
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**NOTICE 3369 OF 2025****INVITATION FOR PUBLIC COMMENTS ON
THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL MEDIA SERVICES AND
ONLINE SAFETY**

I, Mr Solly Malatsi, the Minister of Communications and Digital Technologies, hereby publish, in accordance with section 85 (2) (b) of the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), the **Draft White Paper on Audio and Audiovisual Media Services and Online Safety** for final written comments / inputs.

Members of the public and interested persons are invited to submit their final written comments/ inputs / representations on this **Draft White Paper on Audio and Audiovisual Media Services and Online Safety** within thirty (30) calendar days after the publication of this Notice in the Gazette and late submissions or inputs or comments received after the closing date may be disregarded.

All written comments and enquiries on this publication should be directed to:

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Kindly write the **Draft White Paper on Audio and Audiovisual Media Services and Online Safety Policy** in the subject field of your email. A copy of the revised set of the **Draft White Paper on Audio and Audiovisual Media Services and Online Safety** is available at www.gov.za or www.dcdt.gov.za.



HON. SOLLY MALATSI, MP

MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

DATE: 10 July 2025



communications
& digital technologies

Department:
Communications & Digital Technologies
REPUBLIC OF SOUTH AFRICA

**DRAFT NATIONAL WHITE PAPER FOR AUDIO AND AUDIOVISUAL MEDIA
SERVICES AND ONLINE SAFETY**

30 June 2025

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EXECUTIVE SUMMARY

1. This White Paper (“Policy”) consists of high-level policy proposals and principles that form a framework for the work that needs to be done. The related activities will be discussed in the implementation plan and policy directions, and in due, amendments to legislation including the Electronic Communications Act, 2005 (ECA), and if necessary, the preparation of a new Bill.
2. With the rise of global streaming platforms, user-generated content, and non-linear media consumption, the country's existing regulatory framework, designed in an analogue broadcasting era, is no longer fit for purpose. This Policy envisages a forward-looking approach to regulating audio and audiovisual media services (AAVMS) and online content. Drawing on successful international models, particularly those in the UK, Europe and Australia, where many countries look for best practice, the policy sets out to balance media freedom with public interest, stimulate local content production, ensure platform accountability, and strengthen protection against digital harms.
3. The Policy is located within the policy goals of the National Development Plan 2030 (NDP) which identifies the creative industries sector as critical levers to economic growth and nation-building. It is also built on the foundation set by the Broadcasting Digital Migration Policy (2008) and the National Integrated ICT White Paper (2016). Importantly, it seeks to align with international best practice to ensure a welcoming environment for investment, while promoting our South African culture, and addressing our specific needs.

4. The Policy seeks to uphold freedom of expression, diversity and plurality, transparency, independence, universal numerous freedoms and rights, including access to information, regulatory fairness and parity, economic growth, social inclusion, accessibility by persons with disabilities, promotion of fair competition, protection of children, promotion of South African content, and consumer protection (specifically in relation to online harms).
5. The scarcity rationale, the public interest rationale and the pervasiveness or influence rationale are still valuable principles that have assisted in determining the level of regulation that should apply to different types of AAVMS and platforms providing services to citizens in South Africa. The nominated regulatory authority may use these and other assessment tools in arriving at a determination on the type of licence or other authorisation required by a specific service.
6. A transitional framework may be needed. Where any person before any change in the current licensing framework lawfully provided a service without requiring a licence, they will have permission to continue to do so until the nominated regulator has granted or refused a licence or licence-exemption application, or taken the other steps anticipated in the Policy.
7. The 3-tier broadcasting system will be maintained but the Policy expands on the approach to each of these 3 tiers and obligations that might be included in law or licences.
8. To ensure the public continues to enjoy free-to-air and free-to-

view access to listed events, the listing of national sporting events which are in the public interest will be extended to include the broadcasting of these in the broader AAVMS market. The listing of events in legislation could now also include events of major public importance or cultural significance for example, presidential inaugurations or state funerals.

9. Governance within regulatory authorities with a role to play in the new framework will have to be reviewed to strengthen their capacity and improve their efficiency in this complex digital environment.
10. Co-operation between government departments is needed to ensure that statutory prohibitions against piracy and circumvention of technological protection measures are regularly reviewed to ensure they remain effective against the evolving technology solutions employed by persons engaging in the piracy of South African audio and audio-visual content.
11. Plurality of voices and diversity of programming in the public interest will be ensured by competition law, together with content regulation and other licence conditions. The Competition Commission will exercise concurrent jurisdiction with ICASA in addressing concerns of market concentration and media plurality.
12. Government wants to ensure that there is an enabling policy environment for increased foreign direct investment, as a stimulus to the growth and development of the ICT sector as a whole. To this end, the limitations on foreign ownership in respect of linear individual audio-visual content services (broadcasting services) will increase from 20% to maximum of 49%. Limitations

on cross-media ownership, including the distinction between AM and FM sound broadcasting licences will be removed. The other prescribed restrictions which are currently applicable to commercial sound and television broadcasting services will be revised to enable consolidation where this would ensure continued sustainability of licensees and ongoing investment in innovation, rather than allowing broadcasting licensees to fail in a challenging economy.

13. Government will work with key skills partners across the spectrum to develop digital skills in the areas of television, film, animation, games, radio, advertising, applications development and Government will continue to work with SETAs and Accreditation Authorities to address key skills shortages, map career paths, and fast-track transformation.
14. Government will, in parallel and as part of digital transformation, support the establishment, definition and actions that must contribute to the development of digital media and information literacy in South Africa, develop concrete action plans, report on the levels of media literacy and promote proposals for measures in this area for a more competitive and sustainable audio- visual and content industry.
15. Having regard to numerous factors including the current regulatory landscape, the DCDT intends to establish an ombudsman for online safety and media regulation which will – to the extent necessary – develop new rules to make consumption of online services safer. The ombudsman will take account of existing codes of conduct and engage with the relevant regulatory or self-regulatory bodies to avoid duplication

and ensure that any gaps are addressed in a new online code. The approach taken in other countries and in South Africa in this regard has been taken into account.

16. To expedite the creation of the ombudsman, the DCDT will consider the existing self-regulatory and co-regulatory mechanisms, and whether an ombud function could be housed within one of them.
17. The Policy includes an implementation plan with indicative timelines for the changes that are envisaged. The implementation of the Policy will take place in three Stages, over a period of twenty-four months, starting on the date of publication of this Policy.

LIST OF ACRONYMS

| | |
|----------------|---|
| AAVMS | Audio and Audio-visual Media Services |
| AI | Artificial Intelligence |
| ARB | Advertising Regulatory Board |
| AVMSD | EU Audiovisual Media Services Directive |
| BCCSA | Broadcasting Complaints Commission of South Africa. |
| DCDT | Department of Communications and Digital Technologies. |
| DTH | Direct-To-Home |
| DTIC | Department of Trade, Industry and Competition |
| DTT | Digital Terrestrial Television |
| ECA | Electronic Communications Act 36 of 2005 |
| ECTA | Electronic Communications and Transactions Act 25 of 2002 |
| EU | European Union |
| FPA | Films and Publications Act |
| FPB | Film and Publication Board |
| IBA Act | Independent Broadcasting Authority Act |
| ICASA | Independent Communications Authority of South Africa |
| ICT | Information and Communications Technology |
| IPTV | Internet Protocol Television |
| ISP | Internet Service Providers |
| MDDA | Media Development and Diversity Agency |
| NDP | National Development Plan |
| NAB | National Association of Broadcasters |
| NDP | National Development Plan |
| OCS | On-demand or on-demand content services |
| OFCOM | Office of Communications (United Kingdom) |
| OTTs | Over-The-Top services |
| SABC | South African Broadcasting Corporation |
| SMEs | Small and Medium Enterprises |
| SMMEs | Small, Medium and Micro Enterprises |

| | |
|--------------|-----------------------------------|
| SVOD | Subscription Video on Demand |
| USAF | Universal Service and Access Fund |
| VLOPs | Very Large Online Platforms |
| VODs | Video on Demand services |
| VSPS | Video-Sharing Platform Services |

1. INTRODUCTION: THE POLICY IN CONTEXT

1.1 The rapid and unprecedented changes occurring both in society and communications have brought about a period of substantial change. Social media platforms are an accepted part of everyday life, and different ‘broadcasting-like’, on- demand and video-sharing platform services use the Internet as a means of distribution.

