversity and tolerance in society.

6.14.4 there is a general tendency in respect of public service media to have recourse to instruments of self-regulation in order to find appropriate and suitable answers to the questions posed by the role of the media in promoting a climate of tolerance and making a contribution to better integration.

6.15 In conclusion the Council of Europe acknowledges that public service media should continue to play an active role in the promotion of a culture of tolerance and encourage every action capable to contribute to social cohesion; where the role of monitoring based on elaborate methodology seems to be of paramount importance (Council of Europe, 2009).

Issue(s) for stakeholder consideration:

Issue 77: Is there a heightened role for broadcasters in fostering a sense of social cohesion in the face of digital convergence?

Issue 78: How should the Authority and broadcasters jointly ensure the inclusion, portrayal, reflection and mirroring of all sectors of society and current social developments in broadcasters programming quotas and outputs to ensure that these programmes are accessible to all audiences and encourage greater social cohesion and benefits society?

FINAL ISSUES FOR STAKEHOLDER CONSIDERATION:

Issue 79: What is the optimal way for the Authority to exercise its oversight role with regard to the SABC Charter, especially with regards Section 6 of the Broadcasting Act 1999?

Issue 80: Do the themes articulated in the Issues Paper capture the totality of the regulatory frameworks and issues that the Authority should be addressing? If not, what additional theme(s) do you believe are appropriate and why?

Issue 81: Are there other additional regulatory issues that the Issues Paper should focus on over the next 3-5 years? If so, what are they and why should the Authority consider their inclusion?

Issue 82: Which regulations should be prioritised over other goals? If so, which strategic goal/s should be prioritised and why? Please make sure to specify the regulations to which you refer and to provide a rationale for your views.

Issue 83: Are there further issues that the Authority should address or has not addressed in the Issues Paper? Are there any additional comments you wish to make about the Issues Paper?

Issue 84: Are there any non-Authority's specific regulatory challenges which stakeholders face in the deployment of broadcasting infrastructure?

7. PART F CONCLUSIONS AND NEXT STEPS

7.1 This Issues Paper is intended to be a neutral discussion of a critical regulatory framework moving into the digitally converged environment. At the early stages of this review process, the Authority will not draw any conclusions.

7.2 Stakeholders should therefore also refer to the Appendices in order to find the regulations that form part of the broader regulatory review.

7.3 The Authority particularly welcomes written submissions on:

7.3.1 the descending order of regulatory issues that the Authority should prioritise;

7.3.2 how the Stakeholders would like the Authority to devolve a new regulatory framework moving forward;

7.3.3 the best way to address these regulatory frameworks beyond December 2013.

7.4 The Authority will engage with all stakeholders at a provincial level between January and March 2012 before holding final public hearings in Johannesburg.

7.5 The following table is an indicative schedule of the project. These dates are a guide only, and they are subject to changes or updates:

| DELIVERABLE | DATES |
|---|--------------------------------------|
| Release of the Issues Paper | December 2011 |
| Provincial Consultations | Mid-January 2012 to early March 2012 |
| Deadline for submission to the Issues Paper | March 2012 |
| Public Hearings | 26-30 March 2012 |

| | |
|--|-----------------------|
| Release of Draft Report on Issues Paper for public Comment | 30 August 2012 |
| 2 nd Round of Provincial Consultations and Hearings | October/November 2012 |
| Release of Final Report on Issues Paper | 31 December 2012 |

7.6 The Authority invites you to make observations to this issues paper by early March 2012. Please submit your comments in a generally readable electronic format. All submissions will be published on the Authority's website if not requested otherwise. If you would like your contribution to be treated confidentially, please indicate this at the top of the first page of your submission. Should you want to add a cover letter please do so in a separate document.

7.7 In case your comments exceeds four pages please start your submission with an Executive Summary. All submissions should be mailed to the functional mailbox of the Project Team: regulatoryreview@icsa.org.za

8. PART G: CONSOLIDATED LIST OF CONSULTATION ISSUES QUESTIONS

8.1 The Issues Paper lays out or poses a broad array of critical regulatory questions and the Authority would particularly welcome written submissions on the following issues:

Issue 1: Do you agree with the Part A views? Please elaborate.

Issue 2: What is your analysis and view on the above benchmarking, and which lessons do you believe are relevant to the Authority's Issues Paper and future issues?

Issue 3: Is the current benchmarking relevant or sufficient? Please elaborate.

Issue 4: Which other countries and issues do you believe should have considered for the benchmarking exercises and which ones do you consider being irrelevant?

Issue 5: What will be the best cross-media ownership rules that may provide a vital boost to the broadcasting industry? Should the Authority broaden, retain, abolish or change the scope of current Ownership and Control of Commercial services and limitations on broadcasting rules?

