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GENERAL NOTICE

NOTICE 354 OF 2004

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



ICASA SOUTH AFRICAN TELEVISION CONTENT REGULATIONS, 2002

The Independent Communications Authority of South Africa ("ICASA") hereby gives notice of its intention to amend the ICASA South African Television Content Regulations, 2002 for public comment.

These Regulations came into effect on 22 August 2003. In an attempt to deal with some confusion regarding measurement periods, the need to harmonise the regulations with the Broadcasting Amendment Act, Act 64 of 2002, and to implement certain aspects of the Position Paper on Regional Television it is proposed that amendments to the Regulations be introduced.

We hereby invite interested parties to comment on the proposed amendments within 21 working days after publication of this notice. Representations should be confined to technical amendments.

Representations should be sent to:

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General Explanatory Note:

[] Words in bold type in square brackets indicate omissions from existing regulations.

_____ Words underlined with a solid line indicate insertions in existing regulations.

It is proposed that Regulation 3 be amended by the insertion of the word Broadcasting. The regulation should read as follows:

3. Public Television Broadcasting Licensees

It is proposed that Regulation 3.1 be amended by the deletion of the words **[an annual average of 55% of its programming during the South African performance period and during prime time consists of South African television content]** and the insertion of the words broadcasting and a minimum weekly average of 55% of its programming, measured over the period of a year, consists of South African television content during the South African television performance period and that such South African television content is spread reasonably evenly throughout the said period. Regulation 3.1 should read as follows:

A public television broadcasting licensee must ensure that after eighteen months of the gazetting of these regulations in the case of an existing licence holder or within eighteen months of the issue of a licence or such longer period as the Authority may determine, a minimum weekly average of 55% of its programming, measured over the period of a year, consists of South African television content during the South African television performance period and that such South African television content is spread reasonably evenly throughout the said period.

It is proposed that Regulation 3.2 be amended by the deletion of the words **[at least]** and **[and during prime time]** and the insertion of the words broadcasting, a minimum of and and that such South African television content is spread reasonably evenly throughout the said period. Regulation 3.2 should read as follows:

Where a public television broadcasting licensee provides a broadcasting service which has more than one channel, that licensee must ensure that after eighteen months of the gazetting of these regulations a minimum of 55% of its programming on each channel during the South African television performance period consists of South African television content and that such South African television content is spread reasonably evenly throughout the said period.

It is proposed that Regulation 3.3 be amended by deletion of the words **[at least]** and the insertion of the words broadcasting, a minimum of and and. Regulation 3.3 should read as follows:

In complying with its obligations in terms of Sections 3.1 and 3.2 above a public television broadcasting licensee must ensure that a minimum of:

- (i) 35% of its drama programming consists of South African drama;
- (ii) 80% of its current affairs programming consists of South African current affairs;
- (iii) 50% of its documentary programming consists of South African documentary programming;
- (iv) 50% of its informal knowledge-building programming consist of South African informal knowledge-building programming; and
- (v) 60% of its educational programming consists of South African educational programming; and
- (vi) 55% of its children's programming consists of South African children's programming.

It is proposed that a Regulation 3.4 be inserted that should read as follows:

After consultations between a public television broadcasting licensee, which has more than one national television broadcasting service, and the Authority, one national television broadcasting service may be permitted for commercial reasons to have a

minimum weekly average of 35% of its programming, measured over the period of a year, consist of South African television content during the South African television performance period.

It is proposed that a Regulation 3.5 be inserted that should read as follows:

In complying with its obligations in terms of Section 3.4 above, a public television broadcasting licensee must ensure that a minimum of:

- (i) 20% of its drama programming consists of South African drama;
- (ii) 50% of its current affairs programming consists of South African current affairs;
- (iii) 30% of its documentary programming consists of South African documentary programming;
- (iv) 30% of its informal knowledge-building programming consist of South African informal knowledge-building programming; and
- (v) 25% of its children's programming consists of South African children's programming.

It is proposed that Regulation 4 be amended by the deletion of the words **[Public Commercial and]** and the insertion of word Broadcasting. The regulation should read as follows:

4. Private Commercial Television Broadcasting Licensees

It is proposed that Regulation 4.1 be amended by the deletion of the words **[including a public commercial television licensee,]** and the words **[an annual average of 35% of its programming in the South African television performance period consists of South African television content]** and the insertion of the words broadcasting and a minimum weekly average of 35% of its programming, measured over the period of a year, consists of South African television content during the South African television performance period. Regulation 4.1 now reads as follows:

A commercial television broadcasting licensee must ensure that after eighteen months of the gazetting of these regulations in the case of an existing licence holder or such longer period as the Authority may determine, a minimum weekly average of 35% of its programming, measured over the period of a year, consists of South African television content during the South African television performance period.