1.2 Mobile operators are rapidly deploying next generation networks, and the cost of data has been declining in many countries and is expected to decline in South Africa. Cheaper data has led to increased uptake of Internet-based audio and audio- visual services in those areas of the country that have access to broadband networks, although the Policy recognizes that broadband has not yet been extended into many rural and semi-rural areas and that digital transformation has yet to be realized for many citizens. Nonetheless, it is appropriate to now consider the services that do exist and the likely benefits and harms that could result from uncontrolled access to and distribution of content.

1.3 With the rise of global streaming platforms, user-generated content, and non-linear media consumption, the country's existing regulatory framework, designed in an analogue broadcasting era, is no longer fit for purpose. This Policy proposes a forward-looking approach to regulating audio and audio-visual media services (AAVMS) and online content. Drawing on successful international models, particularly those in the UK, Europe, and Australia, the Policy sets out to balance media freedom with public interest, stimulate local content production,

ensure platform accountability, ensure regulatory parity, and strengthen protections against digital harms.

1.4 The Independent Broadcasting Authority Act, 1993 (IBA Act) focused on one type of content service, namely “broadcasting” services. The definition was used in the Broadcasting Act, 1999 and is used still in the Electronic Communications Act, 2005 (ECA). The Independent Communications Authority Act of South Africa, 2000 (ICASA Act) places a specific emphasis on broadcasting because of its roots in section 192 of the Constitution.

1.5 The Broadcasting Digital Migration Policy was a turning point in 2008 in the development of the entire broadcast sector as it set the country on a digital path, migrating broadcasting transmission systems from analogue to digital.

1.6 The 2016 ICT Policy White Paper also made it clear that the South African regulatory framework for broadcasting was due a significant policy overhaul. The ICT Policy White Paper set out Government’s choices about principles, rules, and guidelines to achieve the long-term goals and objectives set out in the National Development Plan 2030 (NDP) and the South African Constitution.

1.6.1 The NDP noted that the review process for media had to ensure that the mandate to build the nation and promote constitutional values was strengthened, and in particular, the independence and autonomy of media institutions and regulatory bodies should be protected. An important part of the NDP’s 2030 vision is that *“All South Africans will be able to use core ICT services and enjoy*

access to a wide range of entertainment, information and educational services...".

- 1.6.2 The ICT Policy White Paper stated that the *"cultural and freedom of expression objectives which have underpinned the policy and regulatory framework for broadcasting continue to require a specific policy focus. South African content promotion and facilitating access by audiences to a diverse range of television and radio programming will...remain essential objectives of broadcasting policy – and could become increasingly important as audiences access content from elsewhere in the world via the Internet."*

- 1.7 In many countries throughout the world, one of the key rationales for regulating radio (FM/AM) and television (VHF/UHF) services transmitted via terrestrial radio frequency spectrum was that radio frequency spectrum is a scarce resource and that there is a high degree of competition between applicants for terrestrial radio frequency spectrum used by radio and television. This principle for the regulation of broadcasting became known as the "scarcity rationale". In exchange for this privilege, governments imposed obligations and restrictions on the content carried by licensed broadcasters. This included providing for balanced debate, education, the promotion of local content, diversity of programming, the protection of children from harmful content, and prohibitions against owners of other mass media (e.g., newspapers) from controlling broadcasters. So, in conjunction with the scarcity rationale, governments also developed a "public interest rationale".

1.8 Another reason for the regulation of broadcasting was the “pervasiveness or influence rationale”. As broadcasting replaced print media as the main means of mass communication in the world, it attracted a higher level of regulatory attention. Given the pervasive nature or influence of broadcasting services, whoever controls that content is in a unique position to influence how listeners and viewers view the world and their own culture. This rationale also served to underpin governments’ decision to impose obligations and restrictions on broadcasters to encourage certain content (such as local content), to restrict other content (such as content harmful to children), and to impose prohibitions on owners of mass media such as newspapers from also controlling broadcasters.

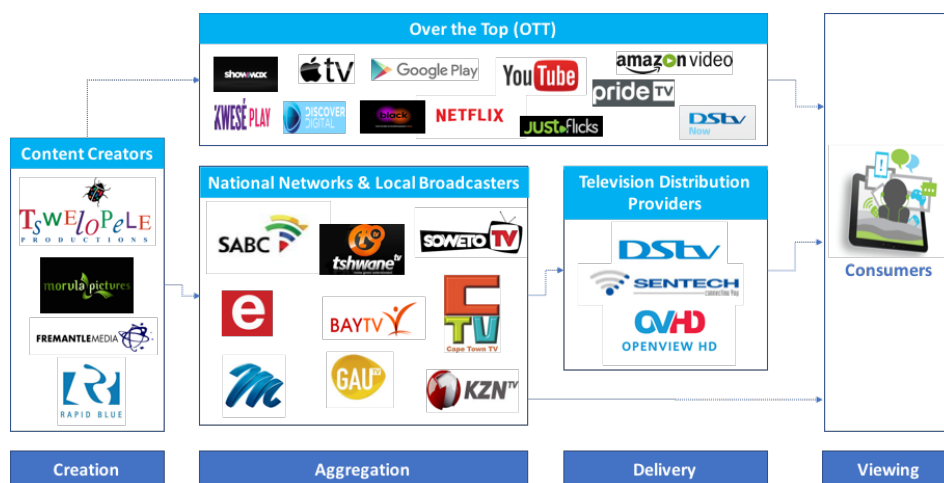
1.9 Now, in 2025, most countries have migrated to digital transmission and in broadcasting, this is referred to as “digital terrestrial television” (DTT). Satellite broadcasts enable direct TV reception by the public or “direct-to-home” (DTH) television without the use of terrestrial spectrum (although spectrum for downlink and uplink services to and from the satellite is required). Satellites can broadcast multiple channels over a very large area or footprint. Some of the services provided on the satellite platform are free-to-view and other services charge a subscription for access to exclusive content. Digital transmission has several advantages over analogue transmissions, the most important being that digital channels take up less bandwidth, which means that digital broadcasters can provide more digital channels in the same space required for a single analogue channel, and they can use spectrum more efficiently.

- 1.10 Over time, sector regulators throughout the world have begun to grapple with the impacts of globalisation, convergence and digital disruption and have directly or indirectly reconsidered the three rationales for regulating broadcasting to determine if they are still appropriate for new services. These are services like over-the-top services (OTTs), meaning services using the internet to deliver “broadcasting-like” content to a wide variety of devices such as gaming consoles, tablets, mobile phones, laptops, and ‘smart’ or digital TV sets. Online audio and audio-visual content can be streamed over the internet either as a “linear” service as a scheduled channel, or “on-demand” as a non-linear service, meaning the viewer chooses what and when to watch. The scarcity rationale is no longer as relevant as it once was.
- 1.11 However, the increase in and adoption of OTT services is changing the production, sale, distribution, and consumption of video content. Online players are using different models such as subscription video-on-demand (SVOD) or VOD, and advertising video-on-demand services which provide the service for free to consumers provided they spend some time watching adverts. The world’s leading OTT providers operate in South Africa as well and are selling their services directly to subscribers or in partnership with providers of complementary services. Some telecommunications providers are bundling these services together with their telecommunications services and offering reduced data prices for bundles for the purpose of viewing OTT services.

- 1.12 In South Africa, the number and types of platforms over which audio and audiovisual services are offered has increased significantly. The broadcasting, audio and audio-visual media services value chain in South Africa is shown in Figure 1.

Figure 1: South African Audio and Audio-visual Value Chain

(Examples shown are only to illustrate each part of the value chain and are not exhaustive).



- 1.13 Government acknowledges that global developments mean that there needs to be change in policy approaches to broadcasting and the broader AAVMS market in South Africa. The public interest rationale and the pervasiveness/influence rationale are still valuable principles that assist in determining the level of regulation that should apply to different types of AAVMS and platforms providing online services to citizens in South Africa, but additional considerations such as those set out in the next section, must also be taken into account.

2. OBJECTIVES OF THE WHITE PAPER AND APPROACH

General objectives and approach

2.1 The overarching vision of the Policy is, broadly speaking, to create a safe, inclusive, and competitive digital media ecosystem that reflects South Africa's cultural diversity and democratic values, while remaining aligned with international best practices. Regulation must be modernised to better support content innovation, consumer rights, and investment in the creative industries. The Policy also seeks to ensure that South Africans, regardless of geography or economic status, can access a wide range of high-quality, relevant, and responsible media content.

2.2 The more specific objectives of the Policy are to uphold freedom of expression while protecting against online harms; promote South African storytelling and creative industries; ensure public access to essential and diverse content; introduce a tiered, risk-based regulatory approach which is fair across the board; and create a responsive and adaptive legal framework that keeps pace with technological change.