Issue 6: How should the Authority strike a balance between ensuring plurality of ownership and allowing broadcasting licensees freedom to expand and innovate?

Issue 7: How should the Authority deal with listed companies in relation to Historically Disadvantaged Individuals?

Issue 8: In the interest of assisting broadcasters, political parties, candidates, the general public and other interested parties to interpret and apply the elections regulations, the Authority seeks your comments or advise on how these regulations should be improved and whether it would make sense to allow one regulation to apply to coverage of the General National, Provincial, Local and Bye-elections, especially in preparation for the 2014 general elections.

Issue 9: Should the Authority make any changes to the Municipal and National Elections broadcasting regulations? Please elaborate on your answer.

Issue 10: Is the regulation of current affairs during Elections well placed within the Code of Conduct for broadcasters?

Issue 11: How should the issue related to equitable treatment be interpreted in the ECA and by the Authority's regulations during elections?

Issue 12: Are there any USAF regulatory issues going into the digitally converged environment that should be brought to the attention of the Authority for consideration?

Issue 13: What is your current view around list of sporting events that should be available on free-to-air television? What do you consider to be the long-term effectiveness of Sport Broadcasting Services Regulations in a digitally converged environment?

Issue 14: Do you believe that there should be a detailed regulation establishing a detailed procedure for dealing with listed event and their selling to free-to-air broadcasters or should the Authority leave this to the market players to determine, if yes why, if no, why not?

Issue 15: Considering the legislative requirement that the Authority should not interfere in commercial agreements, what should happen when the broadcasters involved cannot reach an agreement, resulting in South Africans not being able to watch a specific listed national sporting event?

Issue 16: How should the assessment of prices be modelled, for example Ofcom has developed such a model?

Issue 17: Is it necessary to review the current Position Paper, and what would be the rationale for that?

Issue 18: Is the current Position Paper ready for large scale developments of IPTV/VoD?

Issue 19: Given the limited take-up of IPTV/VoD so far, when and how should IPTV/VoD regulation deal with ownership and cross-ownership issues; must

carry or must offer obligations issues; code of conduct/transmission of offensive content issues; and public interest issues like consumer protection?

Issue 20: How should the Authority licence new players in the digitally converged environment?

Issue 21: Are there any new regulatory issues going into the digitally converged environment that should be brought to the attention of the Authority for consideration?

Issue 22: What lessons should the Authority learn from the international best practise and new trends of dealing with advertising?

Issue 23: What do you believe should be the nature of the relationship between the Authority and the ASA?

Issue 24: Which issues should be left to self-regulation and which ones should be left to co-regulation, and how should the legislature codify or clarify this role?

Issue 25: How should the Authority deal with issues related to advertisements, sponsorships, and product placement? What lessons should be learnt from the comprehensive approach undertaken by various jurisdictions?

Issues 26: What are your views on the Audience Advisories and in what form should these be flighted? Please justify your response. In which form should broadcasters flight the advisories?

Issue 27: Is the current Code of Conduct sufficient and relevant for a multichannel, digital and converged environment?

Issue 28: Should a single code apply to all new digital channels, irrespective of the platform?

Issue 29: Should the Authority continue developing the code or should it be left to the industry, with the Authority being provided with back-stop powers, like in the OFCOM example?

Issue 30: What do you believe should be the legislative recommendations the Authority should make to ensure that the issues of co/self-regulatory models are implemented and acknowledged?

Issue 31: Should broadcasters be required to provide tapes and transcripts to groups and/or individuals that have lodged a complaint against broadcast material?

Issue 32: Should the Authority consider regulating secret filming and recording of members of the public; hypnotism, occult and psychic practices; and showing of ongoing judicial processes in TV programmes?

Issue 33: Are there concerns regarding the watershed period?

Issues 34: Is there a need to strengthen the regulatory framework around the broadcast of news reports and the right of reply?

Issue 35: Is the Authority's current commissioning code in line with the evolving market? If there are changes required which ones are those?

Issue 36: Should the Authority consider giving broadcasters an opportunity to amend the protocol without the Authority's approval, provided the changes do not contradict the regulations?

Issue 37: Should the public broadcasting services continue to have a must-carry status?

Issue 38: How would must-carry regulations assist in addressing the universal access to broadcasting services in a digitally converged environment?

Issue 39: Should the must-carry rules also apply to IPTV/VoD and mobile broadcasting services; and what kind of principles should be established which allow broadcasters to negotiate for the retransmission of their broadcast signal on IPTV services? Please justify your response.

Issue 40: What is your view on the must carry and must offer regulation of listed national sporting events that should be available on free-to-air?

Issue 41: Should the argument of payment of fees for carriage be revisited?

Issue 42: What kind of licensing/allocation process and framework should be adopted or developed for these new services or potential licensees?

Issue 43: What kind of regulatory framework changes would create certainty in the market and encourage investment in and development of subscription broadcasting services?