It is proposed that Regulation 4.2 be amended by the deletion of the words **[an annual average of 35%]** and the insertion of the words broadcasting and a minimum weekly average of 35%, measured over the period of a year. Regulation 4.2 should read as follows:

A commercial television broadcasting licensee must ensure that at the commencement of its broadcasting service it achieves a minimum weekly average of 35%, measured over the period of a year, of South African television content during the South African television performance period.

It is proposed that Regulation 4.3 be amended by the deletion of the words **[at least]** and the insertion of the words broadcasting, a minimum of and and. Regulation 4.3 should read as follows:

In complying with its obligations in terms of Section 4.1 above, a commercial television broadcasting licensee must ensure that a minimum of:

- (i) 20% of its drama programming consists of South African drama;
- (ii) 50% of its current affairs programming consists of South African current affairs;
- (iii) 30% of its documentary programming consists of South African documentary programming;
- (iv) 30% of its informal knowledge-building programming consist of South African informal knowledge-building programming; and
- (v) 25% of its children's programming consists of South African children's programming.

It is proposed that Regulation 5 be amended by the deletion of the words **[Service Providers]** and the insertion of the words Broadcasting Licensees. The regulation should read as follows:

5. **Subscription Television Broadcasting Licensees**

It is proposed that Regulation 5.1 be amended by the deletion of the words **[an annual average of 8%]** and **[service provider]** and the insertion of the words broadcasting licensee, a minimum weekly average of 8%, and measured over the period of a year. Regulation 5.1 should read as follows:

A commercial subscription television broadcasting licensee must ensure that a minimum weekly average of 8% of its programming, measured over the period of a year, or some greater proportion as may be determined by the Authority; during the South African television performance period consists of South African television content within such categories as the Authority may determine.

It is proposed that Regulation 5.2 be amended by the deletion of the words **[television subscription provider]** and **[an annual average of 35%]** and the insertion of the words subscription television broadcasting licensee and a minimum weekly average of 35%, and measured over the period of a year. Regulation 5.2 should read as follows:

Where a portion of the broadcasting service of a commercial subscription television broadcasting licensee is unencoded, then for the duration of that unencoded portion, it must ensure that a minimum weekly average of 35%, of its programming, measured over the period of a year, consists of South African television content within such categories as may be determined by the Authority.

It is proposed that Regulation 5.3 be amended by the deletion of the words **[at least]** and **[service provider]** the insertion of the words a commercial, broadcasting licensee, a minimum of, and and. Regulation 5.3 should read as follows:

In complying with its obligation in terms of Section 5.2 above, a commercial subscription television broadcasting licensee must ensure that a minimum of:

- (i) 20% of its drama programming consist of South African drama; and
- (ii) 15% of its other programming consists of South African programming.

It is proposed that Regulation 5.4 be amended by the deletion of the words **[service provider]** and the insertion of the words broadcasting licensee. Regulation 5.4 should read as follows:

The Authority may, in lieu of the obligations on the commercial subscription television broadcasting licensee in terms of clause 5.1 and, only in respect of its encoded broadcasting service referred to above, direct that the licensee must spend a specified sum of money as may be determined by the Authority on programming which has a South African television content.

6. Independent Television Production

It is proposed that Regulation 6.1 be amended by the deletion of the words **[at least]** and **[service providers]** and the insertion of the words broadcasting, broadcasting licensee and a minimum of. Regulation 6.1 should read as follows:

Public and commercial television broadcasting licensees and subscription television broadcasting licensees must ensure that a minimum of 40% of their South African television content programming consists of programmes which are independent television productions and the independent television productions are spread reasonable evenly between, where applicable, South African arts programming, South African drama, South African documentary, South African informal knowledge-building, South African children's and South African educational programming.

7. Commissioning Procedures

It is proposed that Regulation 7.1 be amended by the insertion of the word broadcasting. Regulation 7.1 should read as follows:

Public, commercial and subscription television broadcasting licensees/services shall ensure that their terms of trade and commissioning procedures are, inter alia fair, transparent, and non-discriminatory.

8. Formulas (Format Factors)

It is proposed that a Regulation 8.6 be inserted that should read as follows:

The score for the production of the following genres in African Languages, specifically for regional television services, is calculated using the following

Formula: Format Factor (unit) x Duration (hours weekly):

- (a) for any documentary produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 3
- (b) for any children's programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 3; and
- (c) for any Arts programme produced in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 3.

9. Records

It is proposed that Regulation 9.1 be amended by deletion of the words **[television licensees]** and **[service providers]** and the insertion of the words broadcasting licensees. Regulation 9.1 should read as follows:

Public, commercial and subscription television broadcasting licensees must keep and maintain logs, statistical forms and programme records in a format prescribed by the Authority:-

It is proposed that Sub-regulation 9.1 (a) be amended by the insertion of the number 3.5. Sub-regulation 9.1(a) should read as follows:

Full particulars of all South African content programming broadcast in each week indicating each category of South African television content, as defined in 3.3, 3.5, 4.3 and 5.3;