2.3 At the global level, the DCDT is part of debates that favour the regulation of digital platforms known as video-streaming platforms (VSPs) and very large online platforms (VLOPs), as it is these platforms together with internet access that enable consumers to access AAVMS. It is generally agreed that these platforms need to take more responsibility to ensure that the digital environment is not used for the dissemination of illegal, offensive and harmful content, particularly in relation to children. Legal measures may be needed to criminalise harms specific to digital technology, such as

the use of synthetic content for the purpose of deceiving people or for the use of micro-targeting during elections.

2.4 The Government also acknowledges the lack of a clear complaints and dispute mechanism, allowing people to engage – often with powerful actors – to safeguard their interests and rights. The creation of an ombudsman function may, together with amendments to existing regulatory avenues for complaints and disputes, offer an enforcement mechanism that is widely accepted in other jurisdictions and recognised by the United Nations.

2.5 The right of reply is also a principle that must be upheld to allow individuals to respond to public criticism or comments regarding or affecting their reputation in the same forum and to ensure a balanced exchange of ideas.

2.6 Advertising and product placement is an area where Government intervention has been limited but which has the potential to significantly skew competition in a market. Measures are also needed to ensure advertising and commercial messages are not surreptitious nor use subliminal techniques, that advertising of, for example, tobacco products is not allowed, and that advertising and sponsorship of programming does not affect editorial independence.

2.7 Consistent with Constitutional values and principles, the promotion and protection of plurality of voices and diversity of content will continue to be a priority alongside the mandatory inclusion of local content, and some funds currently collected from licensees will be managed within a dedicated programme to support local content production.

2.8 At the same time, in order to safeguard the integrity of information ecosystems, steps must be taken to regulate, monitor and take action against those who seek to manipulate algorithms, data and platforms to cause harm to others. This regulation may take the form of co- or self-regulation, licensing, authorisation, notification or registration. The type of regulation is likely to depend on the control of content within each category of service provider, including more traditional broadcasting service providers as well as providers of Video on Demand services (VODs), Video Sharing Platforms Services (VSPs) and Very Large Online Platforms (VLOPs) operating within and related to the digital media and services and targeting the South African market or audiences or subscribers.

Specific objectives

2.9 Government is committed to the NDP vision of the State playing a transformative and developmental role. In line with this the following specific objectives will guide and direct the implementation of this Policy:

- 2.9.1 **Promotion of South African identity and content** – to ensure the preservation of South African national identity and culture and that South African creative industries benefit from expenditure on programming by audio and audio-visual content service providers who target South African consumers.
- 2.9.2 **Freedom of expression** – to facilitate and extend the right of all South Africans to freedom of expression.
- 2.9.3 **Values** – to support Constitutional principles of non-racialism, non- sexism, and equality before the law.

- 2.9.4 **Diversity** – to ensure all South Africans have access to a diverse range of AAVMS on a national, regional, and local level that cater for all language and cultural groups and provide entertainment, education, and information. This is in addition to diversity in ownership.
- 2.9.5 **Universal Access** – to promote an environment of open, fair, and non- discriminatory access to AAVMS. Lowering the cost of data will be a critical element in ensuring that all South Africans have access to AAVMS.
- 2.9.6 **Access to Information** – to ensure access by all South Africans to a broad range of information, opinion, news, and analysis of relevance to their communities and lives.
- 2.9.7 **Regulatory Parity** – to adopt a technology-neutral approach that ensures regulation of similar services in the same manner irrespective of the platform or device on which they provide a service. However, the level of regulation may be based on whether the content provided is linear or on-demand.
- 2.9.8 **Economic Growth** – to stimulate growth and innovation in AAVMS by driving domestic and foreign investment in the sector, especially in promoting job creation, facilitating ease of market entry, and ensuring development of applications and South Africa content.
- 2.9.9 **Social Inclusion** – to ensure actions to enable our people and communities to use audio and audio-visual content platforms to fully participate in society and that AAVMS promote the values and bonds that bring people together in the context of cultural diversity and nation-building. Digital literacy programmes will be essential to ensure that all South Africans can use and access audio and audio- visual services.

2.9.10 **Accessibility by persons with disabilities** – to promote access by all South Africans to platforms and devices that enable them to consume AAVMS and ensure that technology is available to assist persons who are visually, hearing and cognitively impaired to have access to AAVMS.

2.9.11 **Promotion of fair competition** – to facilitate fair competition between all service providers and prevent anti-competitive actions or abuses of dominance.

2.9.12 **Protection of children** – to ensure the protection of children from harmful content that may impair their physical, mental, or moral development.

2.10 In summary, the Policy is grounded in principles that reflect constitutional values and global best practices. These include technology-neutrality, meaning that regulation will not favour or discriminate based on how content is delivered, whether via traditional TV, streaming apps, or online platforms. Regulation will be proportionate, applying obligations based on a service's size, function, and societal impact. The Policy promotes good governance, transparency, fairness, and accountability in all regulatory decisions. It recognises the value of co-regulation, encouraging industry bodies and civil society to play a meaningful role in implementation.

3. THE CURRENT REGULATORY FRAMEWORK

3.1 There are three categories of South African radio and television, namely public, commercial and community. Public services operated by SABC are national and regional whereas commercial services operate in any other area where there is need and demand, including in metro and rural areas. Community radio and community television is operated by non-profit entities in communities of common interest or in geographically related communities.

3.2 Subscription television or 'pay TV' is available across South Africa via terrestrial and satellite networks. Television can also lawfully be received over the Internet.

3.3 There are several Objects in the ECA¹ which apply to ICASA's regulation of broadcasting "in the public interest". Together with the provisions of Chapter 9 of the ECA which deals specifically with broadcasting matters, these Objects of regulation are intended to ensure diversity in content and plurality in ownership of AAVMS, the promotion of competition, and support for South African content.

3.4 The current licensing framework is set out in Chapter 3 of the ECA.

The service licence categories are:

- Electronic Communications Network Services (ECNS);
- Broadcasting Services (BCS); and
- Electronic Communication Services (ECS).

¹ Sections 2(a), (b), d), (e), (f), (h), (i), (j), (k), (l), (o), (p), and (r) to (z) of the ECA.

3.5 Licences are either individual or class licences. Simply put, individual licences are of national scope or compete for scarce frequency resources or have a significant impact on socio-economic development and therefore require a higher level of regulation and attention, whereas class licences may be regional or local in scope or use frequencies which are not scarce or are less significant in socio-economic impact and do not require a substantial level of attention or regulation.

3.6 Radio frequency spectrum licences are granted according to different processes based on whether the spectrum is “high demand” or scarce and may be assigned under a competitive process, whereas spectrum that is not regarded as “high demand” may be assigned under an administrative process.

3.7 Designated services and radio frequency spectrum may be exempt from licensing, although regulations may still apply to exempt services and to exempt spectrum.

3.8 An overview of the framework is shown in

3.9 Figure 2.

Figure 2: Current licensing framework under Chapter 3 of the ECA (read with Chapter 5)

| Type of service | Type of licence | Scope |
|---|---|--|
| Network ownership, construction, maintenance | - | - |
| Providing services over that network | <ul style="list-style-type: none"> • Individual ECNS • Class ECNS | <ul style="list-style-type: none"> • Individual: National / provincial • Class: Municipality (district or local) |
| Providing services over your own or a third-party network | <ul style="list-style-type: none"> • Individual ECS • Class ECS | |
| Mobile/satellite | Individual Radio Frequency Spectrum licence (high demand) | |
| Broadcasting | Individual BCS | |
| Closed user group, not-for-profit, private, LAN | Licence exemption | According to the terms of the exemption |

3.10 ICASA adopted a position in 2010 regarding Internet Protocol television (IPTV) namely that IPTV services offered on managed (closed) networks in South Africa would be regarded as broadcasting services for which an individual or class licence would be required, however TV programming offered on the public Internet falls outside ICASA's jurisdiction and does not require a licence. The position taken by ICASA in 2010 also extended to VOD services. VOD provided to households over managed

networks in South Africa were determined to be electronic communication services (their bi-directional nature meant they were not broadcasting services). As a result, these services, said ICASA, would require a Class Electronic Communication Service licence even if offered on a national basis. A VOD service offered over the public Internet did not require a licence as it was seen as falling outside of ICASA's jurisdiction.⁷

3.11 The framework for broadcasting and 'broadcasting-like' services is shown in

3.12 Figure 3.

Figure 3: ICASA's approach to "broadcasting services"

| Type of service | Scope | Type of licence |
|---------------------|---|--------------------|
| Broadcasting | <ul style="list-style-type: none"> Linear, one-to-many, free-to-air National | Public (SABC only) |
| Broadcasting | <ul style="list-style-type: none"> Linear, one-to-many, on-demand, subscription, free-to-air, subscription, terrestrial or satellite (DTT or DTH), national or other IPTV (managed service) | Commercial |
| Broadcasting | Community of common geographic location or common interest, area to be determined by ICASA, any technology, not-for-profit companies only | Community |

3.13 The current statutory definition of “**broadcasting services**” is, “*means any service which consists of broadcasting and which service is conveyed by means of an electronic communications network but does not include –*

- (a) a service which provides no more than data or text, whether with or without associated still images;*
- (b) a service in which the provision of audiovisual material or audio material is incidental to the provision of this service; or*
- (c) a service or a class of service which the Authority may prescribe as not falling within this definition.”*

“**broadcasting**” is defined as, “*any form of unidirectional electronic communications intended for reception by-*

- (a) the public;*
- (b) sections of the public; or*
- (c) subscribers to any broadcasting service, whether conveyed by means of radio frequency spectrum, or any electronic communications network or combination thereof, and “broadcast” is construed accordingly”.*

3.14 Other definitions which are relevant are “**broadcasting signal distribution**” and “**broadcasting service radio frequency bands**”.