Issue 44: What is your view with regards to self-help stations regulations in the digital converged environment? Should the Authority make provision for self-help stations regulations in the digital converged environment?

Issue 45: When and how should the Authority make frequency band available to self-help providers for digital television retransmission services?

Issue 46: In South Africa, who should ensure, observe and watch closely the six-month rule as applied in Australia?

Issue 47: Should the same procedures that applied in the analogue era apply when communities wish to establish their own digital terrestrial self-help retransmission?

Issue 48: What should USAF's role be in relation to payment of charges and fees imposed by the Authority in respect of self-help stations licences, including applications of all descriptions, and renewal of self-help stations licences?

Issue 49: How and when should the Authority review the existing local content quotas to reflect the multi-channel digital environment, including mobile digital broadcasting and IPTV/VoD?

Issue 50: Should local content quotas apply to a service or to all new digital channels within a service? Please elaborate.

Issue 51: Should the Authority impose local content quotas on music specific television channels?

Issue 52: Should the Authority merge South African Television and Music Content Regulations into one regulation covering all platforms and services? Please elaborate.

Issue 53: How should the Authority review the community broadcasting regulatory model to help ensure that the community broadcasting sector is effectively managed and sustained in the digitally converged environment?

Issue 54: Is the current community broadcasting regulatory model sustainable?

Issue 55: Should the Authority continue to regulate the scheduling and placement of advertisement and sponsorships that are broadcast by community broadcasters?

Issue 56: What is your view with regards to current licence application processes within ICASA? What should the maximum licence period and timing condition be for licensees, temporary or permanent?

Issue 57: How should the Authority deal with community subscription broadcasting services in the digitally converged environment?

Issue 58: How should the Authority deal with satellite free-to-air community broadcasting services in the digitally converged environment?

Issue 59: How should the Authority deal with management contracts between the community broadcasters and the commercial entities, for example external administrative and programming support, in the digitally converged environment?

Issue 60: How should the Authority deal with the special event licensing and technical issues moving forward? Is there a need for self-help stations beyond December 2013?

Issue 61: Are these regulations still needed in view of the Processes and Procedure Regulations of 14 June 2010 which prescribes licensing processes and Standard Terms and Conditions for Class licences?

Issue 62: Does the Authority still need to licence temporary television for a period of one year?

Issue 63: How should the Authority deal with the low power sound broadcasting licence moving forward?

Issue 64: Is there a need for the Authority to make a recommendation to the Minister of Communications to increase the power of low power sound broadcasting service?

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Issue 66: How should the Authority deal with the regulatory model for Free-to-Air Commercial Television Service in the new digitally converged environment?

Issue 67: How should the Authority deal with the regulatory model for Commercial Sound Broadcasting Services in the new digitally converged environment; and when should the Authority consider licensing or addressing matters related to digital radio?

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Issue 70: How should complaints and sanctions be dealt with moving into the digitally converged environment, considering how the broadcasters and the Authority have dealt with public complaints and their practice with regard to the procedure of sanctions?

Issue 71: What adjustments may be made to improve the Authority's monitoring and enforcement powers to deal more effectively with breaches of rules established by legislation; for example sanctions for breaches of licence conditions, code of conduct and various other regulations?

Issue 72: Are the current regulatory frameworks impeding or sufficiently guaranteeing or promoting access to broadcasting services for people with disabilities, women, children, elderly and youth? If yes, why do you support this view; if not why do you argue that way?

Issue 73: How should the Authority improve its regulatory frameworks specific to people with disabilities, women, children, elderly and youth. How should existing

regulations be strengthened to include a focus on appropriate descriptive language and avoiding common the stereotyping in reporting, communication and interviewing for people with disabilities, women, children, elderly and youth?

Issue 74: With regard to Radio, how should the Authority regulate the specific airtime quotas regulations targeted at people with disabilities, women, children, elderly and youth?

Issue 75: With regard to TV, how should the Authority regulate the programming and programme production targeted at people with disabilities, women, children, elderly and youth in the digitally converged environment?

Issue 76: What are the new content formats and what do they mean for programming? What has been the impact of new formats to the South African sector and how should the Authority deal with this new paradigm shift that is eventually replacing the old formats that were popular when the Triple Inquiry was carried out? What are the new and the most relevant content types and genres that the Authority should focus on in the digitally converged environment?

Issue 77: Is there a heightened role for broadcasters in fostering a sense of social cohesion in the face of digital convergence?

Issue 78: How should the Authority and broadcasters jointly ensure the inclusion, portrayal, reflection and mirroring of all sectors of society and current social developments in broadcasters programming quotas and outputs to ensure that these programmes are accessible to all audiences and encourage greater social cohesion and benefits society?