3.15 These definitions and categories will be augmented by

additional provisions to address the changes in the sector
in relation to broadcasting and broadcasting-like services.

4. EXISTING REGULATORY INSTITUTIONS AND OTHER ENTITIES

An analysis of the regulatory and self-regulatory or co-regulatory bodies that might be relevant to the AAVMS and online environment is set out below. DCDT has considered the role and remit of each one, together with the suggestions and commentary received from stakeholders. The key issues considered include the structure, purpose, cost and level of complexity of implementation in the short and medium term, of a new form of regulatory institution or body, or of reformulating the structure and purpose of an existing institution or body.

4.1 ICASA

- 4.1.1 ICASA is a constitutional body created as a Chapter 9 institution. Its mandate under the ICASA Act, 2000 (ICASA Act) is, among other things, *“to regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society as required by section 192 of the Constitution”*. It is responsible to regulate electronic communications which includes broadcasting and to regulate postal services. It must also regulate in accordance with the ECA.
- 4.1.2 ICASA reports to the Minister of Communications and Digital Technologies (DCDT) and the Minister appoints the Council of ICASA with the approval of the National Assembly. The Council is subject to a performance management system in terms of which the Minister monitors and evaluates the performance of the chairperson, councilors and the Council, individually and collectively.
- 4.1.3 ICASA’s role is clearly stated in the ICASA Act as *“the regulation of broadcasting in the public interest and to ensure fairness and a diversity of views broadly*

representing South African society, as required by section 192 of the Constitution". It is also required to regulate electronic communications and postal matters in the public interest, and to "achieve the objects contemplated in the underlying statutes, being the ECA, Postal Services Act and Broadcasting Act.

- 4.1.4 "electronic communications" is defined in the ECA as *"the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conduct, but does not include content service"*. "content service" is not defined.

4.2 The Film & Publication Board

- 4.2.1 The Film and Publication Board (FPB) is a statutory body and a state-owned company with its own Board of Directors, created under the Films and Publications Act, 1996 (FPA). Its mandate is to educate the public on their consumption of films and publications through appropriate classification and to tackle issues relating to content, in particular harmful/prohibited content. This is a role governed by law, with the following objects:

"...to regulate the creation, production, possession and distribution of films, games and certain publications to—

- (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;*

- (b) *protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and*
- (c) *make use of children in and the exposure of children to pornography punishable.*
- (d) *criminalise the possession, production and distribution of child pornography; and*
- (e) *create offences for non-compliance with this Act.”*

4.2.2 In addition, the FPB has, in its strategic plan for the 2025 to 2026 years, indicated that its mandate includes the matters indicated in Figure 4.

Figure 4: FPB strategic plan – indication of mandate

| What Do We Regulate | How Do We Regulate | Regulatory Tool | Enabling Provision | Who Are We Regulating |
|---|------------------------------|--|------------------------|--|
| Online services (User generated content): <ul style="list-style-type: none"> • On consensual sharing of private sexual films or photographs • Distribution of films or photographs depicting sexual violence and violence against children • Propaganda for war, incitement of imminent violence and hate speech | Investigation of a complaint | Take -down notice, CSAM- referral to SAPS, adjudication by the enforcement committee | 18E,77 ECTA25/2002,6 B | Non-Commercial online distributors (members of the public) |

Source: [Annexure B Annual Performance Plan FPB 2025-26.pdf](#)

4.2.3 However, the FPB has also indicated that it is not yet ready and able to take on the role which it describes and which is foreshadowed in parts of the FPA.

4.3.zaDNA

Although accountable to the DCDDT, .zaDNA is a not-for-profit organisation that manages and regulates the .za namespace. This is a specific and narrow remit which is appropriate by international standards.

4.4The Broadcasting Complaints Commission of South Africa

- 4.4.1 This Commission (BCCSA) was established by the National Association of Broadcasters (NAB) in 1993 and is recognised by ICASA as an representative industry body under the ECA. Broadcasters are required to become members of the BCCSA which offers a self-regulatory mechanism for dealing with complaints against broadcasters.
- 4.4.2 The BCCSA has published various codes of conduct including an online code of conduct. ICASA recognizes this body under the ECA as the BCCSA's code of conduct and disciplinary mechanisms are acceptable to ICASA.
- 4.4.3 BCCSA has, however, proven to be very effective in the application of the code of conduct in relation to broadcasting service licensees as a result.

4.5The Media Development and Diversity Agency

The Media Development and Diversity Agency (MDDA) is a statutory development agency for promoting and ensuring media development and diversity. It is a partnership between the South African Government and major print and broadcasting companies to assist in, amongst others, developing community and small commercial media in South Africa.

4.6 The Press Council, the Press Ombud and the Appeals Panel

- 4.6.1 These entities, taken together, form an independent co-regulatory mechanism set up by the print and online media industry to provide impartial, expeditious and cost-effective adjudication to settle disputes between newspapers, magazines and online publications, on the one hand, and members of the public, on the other, over the editorial content of publications.
- 4.6.2 The Press Council has adopted the *Code of Ethics and Conduct for SA Print and Online Media* (the Press Code) to guide journalists in their daily practice of gathering and distributing news and opinion and to guide the Press Ombud and the Appeals Panel to reach decisions on complaints from the public.
- 4.6.3 The mandate of these bodies is confined to the issues mentioned here.

4.7 The Advertising Regulatory Board

- 4.7.1 This Board (ARB) has members from South African advertising agencies, digital web practitioners, media and the market industry. Advertising regulation is based on the International Code of Advertising Practise and the South African Code of Advertising Practise.
- 4.7.2 If a consumer or marketer considers an advertisement to contain content that is illegal, indecent, dishonest or untruthful, a complaint can be made to the ARB which will rule on the matter. The rulings have had a cooling effect on behaviour that does not accord with the Code of Advertising Practise.

4.8 The Internet Service Providers Association

- 4.8.1 ISPA is also a self-regulatory body although it is recognized as an industry body under section 71 of the Electronic Communications and Transactions Act, 2002 (ECT Act). As a result, members of ISPA have special recognition and limited liability for Internet content. ISPA is a non-profit company.
- 4.8.2 ISPA facilitates arrangements between Internet service providers, ICASA and other government structures, operators and other service providers in South Africa.
- 4.8.3 ISPA may issue take-down notices for conduct or content that does not meet the standards set out in the code of conduct, but there are no legal enforcement powers if an entity does not comply, other than the naming and shaming of the ISP concerned. Over time, this has proved to be an effective mechanism.

4.9 The Wireless Application Service Provider Association

- 4.9.1 WASPA represents the interests of its members which are companies that use mobile network platforms to send messages to subscribers and end users, enable games and other services on their phones.
- 4.9.2 WASPA plays a key role in regulating the provision of mobile applications and services in South Africa through its own Code of Conduct which all members of the Association must adhere to, and it has also a formal complaints process.

4.10 The South African Human Rights Commission

The SAHRC is also established under the Constitution and is mandated to:

- 4.10.1 raise awareness of human rights issues;

- 4.10.2 monitor and assess the observance of human rights;
- 4.10.3 educate and train citizens and entities about human rights;
- 4.10.4 addressing human rights violations and seek effective redress, usually through the courts.

Complaints must be submitted to the SAHRC for resolution through the courts.