Issue 79: What is the optimal way for the Authority to exercise its oversight role with regard to the SABC Charter, especially with regards Section 6 of the Broadcasting Act 1999?

Issue 80: Do the themes articulated in the Issues Paper capture the totality of the regulatory frameworks and issues that the Authority should be addressing? If not, what additional theme(s) do you believe are appropriate and why?

Issue 81: Are there other additional regulatory issues that the Issues Paper should focus on over the next 3-5 years? If so, what are they and why should the Authority consider their inclusion?

Issue 82: Which regulations should be prioritised over other goals? If so, which strategic goal/s should be prioritised and why? Please make sure to specify the regulations to which you refer and to provide a rationale for your views.

Issue 83: Are there further issues that the Authority should address or has not addressed in the Issues Paper? Are there any additional comments you wish to make about the Issues Paper?

Issue 84: Are there any non- Authority's specific regulatory challenges which stakeholders face in the deployment of broadcasting infrastructure?

PART H: ANNEXES

ANNEX 1: SCHEDULE OF ICASA'S BROADCASTING REGULATIONS FROM 1994 – 2011 [AS AT 31 OCTOBER 2011]
2011

| REGULATORY POSITION PAPER | GAZETTE NO. AND YEAR OF PUBLICATION | PURPOSES/OBJECTIVE |
|---|---|--|
| Findings Document on the Review of Ownership and Control of Commercial services and limitations on broadcasting, Electronic Communications Services and Electronic Communications Network Services | GN 624 in Government Gazette No 34601 of 15 September 2011 | To enforce the ECA; preserve and encourage a diversity of voices/views within the broadcasting system; promote the cultural values, economic and social goals; enhance, maintain, permit and promote efficient and effective economic competition; and help the industry navigate the negative impact of the economic downturn |
| Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund | GN R.93 in Government Gazette No 34010 of 10 February 2011 | To repeal the 2008 regulations on Annual Contributions of Licensees to the Universal Service and Access Fund) prescribe the Annual Contributions to be paid to the Universal Service and Access Fund by persons issued with licences in terms of chapter 3 and 9 of the Act; and specify the date when such contributions to the |

| | | |
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| | | Fund become payable and the manner in which they must be paid. |
| Regulations on Municipal Elections Broadcasting: Overview of the Process leading to the Development of the Final Regulations | GN R.202 in Government Gazette No 34086 of 8 March 2011 | To prescribe the framework and guidelines under which PEBs and PAs shall be conducted and carried by the broadcasting service licensees during the municipal elections. The regulations are applicable to broadcasting service licensees and political parties contesting the municipal elections during the election period. |
| Regulations on Party Elections Broadcasts, Political Advertisements, the equitable treatment of political parties by broadcasting licensees and related matters during municipal elections | GN R.203 in Government Gazette No 34086 of 8 March 2011 | |

2010

| REGULATION POSITION PAPER | GAZETTE NO. AND DATE OF PUBLICATION | PURPOSE OR OBJECTIVE |
|---|---|--|
| Sport Broadcasting Services Regulations | GN R.275 in Government Gazette No 33079 of 7 April 2010 | To regulate the broadcasting of national sporting events in the Republic; determine the criteria to be used in the listing of national sporting events; identify and list national sporting events; and provide a dispute resolution mechanism |
| Findings and Reasons Document on the Sport Broadcasting Services Regulations, 2010 | GN R.288 in Government Gazette No 33108 of 12 April 2010 | |
| IPTV And VOD Position Paper | GN 770 in Government Gazette No 33436 of 3 August 2010. | To engage stakeholders on better and innovative ways to regulate IPTV and VOD; and assess the impact of any potential structural changes, communications technologies and technological developments, and the optimal conditions of competitiveness and legal certainty for the provision of communication services in the Republic. |
| Digital Migration Regulations | GN R.97 in Government Gazette No 32956 | To regulate the digital migration of the existing television channels; prescribe the conditions for the |

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| | of 15 February 2010 | allocation of channel capacity in Multiplex 1 and Multiplex 2 for the purposes of digital migration; prescribe the procedure for the authorisation of digital incentive channels; and set the time frames within which digital migration is to be achieved by the incumbent broadcasting service licensees. |
| Reasons Document on Digital Migration | GN 132 in Government Gazette No 32957 of 15 February 2010 | |

2009

| REGULATION POSITION / PAPER | GOVERNMENT GAZETTE / GOVERNMENT PAPER | PURPOSES / OBJECTIVE |
|--|---|--|
| Findings Document on the Review of the 1999 Regulations relating to Advertising, Infomercials And Programme Sponsorship | GN 1659 in Government Gazette No 32826 of 18 December 2009 | To review the Advertising, Infomercials and Programme Sponsorship Regulations of 1999; and lay down detailed rules concerning the identification and scheduling of advertising, programme sponsorship and infomercials |
| Digital Terrestrial Television Regulations and Position Paper | GN R.720 in Government Gazette No 32377 of 3 July 2009 | To regulate the transition of terrestrial television broadcasting services from Analogue transmission to Digital Terrestrial Television (DTT) transmission during the dual illumination period; |