4.11 **The Commission for Gender Equality**

- 4.11.1 The CGE is a constitutional entity whose statutory mandate is to contribute to strengthening and deepening constitutional democracy in South Africa through the promotion, protection, development, and attainment of gender equality.
- 4.11.2 Its functions include monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that they promote and protect gender equality; public education and information; reviewing existing and upcoming legislation from a gender perspective; investigating inequality; commissioning research and making recommendations to Parliament or other authorities; investigating complaints on any gender-related issue and monitoring and reporting on South Africa's compliance with international conventions.

- 4.12 As can be seen, there is a swathe of largely self-regulatory bodies which have adopted codes of conduct which members sign up to and their conduct is guided by these codes. The MDDA is, for present purposes, not a regulatory body in its functions, and only ICASA, the FPB, the SAHRC and CGE are statutory entities. Only ICASA has the power to license, authorize or exempt services

falling within Chapter 3 of the ECA.

- 4.13 A large number of respondents during the consultation on the White Paper noted the additional cost and 'red tape' that a new regulatory body would result in, not to mention the time it would take to establish such a body when other mechanisms are already in place to regulate the conduct of social media platforms in providing online services to consumers, and AAVMS.
- 4.14 As a result, the DCDT has decided to adopt an approach which will unfold in three Stages over a period of six to twenty-four months, which approach is intended to address the justifiable concerns raised by stakeholders about the breadth of the scope of the White Paper, and the time it has taken to finalise it. This will also allow for further consideration on the need for and form of a new regulatory body.

5. ELEMENTS OF THE NEW REGULATORY FRAMEWORK

5.1 Definitions

Terminology is helpful in assessing which services or content to regulate and how to regulate them. Definitions will be reviewed in the First Stage, the design of which is described in section 6. The definitions of various terms that already exist in the ECA, such as “electronic communications network” will also be considered during the review.

5.2 Structure

- 5.2.1 The regulatory distinction between individual and class licences will remain a critical element as it allows ICASA, as licensing authority, to make distinction between these two types of licences to impose a higher level of regulation and public interest obligations on individual licensees.
- 5.2.2 The distinction between the three tiers of broadcasting namely public broadcasting, commercial broadcasting (free-to-air and subscription) and community broadcasting will remain as a tool for ICASA to determine the level of public interest obligations that need to apply to each licensee.
- 5.2.3 To achieve a more level playing field, registration and notification obligations will be imposed on categories of AAVMS other than “broadcasting” (and “broadcasting-like services”) at the same time as subjecting the registered or notified parties to co- regulation and self-regulation through codes of conducts, guidelines, and other relevant instruments.
- 5.2.4 The revised definitions will identify more precisely which AAVMS services these are, but the commonly used terms

are included here for convenience, namely VSPs and online content services (OCS).

- 5.2.5 Benchmarking indicates that a graduated or scaled-up system such as the system approved by the European Parliament in their Audio-Visual Media Services Directive of 2010, as amended in 2016 and 2018 (AAVMSD), provides for greater regulation on linear services using radio frequency bands with less regulation for on-demand services, and self-regulation for VSPs.
- 5.2.6 Therefore, three broad types of AAVMS using electronic communications networks are proposed to be used for the purposes of licensing, registration, notification or exemption:
- broadcasting services.
 - on-demand content services; and
 - video sharing platform services.
- 5.2.7 If a broadcasting service has a right to broadcast content and offers the programmes on its catch-up service, this will be regarded as an associated service which does not require a separate licence. The same regulatory requirements will apply to catch-up services as apply to the licensee providing them.

5.3 Regulatory mechanisms

- 5.3.1 South Africa's regulatory landscape is characterised by many self-regulatory bodies with codes of conduct and they are relatively successful. Just how successful will be examined in a DCDT review with their cooperation, in the Second Stage.
- 5.3.2 In Stage One, the creation of an ombudsman for the regulation of online media services will be examined. The model will align with the models of self-regulation of many

related and existing industries and services in the online world.

- 5.3.3 An ombudsman will operate alongside representatives of the many other similar bodies mentioned in the Policy but seek to address the gap that exists between current legislation and the exponential growth in platforms and services that are not addressed by legislation at the present time, or by existing bodies as they attempt to grapple with new roles, like the FPB. In particular, the ombudsman will address complaints about online harm in the form of mis- or disinformation as well as other content issues including content that is unsuitable for children or that incites violence or is racist or otherwise unacceptable, and do not currently have an easily identifiable and accessible route to resolution.
- 5.3.4 An ombudsman has become a widely accepted form of effective and accessible dispute resolution, encouraging accountability and promoting good governance. In South Africa, several industry ombuds have been appointed over the years in different sectors.
- 5.3.5 An ombud can be created by law or be a voluntary organisation. Legislation that might currently permit the creation of such a body includes the ECA, the FPA and the Electronic Communications and Transactions Act, 2002 (ECT Act). The least time-consuming route to appropriate regulation is to adapt existing law rather than drafting from scratch – for the short term.
- 5.3.6 Funding for voluntary ombuds is typically raised through membership fees, set at varying levels, while statutory ombuds are funded through levies raised and transferred by existing sector bodies.

- 5.3.7 As the Treasury has noted, the efficiency and effectiveness of the complaints referral system (across ombuds and regulators) is a very important consideration. A related question is whether the manner in which complaints relating to a bundled product is heard is most fair and efficient.
- 5.3.8 Work is also needed to develop consistent, fair and complete indicators of the effectiveness and efficiency of any ombud scheme, so that their performance and that of the system in general can be better monitored.
- 5.3.9 Unfortunately, this work cannot be completed at the same time as completing this Policy, however, a review of existing laws has begun, with a view to finalizing an appropriate amendment within six to twelve months. The DCDT will invite submissions from existing entities on their suitability or adaptability in this regard. A formal invitation to submit proposals for consideration will be issued within 60 days of the publication of this Policy. Note, this invitation will not constitute a procurement activity.

5.4 The short-term framework

Pending the outcome of Stage One and any amendments that could give effect to the creation of an online ombudsman in legislation, complaints about online harms must be directed to existing entities according to their respective functions. This is a temporary measure but will allow time for proper consideration of where to situate an ombudsman, and to make provisions for its powers, duties, accountability obligations, and funding.

5.5 Other material issues

- 5.5.1 Public broadcasting: Academic literature in the field of public broadcasting is clear about the difference between ‘public

broadcasting’ and ‘state broadcasting’. The key element is that public broadcasting provides a non-profit, independent public service, hence the decision that public broadcasting services should be redefined as “any broadcasting services provided by the SABC”

5.5.2 Online service definitions: There are a wide variety of AAVMS available as non-linear VOD services on the Internet. These are regarded as “online services” and “on-demand services”. This is a sizable group. The definitions of relevant services within the group require careful thought and international terminology is being considered.

5.5.3 Platform definition and obligations: The terms Video-Sharing Platform Services (VSPs) and Very Large Online Platform Services (VLOPs) are clearly intended to address the platforms over which content is distributed or made available. The most likely obligations, consistent with international approaches, will include:

- requirements that these platforms to apply terms and conditions to users that include prohibitions on incitement to violence or hatred and obligations prohibiting public provocation to commit terrorist offences; as well as prohibiting content which may impair the physical, mental, or moral development of minors;
- establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned, any of the content referred to above that is stored on its platform;
- establishing and operating age verification systems for users of video-sharing platforms concerning content which may impair the physical, mental, or moral development of minors;
- establishing and operating systems allowing users of video-

sharing platforms to rate the content;

- providing for parental control systems concerning content which may impair the physical, mental, or moral development of minors;
- prohibiting advertisements in content provided for children;
- establishing and operating systems through which providers of video-sharing platforms explain to users of video-sharing platforms the actions taken in response to reporting and flagging; and
- providing for effective media literacy measures and tools and raising users' awareness of these measures and tools.

5.5.4 Must carry rules and findability: These obligations may have achieved their intended objective (to make public interest content available) and need review. Rules ensuring the findability or 'discoverability' of public interest content are seen as the logical next step beyond must carry rules to ensure that programmes and services which are seen as being of particular value for society, for democratic, cultural, or social reasons, can be found easily and accessed on relevant platforms, whether they are linear or on-demand. This requires review.

5.5.5 OTT issues:

- Many countries are grappling with the regulation of OTT services and whether in fact regulation is necessary and if it is, what form it should take.
- Other market players and regulators are often concerned that OTTs are not providing any revenue to the fiscus if they provide services from outside the collecting country. An assessment of fees to be applied to registration and notification, if any, will be carried out in Stage One.
- The perceived lack of parity between the treatment of

licensees, specifically broadcasting licensees, and the treatment of OTTs, requires a thorough assessment to ensure that regulation is necessary, fair and proportionate in relation to each type of service.

5.5.6 Local content: There are also concerns that OTTs do not have any local content obligations, whereas broadcasting licensees have considerable obligations.

- Until the review in Stage One is concluded, South African content quotas should remain in place for broadcasting services (including those offered online), with an emphasis on the need to continue to reinforce South African content and music in all genres and formats.
- The current approach of specifying a minimum percentage of total broadcasting time per TV channel will be revised by ICASA so that this is measured across the total bouquet of channels offered by a broadcasting service licensee. Where it is not possible to meet the South African content quota due to the nature of the service, the licensee may choose to pay a specified sum of money or minimum percentage of gross revenue into a fund which supports the creation of audio and audio-visual South African content.
- South African content obligations may also apply to OCS, and the manner in which they will apply will be determined in Stage Two, within twelve to eighteen months.

5.5.7 Retransmission rights: Broadcasters need to acquire the retransmission rights from sports bodies and since they pay for this right, they usually acquire it exclusively so they can recoup costs from advertising revenues and/or fees from their subscribers. These television broadcast rights have become key to attract audiences and in the context of subscription television, one of the motivations for people to

pay directly for television services (subscription television). This is likely to extend in future to the consumer subscribing to new internet streaming services on broadband networks to access exclusive sporting events. As a result, TV sports broadcasting rights have become the object of highly competitive bidding wars between television broadcasters globally.

- This creates a conflict between the rights of citizens to access and receive information and the economic rights of sports bodies to property and freedom to enter into contract on an exclusive basis and can lead to anti-competitive effects impeding access to the broadcasting rights with a negative impact on the structure of TV markets.
- Competition law can address joint selling and purchasing of television sports broadcasting rights and the periods of exclusivity granted in respect of those rights, some of which relate to events of national or cultural importance for the country. The role of the Competition Commission here will be considered, alongside internationally approved indicators for determining if an event should be considered to have “major importance for society”, and thus subject to specific rules on sharing and retransmission.

5.5.8 Copyright: The growing challenges posed by the Internet relating to the protection and enforcement of intellectual property rights requires a joint effort by the relevant government ministries through an Inter-Ministerial Committee or a similar forum. Statutory prohibitions against piracy and circumvention of technological protection measures will be regularly reviewed to ensure they remain effective against the evolving technology solutions employed by persons engaging in the piracy of South

African audio and audio-visual content.

5.5.9 Protection of children: The protection of children and other consumers is a key guiding principle in the regulation of AAVMS. The right of freedom of expression which includes freedom of the media is not absolute and therefore needs to be carefully balanced against other rights enshrined in the Constitution.

- The current instruments used to promote the protection of children and other consumers in respect of broadcasting services are the code of conduct administered by the Broadcasting Complaints Commission of South Africa (BCCSA) which is exclusively applicable to the members of the National Association of Broadcasters (NAB).
- The FPB will continue to use the content classification framework provided for in the FPA read together with the FPB classification guidelines, which determines and assigns appropriate age ratings and consumer advisories.

5.5.10 Advertising: There is a regulatory imbalance as advertisers may be able to do things online which the rules would not permit on radio or television.

- Rules on misleading and comparative advertising must be harmonized along with rules for disclosure in relation to political advertising and prevention of disinformation in general.
- The ARB has an important role to play in the regulation of advertising by broadcasters.
- The current legislative approach to political election broadcasts and political advertising on traditional broadcasting platforms has been effective. It is, however, very specific to traditional broadcasters. The self- or co-regulation of advertising on online media could be subject to many of the same rules as apply to broadcasting licensees.

- Commercial free-to-air broadcasters' main source of revenue is advertising revenues. The ECA and current ICASA regulations permit subscription broadcasters to draw revenue from subscriptions, advertising, and sponsorships, however advertising and sponsorships may not be the largest source of annual revenue. Since 2005 the number of subscribers to subscription broadcasting services and thus total subscription revenue has increased. ICASA will pursue an inquiry into whether the current share of advertising revenue by subscription services is appropriate, having regard to the revenue earned from subscriptions.

5.5.11 Accessibility: Accessibility to broadcasting for persons with disabilities will continue to be addressed by ICASA and ICASA must facilitate periodic consultation between licensees and representatives of persons with disabilities.

5.5.12 Funding: Broadcasting licensees currently contribute to the MDDA and the Universal Service and Access Fund (USAF).

- In the Second Stage, the application of these funds and the change to a Digital Development Fund and application of this Fund to creation and protection of locally produced content will be reviewed.
- There are numerous Ministries, Departments and national public entities that are involved in the development and funding of the audio-visual content industry. This has resulted in numerous and sometimes overlapping policy documents originating from within the various Ministries. A review is critical to avoid wasteful expenditure and abuse of or simply inefficient application of resources.

5.6 Ownership and control of broadcasting licensees

Audience diversity and plurality of ownership are key principles underpinning the policy and legislative framework of South Africa's broadcasting industry. These principles have been translated into regulatory provisions in the ECA and are also echoed in the NDP and the National Integrated ICT White Paper. However, the statutory limitations have not been changed for 25 years.

Changes in technology have also had a significant impact on the broadcasting market with the introduction of new AAVMS as well as the development of new content distribution platforms. These developments require re-evaluation of the current ownership limitations. Over time, arguments have been raised in relation to ownership limitations specifically because they are no longer appropriate for a multichannel digital audio and audio-visual content industry.

In addition, the current restrictions in the ECA may have a detrimental impact on the growth of the industry, particularly for SMME's.

The Competition Commission is well placed to ensure anti-competitive and merger-related issues are addressed.

5.6.1 International best practice: Other jurisdictions have been reviewing their ownership limitations to assess their relevance and effectiveness in a converged audio-visual media and content environment. and some regulatory authorities have relaxed or done away with ownership restrictions.

- In the United Kingdom, there has been a relaxation of cross-media restrictions on ownership of local broadcasters, and removal of restrictions on media ownership by non-EU persons.
- In the United States of America, the Federal Communications Commission (FCC) undertook to review its media ownership rules every 4 years to determine whether they were

still in the public interest. The limitation on the number of commercial radio stations that a single entity could own together with the cross-media ownership rules was removed. The number of local commercial television stations that a corporation can own increased.

- The Australian Communications and Media Authority is required to establish and maintain a register of controlled media groups identifying the control and ownership of media groups, but there are no historical limitations.
- In New Zealand the restrictions on foreign ownership have been repealed and media ownership, including cross media ownership is now governed solely through competition law.

5.6.2 Amendments to the ECA:

- The obsolete distinction between AM and FM licences will be removed along with other numerical restrictions which are currently applicable to commercial sound and television broadcasting services.
- Section 65 may be revised to increase the total number of broadcasting service licensees that may be controlled by the same entity. The wording of section 65 will be simplified.
- Print media companies are no longer by default the largest media companies, and there has been a proliferation of on-demand content services meaning that access to online news has multiplied tenfold. The cross-media ownership limitations are also obsolete and section 66 in its entirety may be removed.
- The controversial interpretations of the meaning of “control” will be eliminated and a new definition of “control” based on the Competition Act definition may be included in section 1 of the ECA.

- Competition law, together with the content regulation and licence conditions are regarded as sufficient to ensure plurality of voices and diversity of programming in the public interest. The Competition Commission and ICASA will continue to exercise concurrent jurisdiction with ICASA in addressing concerns of market concentration. Both regulatory authorities will have to align their efforts in recognition of the shared responsibility of approval of mergers and acquisitions concerning the impact thereof on fair competition and assessing whether they serve the public interest of media plurality. This will require increased coordination and consultation to ensure alignment between the decisions and conditions attached to approvals by ICASA and the Competition Commission.
- The current legislative framework prohibits a foreigner from exercising control over a commercial broadcasting licensee, by limiting financial interest, interest in voting shares or paid-up capital to a maximum of 20%. Similarly, not more than 20% of the directors of a commercial broadcasting licensee may be foreigners. The regulatory environment for foreign direct investment is one of the key factors which are likely to influence the location decisions of foreign investors. Foreign direct investment has a significantly positive impact on employment, productivity, growth, prospects for stronger integration with international regional and markets as well as the transfer of skills and technology. What is needed is an enabling policy environment for increased foreign direct investment, as a stimulus to the growth and development of the ICT sector as a whole. The limitations in respect of foreign ownership of linear individual audio-visual content services (broadcasting services) may be increased with consideration

of a maximum of 49%.

5.7 Skills development, digital and media literacy

This is a whole-of-government issue. These initiatives must take place outside of the Policy, as part of the whole-of-government approach to digital transformation.