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| | | prescribe a procedure and conditions for the assignment of the DTT multiplexes; provide for the allocation and procedure for the authorisation of digital incentive channels; and set out the time frames for the rollout of the digital terrestrial television throughout the Republic. |
| Regulations regarding the Code of Conduct for Broadcasting Service Licensees issued in terms of section 54 of the Electronic Communications Act No. 36 of 2005 | GN 958 in Government Gazette No 32381 of 6 July 2009 | To set standards according to which Broadcasting Service Licensees will be monitored by the Authority and adjudicated upon in terms of Section 17A-E of the ICASA Act, subject to Section 54(3) of the ECA. |
| Findings Document on the g in terms of section 4 (c) of the ICASA Act No. 13 of 2000, read with section 61(1) of the Electronic Communications Act No. 36 of 2005 | GN 1594 in Government Gazette No 32762 of 1 December 2009 | To ensure that broadcasting service licensees submit commissioning protocols to the Authority for approval; monitor the commissioning practices of independently produced South African programming; ensure that commissioning practices of independently produced South African programming are conducted in a manner that is fair, transparent and non-discriminatory, without hampering |
| Regulations on the Commissioning of Independently Produced South African Programming in terms of sections 4 and 61(1) of the Electronic | GN 1596 in Government Gazette No 32767 of 1 December 2009 | |

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| Communications Act No. 36 of 2005, read with section 4(3) (j) of the ICASA Act No. 13 of 2000 | | the; 1. flexibility of licensees to deal with the pertinent commercial issues in any manner they deem appropriate: 2. independent producers' entrepreneurial, creative, managerial and financial flexibility and control. |
| Regulations on Party Elections Broadcasts, Political Advertisements, the equitable treatment of political parties by broadcasting licensees and related matters | GN R.247 in Government Gazette No 31980 of 3 March 2009 | To prescribe the framework and guidelines under which PEBs and PAs shall be conducted and carried by the broadcasting service licensees during the national and provincial elections. The regulations are applicable to broadcasting service licensees and political parties contesting the national and provincial elections during the election period. |

2008

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| Regulations in respect of prescribed Annual Contributions of Licensees to the Universal Service and | GN 1270 in Government Gazette No 31499 of 10 | To repeal the "Regulations in respect of the Annual Contributions to the Universal Fund by Holders of Telecommunication Services Licences, 2003; prescribe the |
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| Access Fund | October 2008 | Annual Contributions to be paid to the Universal Service and Access Fund by persons issued with licences in terms of chapter 3 of the Act; and specify the date when such contributions to the Fund become payable and the manner in which they must be paid. |
| Position Paper and Notice of intention to prescribe regulations regarding Must Carry Obligations in terms of section 4(4) read with section 60(3) of the Electronic Communications Act No. 36 of 2005 | GN 651 in Government Gazette No 31081 of 22 May 2008 | To provide for terms and conditions under which the Subscription Broadcasting Services (SBS) Licensees will carry the programmes of the Public Broadcasting Services (PBS) Licensee; Determine the transparent, equitable and reasonable terms and conditions under which the PBS Licensee may offer its programmes to the SBS Licensee; and Provide exemptions for certain SBS Licensees from compliance with these regulations. |
| Regulations regarding the extent to which Subscription Broadcasting Service Must Carry the Television Programmes provided by the Public Broadcast Service Licensee | GN 1271 in Government Gazette No 31500 of 10 October 2008 | |

2006

| REGULATION TITLE | REGULATION NUMBER | REGULATION OBJECTIVE |
|--|--|---|
| ICASA South African Television Content Regulations | GN 154 in Government Gazette No 28454 of 31 January 2006 | To develop, protect and promote a national and provincial identity, culture and character; create vibrant, dynamic, creative and economically productive local industries, promote programming that is identifiably South African, is developed for South African audiences and which recognises the diversity of all cultural backgrounds; develop a television industry which is controlled and owned by South Africans |
| Subscription Broadcasting Services Regulations | GN 152 in Government Gazette No 28452 of 31 January 2006 | To regulate subscription broadcasting services in South Africa; impose payment to the Authority of charges and fees in respect of subscription broadcasting licences, including applications of all description, the issue, renewal, and amendment of subscription broadcasting licences; prescribe the procedure and the appropriate conditions for the authorisation of channels in a multi-channel |