- The Minister will, working with other industry stakeholders and representative bodies, co-ordinate a programme to encourage private sector participation across the spectrum to develop skills in the areas of television, film, animation, games, radio, advertising, app development and marketing communications to keep content relevant and the creative industries competitive so that they can compete globally.
- As Government is committed to increasing equal economic and social opportunities for all and as the economy is becoming more digital. Government must strengthen the co-operation and collaboration amongst stakeholders from government, business, civil society organisations, researchers, universities, and regulatory authorities.
- Women, youth, rural and poor urban communities, persons with disabilities, the illiterate and other vulnerable groups will need particular attention – as they do in so many other sectors.

6. PROGRAMME OF IMPLEMENTATION

6.1 Given the many delays in arriving at this point, and in addition, the significant number of conflicting responses to the drafts that preceded it, the Policy will be implemented over a period of time to allow for careful consideration and review, and ensure buy-in and participation by industry and regulatory entities.

6.2 As industry responses to previous consultations have remarked, the complexity and number of issues that this exercise is attempting to address is substantial. There would be little purpose in expediting legislative changes without a proper foundation, which has unfortunately not been possible until now.

6.3 The DCDT has decided to move forward in three Stages which are not intended to operate independently of one another, as some of the tasks envisaged in each stage can be carried out in parallel. However, an indicative timeline has been proposed for the conclusion of the three Stages to ensure that the activities referred to are in fact carried out in a timely and efficient manner, to achieve the outcome described in each Stage.

6.4 First Stage: the conclusion of this Policy, amendments to law, and research and consultation

6.4.1 Amendments to the ECA will be drafted to address issues that are urgent, such as ownership and control.

6.4.2 ICASA will be directed to undertake investigation and inquiries into international best practise in issues set out in section 5. Research and consultation will be a priority in this stage.

- 6.4.3 Existing regulatory bodies including co-regulatory and self-regulatory bodies will be invited to submit proposals to support the creation of an ombud function specifically to regulate the online environment, within their scope. These proposals together with other work by the DCDT will inform the design and implementation of an ombud, and if necessary, amendments will be prepared to give effect to the proposals. Note, a request for proposals will not constitute a procurement activity, and does not guarantee any particular outcome.
- 6.4.4 ICASA will be required to hold an inquiry into appropriate amendments that might be made to regulations to give effect to the Policy.
- 6.4.5 This Stage is envisaged to take between six and twelve months.

6.5 Second Stage: to reform outdated regulations, to introduce new regulations, to determine if a new law is required and what amendments to other laws are necessary, and to finalise a code of conduct

- 6.5.1 Based on its research and consultations carried out in the First Stage, ICASA will, where appropriate, revise or create new regulations to give effect to policy and the amendments to the ECA, and to inform the DCDT, if it is found to be necessary, that a new Bill should harmonise and rationalise any duplication in regulatory entities, policies, laws, and other instruments of regulation.
- 6.5.2 This Stage also enables the full implementation of the ombudsman and consultation on and the adoption of a Code of Conduct, consultation with all affected

stakeholders, and commitments sought from industry participants.

6.5.3 This Stage is envisaged to take between twelve and eighteen months.

6.6 Third Stage: the drafting of a Bill and the repeal of related legislation (depending on the outcome of the Second Stage)

6.6.1 If the review undertaken in the Second Stage determines that there are still gaps in the regulatory framework for AAVMS and online safety, then recommendations will be sought in relation to a new Bill.

6.6.2 However, implementation gaps will not be resolved by legislation only and at this point; a socio-economic impact assessment will be undertaken of the implementation to date of the goals and objects of the Policy.

6.6.3 The duration of the Third Stage is likely to be up to twenty-four months. The cooperation of industry and the rest of Government can, of course, ensure that this process is appropriately and efficiently conducted in a manner that benefits the citizens of South Africa, businesses including SMEs and SMMEs, licensees, aspirant participants, and related stakeholders.

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Explanatory Memorandum to the Draft White Paper on Audio and Audiovisual Media Services and Online Safety

1. Background to this version of the White Paper

The White Paper on Audio and Audiovisual Media Services and Online Safety has been made available in different forms for comment over a lengthy period of time. This has contributed to a lack of consistency in approach and a fracturing of industry views. One conclusion that is inescapable is that policy cannot deal in detail with so many matters in the face of such differing views.

There are complaints by some respondents to the draft White Paper that their submissions have not been published and therefore have not been taken into account; there is confusion about the main purpose of the White Paper and the changes in the first and second drafts; there is insistence by some that their specific point of view be replicated in the White Paper, and some commentators have made recommendations that may not be appropriate to include in their entirety but are legitimate concerns, for example, about the health of our citizens.

A sample of the comments received is included to illustrate the issues raised and the difficulties arising as a result of the fractured views of the industry:

- The NAB suggests that a technology-neutral framework means that the only distinction needed for regulation is between audio content and audiovisual content (and that the Department should avoid any other regulatory intervention). This is suggested on the basis that sometime in the near future, the distinction between linear and non-linear will become redundant because linear services will be offered by non-linear service providers. This has not happened yet anywhere else in the world, but if and when it does, the Implementation Strategy which will now be interposed between the White Paper and new legislation, will take this into account. NAB's recommendations on a 'robust licensing framework to stimulate economic growth' are noted.
- Netflix is of the view that if a contribution to local content is sought from online content providers, it should apply to the content acquisition budget and not gross revenue. Netflix also suggests that there is recognition of direct economic

contributions to the audiovisual production sector such as direct licensing of local content as well as investments in local scholarships and capacity-building initiatives, and on-soil production services for international shows. Compliance need only be assessed every 3 to 5 years.

- OUTA suggests a digital services tax to tax gross revenue from online placement of targeted advertising, as is the case in parts of Asia and Latin America, but admit that this is a complex mechanism to implement. They point out that viewers and listeners have a right to listen to and watch whatever they want to, particularly if they are paying for a service. They are also concerned about the regulator's ability to implement brand new policy and law effectively over a short transition period.
- BritBox believes that the White Paper sets out onerous and numerous obligations on on-demand providers and that not all businesses are subject to annual audit (in relation to the proposal to license entities based on revenues above a certain threshold). Fees would be likely to be passed on to consumers in the form of higher prices.
- SOS/MMA are concerned that members of the press should be subject to licensing or other statutory registration schemes, and that online press outlets should be exempt from any such requirements. SOS/MMA says many submissions have been made by them as well as SANEF and the Press Council which do not appear to have been taken into account. They also suggest that SABC's mandate and funding be dealt with in a separate process.
- Sentech has some obvious concerns about its continued role in the broadcasting environment and wishes to cement its place in the law as the common carrier and signal distributor in South Africa. It also requires continued access as a multiplex operator, to a dedicated multiplex.
- Multichoice recommends a review of Chapter 3 of the ECA because content services should have a new special licensing process more like class registrations. Regulation of broadcasters should be reduced to ensure parity with the online providers who they compete with i.e. licensed broadcasting should be de-regulated. It suggests leaving the threshold determinations for the legislative

drafting phase, and maintaining all existing licences including for spectrum, in place.

- SABC wishes to divide its role between high priority objectives and general objectives so that it can focus on investing more in high priority matters to drive national interest objectives. It also wishes to retain the distinction between commercial and public mandates. SABC suggests that the dominant subscription broadcaster should collect a levy on behalf of SABC, called the “public service levy”.
- FPB recommends retaining the existing arrangements where ICASA is concerned but codes of conduct including co-regulatory mechanisms should be transferred to the FPB for oversight. It says its mandate should be extended to empower it to have authority over local content obligations, advertising standards including product placement, and access to media by persons with disabilities.
- Amazon supports registration by non-linear service providers and a VOD code of conduct is recommended.
- TikTok recommends self-regulation for VSPS in terms of which government and industry conclude a compact regarding regulation of online content and accountability.
- Pulpit Media is concerned that community networks are still not dealt with adequately and bear heavy regulatory burdens.
- ICASA was concerned that it should be the only entity undertaking this review, and in charge of any task team. They propose exempting on-demand services and AAVMS.
- eMedia asked for a review of the wholesale transmission market.
- Other respondents make the point that in the online environment it is impossible to distinguish between class and individual licences or when either might be appropriate.
- Instead of applying a threshold for licensing, some respondents recommend a requirement to make commitments to broad-based black economic empowerment i.e. investment at all levels of the value chain. Therefore, they say, a ‘pay or play’ obligation would be more appropriate in the online environment, where payment

can be made to funds for the promotion and development of local content and related services and skills or investment in equity equivalents or other commitments to other areas under the ICT Sector Code, published under the Broad-Based Black Economic Empowerment Act, 2003.