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| | | environment for subscription broadcasting services; and ensure that subscription broadcasting services' largest source of revenue is not advertising or sponsorship, or a combination thereof. |
| Review of Self Help Stations Position Paper | GN 370 in Government Gazette No 28577 of 28 February 2006 | To regulate self-help stations in South Africa; clarify the residual relations and the responsibilities of the signal distributors, broadcasters, and self-help stations operators; and impose payment to the Authority of charges and fees in respect of self-help stations licences, including applications of all descriptions, and renewal of self-help stations licences. |
| ICASA South African Music Content Regulations | GN 153 in Government Gazette No 28453 of 31 January 2006 | To preserve South African content; develop diverse, high quality and predominantly South African music to cater for the diverse interests in the audience; increase airing and recording of live music to expose new entrants without the experience or finances to record to gain exposure; and develop and support new South African musical talent in all forms of music. |

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| <p>Position Paper on Community Sound Broadcasting Policy</p> | <p>5 June 2006</p> | <p>To prescribe the amounts payable to the Authority of fees in respect of community sound broadcasting licences, including applications of all descriptions, the issue, renewal, and amendment of community sound broadcasting licences; prescribe the procedure and the appropriate conditions for the application, renewal and amendment for sound broadcasting licence; ensure that programme syndication/networking and programming sharing between community sound broadcasting licences do not exceed 20% of a community sound broadcasting licensee's programming; and define persons who cannot participate in the Board, management and staff of a community sound broadcasting licensee.</p> |
| <p>Community Sound Broadcasting Services Regulations</p> | <p>GN 755 in Government Gazette No 28919 of 6 June 2006</p> | |

2005

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| <p>Subscription Broadcasting Services</p> | <p>1 June 2005</p> | <p>To developing the regulatory framework for subscription</p> |

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| Position Paper | | broadcasting in South Africa; and appropriate policy and licensing framework for existing subscription broadcasting services and the introduction of new entrants to Subscription broadcasting markets. |
| Regulations relating to the Applications for Special Event Community Sound Broadcasting or temporary Community Television Broadcasting Licences | GN 1642 in Government Gazette No 27973 of 26 August 2005 | To set out the criteria and terms and conditions for application of a special event license; to allow community television broadcasting licensees, in cases where there are unallocated frequencies and demand can be shown to exceed 30 days, to apply for a non-renewable temporary community television broadcasting licence for a period not exceeding 12 months. |
| Final Terrestrial Broadcast Frequency Plan, 2004 | GN 1513 in Government Gazette No 28299 of 5 December 2005 | Review the 2003 Plan and to look at new considerations. |

2004

| REGULATION POSITION PAPER | GAZETTE NO. AND YEAR OF PUBLICATION | |
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| Position Paper on Community Television Broadcasting Services | GN 2849 in Government Gazette No 27036 of 30 November 2004 | To outline key issues surrounding the introduction and regulation of Community TV broadcasting services; provide programmes that highlight grass-roots community issues, including developmental issues, health care, basic information and general education, environmental affairs, local interest matters and the reflection of local culture; determine public demand for and the financial sustainability of Community TV |
| Position Paper on the Review of the Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting Licences | 13 January 2004 | Amend sections 48,49 and 50 of the IBA Act |
| General Elections Regulations, 2004 | GN 224 in Government Gazette No 26006 of 10 February 2004 | The regulations are intended to outline a general approach that should be adopted by broadcasting licensees in their coverage of the 2004 general elections |

2003

| REGULATION/DECISION PAPER | GAZETTE NO. AND YEAR OF PUBLICATION | PURPOSE/SCOPE |
|---|---|---|
| Sports Broadcasting Rights Regulations, 2003 | GN 2029 In Government Gazette No 25249 of 25 July 2003 | To list sporting events which have been identified as national sporting events; cannot be acquired exclusively for broadcasting by subscription television broadcasting licensees; and must be broadcast live or delayed live or delayed by free-to-air television broadcasting licensees. |
| Position Paper and Regulations on Sports Broadcasting Rights | 25 July 2003 | |
| Low Power Sound Broadcasting Position Paper And Regulations | 24 October 2003 | To regulate Power Sound Broadcasting; and licence the categories of low power sound broadcasting services. |
| Regional Television Broadcasting Services Position Paper, 2003 | GN R.1742 In Government Gazette No 25784 of 28 November 2003 | Promote the provision of a diverse range of sound and television broadcasting services on a national, regional and local level, which, when viewed collectively, cater for all language and cultural groups and provide entertainment, education and information; promote the development of public, commercial and community |