2. Where we are now

Unfortunately, with the passage of time, some references and some of the benchmarking reports that informed the previous draft of the White Paper are now outdated. However, these were useful reference points, and mention is made of them where appropriate. A very recent international development has, however, indicated that the approach set out in relation to this consultation on the draft White Paper may well be appropriate for the same reasons that are given by the European Council in their Council conclusions document (see below).

On 26 May 2025, the European Council issued “Council conclusions on the assessment of the legal framework for audiovisual media services and video-sharing platform services (C/2025/2954)”. The Council has invited the Commission to revisit a number of Directives and Acts of the European Union, given the complexity of the issues that they attempt to address and the time that has passed since they were introduced. The Council recognizes that *“It is paramount that the scope of the AVMSD² remains adaptable as the audiovisual market continues to evolve. The scope should be wide and clear enough to cover all relevant types of audiovisual media content and services offered in the internal market, regardless of their means of distribution...”*

In addition, the Commission is invited to *“Evaluate existing solutions provided by the AVMSD, while taking into account the relevant EU rules such as those laid down in the DSA³, and their application to online platforms that are also VSP⁴ services; and assess*

² Directive 2010/13/EU of the European Parliament and of the Council concerning the provision of audiovisual media services (Audiovisual Media Services Directive) and Directive (EU) 2018/1808 of the European Parliament and of the Council amending Directive 2010/13/EU in view of changing market realities.

³ Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

⁴ Video-Sharing Platform services.

whether the current AVMSD provisions on VSP services are sufficient to protect the general public from harm and other societal risks stemming from audiovisual content available on VSPs and to promote a level playing field, including in the area of audiovisual commercial communications.....” and to “Analyse the need for changes, while bearing in mind the need for legal clarity, regulatory coherence and the added value provided by the AVMSD’s rules on VSP services, as well as the potential need for simplification of the rules applicable to online platforms.”

The latest version of the White Paper also seeks resolution of the various issues raised in a manner that takes into account the many changes in the broadcasting and online sectors. Despite the hiatus in developing a new framework for both broadcasting and other audio and audio-visual media services, which is regretted, it is hoped that South Africa can now benefit from the work being done elsewhere and locally in determining the most appropriate mechanism for regulation of radio and television broadcasting and online services, including the potential for online harms.

3. What is proposed

After serious consideration, the Department has decided to move forward in three stages which are not intended to operate independently of one another, as some of the tasks envisaged in each stage can be carried out in parallel.

An indicative timeline has been proposed for the conclusion of the three Stages to ensure that the activities referred to are in fact carried out in a timely and efficient manner, to achieve the outcome described in each Stage.

First Stage: to conclude this Policy, consider appropriate amendments to existing law, and research and consultation

- 6.6.4 The White Paper will be adopted in final form as a Policy.
- 6.6.5 Amendments to the ECA will be drafted to address issues that are urgent, such as ownership and control.
- 6.6.6 ICASA will be directed to undertake investigation and inquiries into international best practise in relation to issues set out in section 5 of the Policy. Research and consultation will be a priority in this stage.

6.6.7 Existing regulatory bodies including co-regulatory and self-regulatory bodies will be invited to submit proposals to support the creation of an ombud function specifically to regulate the online environment, within their scope. These proposals together with other work by the DCDT will inform the design and implementation of an ombud, and if necessary, amendments will be prepared to give effect to the proposals.

Note, a request for proposals will not constitute a procurement activity, and does not guarantee any particular outcome.

This Stage is envisaged to take between six and twelve months.

Second Stage: to reform outdated regulations, to introduce new regulations, to determine if a new law is required and what amendments to other laws are necessary, and to finalise a code of conduct

- (a) Based on its research and consultations carried out in the First Stage, ICASA will, where appropriate, revise or create new regulations to give effect to policy and the amendments to the ECA, and to inform the DCDT, if it is found to be necessary, that a new Bill should be prepared to harmonise and rationalise any duplication in regulatory entities, policies, laws, and other instruments of regulation.
- (b) This Stage also enables the full implementation of the ombudsman and consultation on and the adoption of a Code of Conduct, consultation with all affected stakeholders, and commitments sought from industry participants.
- (c) This Stage is envisaged to take between twelve and eighteen months.

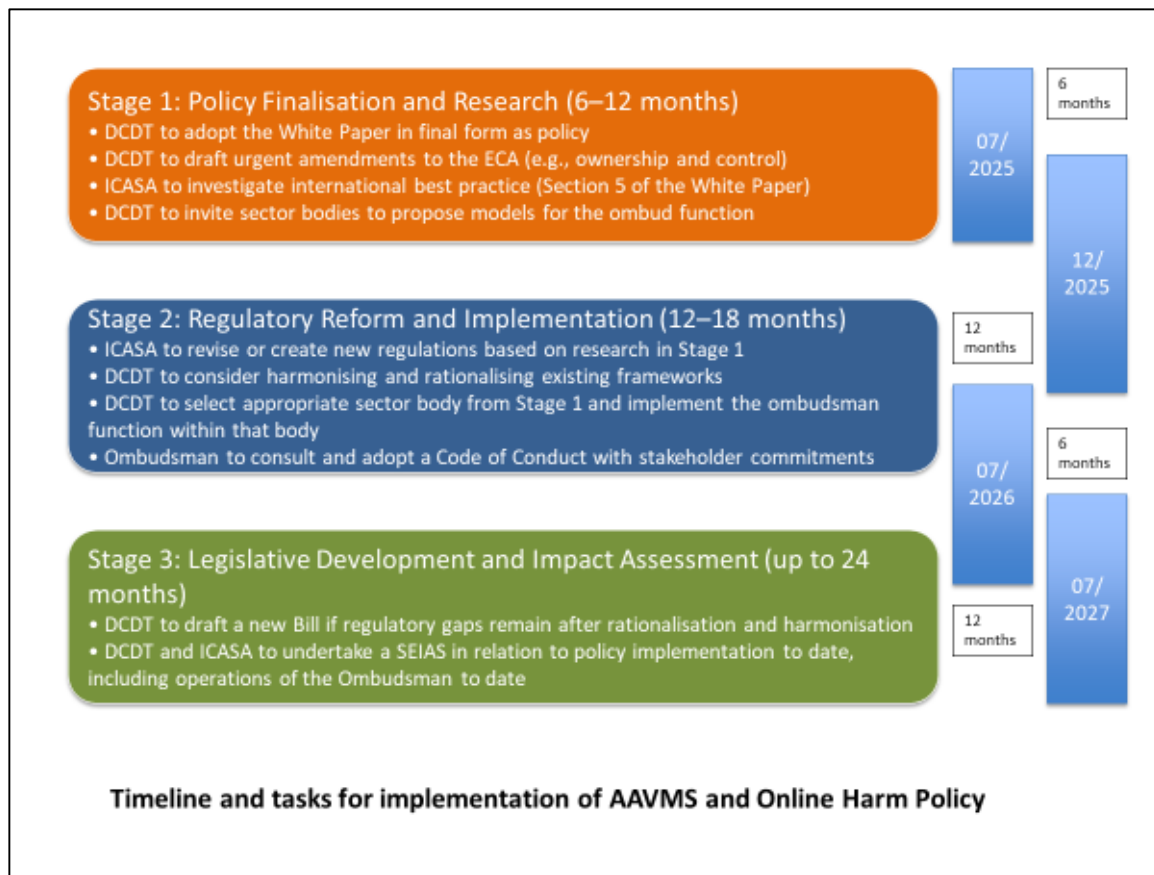
Third Stage: the drafting of a Bill and the repeal of other or parts of

other legislation (depending on the outcome of the Second Stage)

- (a) If the reviews undertaken in the First and Second Stages indicate that there are still gaps in the regulatory framework for AAVMS and online safety, then recommendations will be sought in relation to a new Bill.
- (b) However, implementation gaps will not be resolved by legislation only and at this point a socio-economic impact assessment will be undertaken of the implementation to date of the goals and objects of the Policy.
- (c) The duration of the Third Stage is likely to be up to twenty-four months – bearing in mind that the First and Second Stages will be laying the groundwork for this Third Stage.

The cooperation of industry and the rest of Government can, of course, ensure that this process is appropriately and efficiently conducted in a manner that benefits the citizens of South Africa, businesses including SMEs and SMMEs, licensees, aspirant participants, and related stakeholders.

The process is depicted graphically here:



Comments received from stakeholders will be taken into account in finalising the Policy.