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| | | <p>broadcasting services which are responsive to the needs of the public; ensure that broadcasting services, viewed collectively develop and protect a national and regional identity, culture and character; provide for regular news services; provide actuality programmes on matters of public interest; provide programmes on political issues of public interest; and provide programmes on matters of international, national, regional and local significance</p> |
| <p>Position Paper and Regulations on South African Content on Television and Radio</p> | <p>General Notice 2247 in Government Gazette 25378 of 22 August 2003</p> | <p>Impose local content quotas on radio and television in order to develop, protect and promote a national and provincial identity, culture and character</p> |
| <p>Position Paper and Regulations on Low Power Sound Broadcasting Services</p> | <p>I suggest we use the 2003 date as I doubt the 2005 amendments were effected</p> | <p>Framework for the regulation and licensing of low power sound broadcasting</p> |
| <p>Regulations Relating to Review Procedures to be Followed In the Event of a Review application being brought to the Broadcasting</p> | <p>GN R.1432 in Government Gazette No 25573 of 9 October 2003</p> | <p>Sets out grounds and review procedures to be followed by a complainant against a BCCSA decision brought before the BMCC</p> |

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| Monitoring and Complaints Commission | | |
| Position Paper on Regional Television Broadcasting Services | 26 November 2003 | Licensing of regional television services as enabled by section 5(2) of Broadcasting Act |
| Revised Code of Conduct for Broadcasters | 2002/2003 | Replaces Schedule 1 of IBA Act (section 56) |
| Public Regional Television Broadcasting Licence Fees Regulations Television | | Impose payment to the Authority in respect of public regional television broadcasting licences, including application, the issue, renewal, and amendment of such licences. |
| Terrestrial Broadcast Frequency Plan | GN 3365 in Government Gazette No 25786 of 28 November 2003 | Review the 2002 Plan and to look at new considerations. |

2002

| REGULATION/STIPULATION | DATE | PURPOSE OF REGULATION |
|---|-------------|------------------------------|
| ICASA South African Music Content Regulations, 2002: Regulations relating to the imposition of Sound | | |

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| Broadcasting Licence Conditions regarding South African Music | | |
| ICASA: Fines and Penalties Relating to Non Compliance or Non Adherence by Licensees to provisions of the IBA Act, Regulations issued thereunder and Licence Conditions | | Categorization of contraventions and fines & penalties payable |
| Application Procedures For Special Events Licences for Community Broadcasting Services | GN R485 in Government Gazette No 2332 of 16 April 2002 | Amend/repeal the Temporary Community Broadcasting Services Regulations |
| Regulations relating to the definition of Advertising and the Regulation of infomercials and programme sponsorship in respect of broadcasting activities | GN R551 in Government Gazette No 23389 of 10 May 2002 | |
| Terrestrial Broadcast Frequency Plan | 2002 | To review the 1999 Plan and to look at new considerations |
| ICASA South African Content on Television and Radio Position Paper and Regulations | 15 February 2002 | To develop, protect and promote a national and provincial identity, culture and character. In achieving this, these regulations will seek to promote programming |

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| | | <p>which: is produced under South African creative control; identifiably South African, is developed for South African audiences and which recognises the diversity of all cultural backgrounds in South African society; will develop a television industry which is owned and controlled by South Africans; will establish a vibrant, dynamic, creative and economically productive South African film and television industry.</p> |
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| <p>Findings Document on the Review of South African Content Quotas</p> | <p>29 August 2001</p> | <p>To develop, protect and promote a national and provincial identity, culture and character; and create vibrant, dynamic, creative and economically productive local industries.</p> |

2000

| REGULATION/TITLE PAPER | GAZETTE No. AND YEAR OF ISSUE | PURPOSE/REASON |
|---|-------------------------------------|---|
| Regulations relating to Party Election Broadcasts, Political Advertisements, the Equitable treatment of Political Parties by Broadcasting Licensees: 2002 Local Government Elections | | Broadcasters treat parties equitably in the coverage of election, making airtime available for PAs & PEBs on a non-discriminatory basis |

1999

| REGULATION/TITLE PAPER | GAZETTE No. AND YEAR OF ISSUE | PURPOSE/REASON |
|---|---|----------------|
| Regulations relating to the definition of Advertising and the Regulation of Infomercials and programme sponsorship in respect of broadcasting activities | GN R426 in Government Gazette No 19922 of 1 April 1999 | |
| Position Paper on a Definition of Advertising, The Regulation of | 1999 | |

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| Infomercials and The Regulation of Programme Sponsorships | | |
| Position Paper on the revision of the IBA's Code of Conduct for Broadcasters | 9 April 1999 | To ensure broadcasting licensees adhere to a Code of Conduct which is acceptable to the Authority. |
| Position Paper on Self Help Station | 3 September 1999 | To regulate self-help stations in South Africa; clarify the residual relations and the responsibilities of the signal distributors, broadcasters, and self-help stations operators; and impose payment to the Authority of charges and fees in respect of self-help stations licences, including applications of all descriptions, and renewal of self-help stations licences. |

1998

| REGULATION/POSITION PAPER | DATE OF ADOPTION | PURPOSE/INTENTIVE |
|--|-------------------------|---|
| Television Broadcasting Service records Regulations | | Specify type of records to be kept by television broadcasting service licensees |
| Fines and Penalties | | Categories of contraventions and penalties/fines imposed for such |

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| Regulations | | contravention |
| Television Technical Regulations | | Technical standards and specifications applicable to all television broadcasting services |
| Regulations relating to Party Election Broadcast, Political Advertisements, The equity treatment of Political Parties by broadcasting licensees: 1999 General Elections | | Broadcasters coverage of election is equitable, fair and informs the public |
| Advertisement, Infomercials, and Programme Sponsorship Regulations | | Regulation of the scheduling of advertisements, infomercials and sponsorship on |

1997

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|---|--|---|
| REGULATION POSITION | | |
| IBA Community Sound Broadcasting Licences: Criteria to Measure Community Support Regulations | | Determines the criteria to measure support as required in terms of an applicant for community broadcasting service by the relevant community or by those associated with or promoting the interests of such community |

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| Private Broadcasting Licence Fees Regulations | | Fees payable for the application & issues, renewal and amendment of such licences |
| Signal Distribution Fees Regulation | | Fees payable for application, issue, amendment and renewal of a signal distribution licence |
| Administrative Procedures Regulations | | Set out the administrative procedures for the IBA |
| South African Music Regulations | | Impose minimum quotas of South African music to be carried by different across different broadcasting licence categories, promote South African music |
| South African Television Content Regulations | | Encourage a predominant South African content in all genres, diversity, development of the local independent production sector |
| Sound Broadcasting Service Records Regulations | | Specify records to be kept by all sound broadcasting services |
| Position Paper for the introduction of the First Free-to-Air Private Television Service in South Africa | 12 May 1997 | Introduced the policy and licensing framework for free-to-television service |
| Sound Broadcasting Service Technical Regulations | | Technical standards and specifications applicable to all sound |

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| | | broadcasting services |
| Position Paper on Community Sound Broadcasting Services on four year Licences | 10 June 1997 | Sets out the policy and regulatory framework for community sound broadcasting services in South Africa |
| Community Sound Broadcasting Services Fees | | Determine fees payable to the Authority for the applications & issue, amendment and renewal of such licences |
| Regulations relating to the Imposition of Specific Broadcasting Licence Conditions regarding Local Television Content for Public and Private Television Broadcasting Services | GN R.661 in Government Gazette No 17981 of 2 May 1997 | To develop, protect and promote a national and provincial identity, culture and character. In achieving this these regulations will seek to promote programming which: is produced under South African creative control; identifiably South African, is developed for South African audiences and which recognises the diversity of all cultural backgrounds in South African society; will develop a television industry which is owned and controlled by South Africans; will establish a vibrant, dynamic, creative and economically productive South African film and television industry. |

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| Regulations relating to the Imposition of Sound Broadcasting Licence Conditions regarding South African Music | GN R.662 in Government Gazette No 17939 of 25 April 1997 | |
| Position Paper on Regulating Broadcasting Signal Distribution | 3 October 1997 | Set out the Authority's approach to the regulation of broadcasting signal distribution for the purpose of formulating regulations for this category of licence |

1996

| REGULATION POSITION PAPER | DATE AND NO. OF GOVERNMENT GAZETTE | PURPOSE/OBJECTIVE |
|---|---|--|
| Private Sound Broadcasting Services Position Paper | 16 May 1996 | To promote the objects of the IBA Act; engage stakeholders in the formulation of a framework for the environment in which private sound broadcasting services will exist in South Africa; and offer additional FM and AM licences for private sound broadcasting |

1995

| REGULATION PAPER | NUMBER AND PUBLICATION | SUBJECT |
|--|------------------------------|--|
| Powers of the BMCC: Summoning and Examination of witnesses, Administration of the Oath of Affirmation, Recalcitrant witnesses and the Producing of Books, Documents, Objects and Material Regulations | | Enable the BMCC to summon witnesses, examine witnesses and producing of books, material documents and material required as evidence in BMCC hearings |

1994

| REGULATION PAPER | NUMBER AND PUBLICATION | SUBJECT |
|--|------------------------------|--|
| Temporary Community Broadcasting Licenses Regulations | | Laid down procedures for the application, the granting of temporary community broadcasting licences |
| Criteria to measure Community Support Regulations | | Determines the criteria to measure support as required in terms of an applicant for community broadcasting service by the relevant community or by those associated with or promoting the interests of such community for temporary community broadcasting |

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| | | licence applicants |
| Temporary Signal Regulations | Broadcasting Distribution | Procedures for application for & granting of a temporary signal distribution licence enabling licensees to provide signal distribution for holders of temporary community broadcasting licensees |
| Application Procedures For broadcasting Distribution Regulations | Signal Licences | Applicable procedures in relation to the application for, granting, issuing, renewal, amendment and transfer of signal distribution licences |

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