

No. 531

18 June 2015

**Independent Communications Authority of South Africa**

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

**ICASA DRAFT SOUTH AFRICAN MUSIC CONTENT REGULATIONS****INVITATION FOR WRITTEN REPRESENTATIONS**

In terms of Section 4B of the Independent Communications Authority of South Africa Act (Act No 13 of 2000), interested persons are hereby invited to submit their written representations regarding the Draft Regulations on South African Music Content published herewith by the Authority. A copy of the Draft Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's Library at No. 164 Katherine Street, Pinmill Farm, (Ground Floor at Block D), Sandton between 09h00 and 16h00, Monday to Friday.

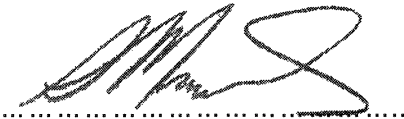
Written representations with regard to the Draft Regulations must be submitted to the Authority by no later than 16h00 on 14 August 2015 by post, hand delivery or electronically (in Microsoft Word) and marked specifically for attention: Mamedupe Kgatshe. Delivery address: Block A, Pinmill Farm, 164 Katherine Street, Sandton. Where possible, written representations should also be e-mailed to: [mkgatshe@icasa.org.za](mailto:mkgatshe@icasa.org.za) or by facsimile: 011 566-3260. Enquiries should be directed to 011 566-3259; between 10h00 and 16h00, Monday to Friday.

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

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

refused, the person who made the request will be allowed to withdraw such representations or portion(s) thereof.

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

A handwritten signature in black ink, appearing to be 'M. S.', with a horizontal dotted line underneath it.

DR STEPHEN MNCUBE  
CHAIRPERSON  
DATE 10/06/2015

## SCHEDULE

The Independent Communications Authority of South Africa (ICASA) has in terms of section 4(j) of the ICASA Act read with section 61 of the Electronic Communications Act (Act 36 of 2005 as amended) made the regulations in the Schedule.

### 1. Definitions

In these regulations any word to which a meaning has been assigned to it in the ICASA Act and the underlying statutes, will have that meaning, unless the context indicates otherwise-

**“Bouquet”** means a collection of video and / or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre;

**“Documentary”** means a factual presentation or analysis of musicians or composers, whether past or present, with a normal minimum duration of five minutes;

**“Interview”** means conversation between a radio presenter and musician(s) or composer(s) used as a basis of a broadcast, with a normal minimum duration of five minutes;

**“New Musician”** means a musician whose debut album has been on the market for six months or less;

**“Performance Period”** means the period of 126 hours in one week measured between the hours 05h00 and 23h00 each day;

### 2. Application of these Regulations

These regulations will apply to the holder of any category of sound broadcasting licence.

### **3. Imposition of Sound Broadcasting Licence conditions regarding South African Music**

#### **Public Sound Broadcasting Licensees**

- (1) A holder of a public sound broadcasting licence must ensure that after eighteen (18) months of the gazetting of these regulations, a minimum of 60% of the musical works broadcast in the performance period, increasing to 70% in the following year, consist of South African music and that such South African music is spread evenly throughout the performance period.

#### **Commercial Sound Broadcasting Licensees**

- (2) A holder of a commercial sound broadcasting licence must ensure that after eighteen (18) months of the gazetting of these regulations, a minimum of 35% of the musical works broadcast in the performance period consist of South African music and that such South African music is spread evenly throughout the performance period.

#### **Community Sound Broadcasting Licensees**

- (3) A holder of a community sound broadcasting licence must ensure that after eighteen (18) months of the gazetting of these regulations, a minimum of 60%, increasing by 10% annually to reach 80% of the musical works broadcast in the performance period consist of South African music and that such South African music is spread evenly throughout the performance period.

#### **Subscription Sound Broadcasting Licensees**

- (4) Every holder of a subscription sound broadcasting licence must ensure that after eighteen (18) months of the gazetting of these regulations, a minimum of 20% of their bouquets consist of channels made up of South African music content, increasing to 30% in the following year.

## **Public Broadcasting Commercial Services**

- (5) The commercial services arm or wing of the holder of a public sound broadcasting licence is subject to the same regulatory requirements as stipulated in sub regulation (2).

## **4. General Provisions**

- (1) A sound broadcasting service licensee that cannot meet the local content requirements must apply to the Authority for exclusion, and must submit proof that there is limited music supply in their defined format.
- (2) A sound broadcasting service licensee that cannot meet the local content requirements must submit proposals, with their application in terms of sub-regulation (1), on how they will work with the music industry to address the shortage of music supply in their defined format.
- (3) The proposals in terms of sub-regulation (2), if approved along with the application in terms of sub-regulation (1), will be included in the licensee's amended licence conditions.
- (4) The Authority encourage subscription broadcasters to broadcast audio sound channels devoted to playing South African local music.

## **5. Contraventions and penalties**

- (1) A licensee that contravenes any regulation of these Regulations, except regulation 3(3), is liable to a fine not exceeding the greater of R5 000 000 (five Million Rand) or 10% of the licensee's annual turnover for every day or part thereof during which the contravention continued.
- (2) A licensee that contravenes regulation 3(3) of these Regulations is liable to a fine not exceeding R50 000 (fifty Thousand Rand).

## 6. Formulas (Format Factors)

(1) The Music Points in terms of this sub-regulation contribute towards the calculation of the relevant minimum South African music content quota, which is calculated using the following formula: Format Factor (unit) x Duration.

(a) for every five minutes of coverage of live music = 2

(b) for an interview with South African musician(s) or composer(s) with a normal minimum of five minutes = 2

**Ten points are worth 1% towards the South African music content quota on a weekly basis.**

(2) The Music Points in terms of this sub-regulation contribute towards the calculation of the relevant minimum South African music content quota, which is calculated using the following formula: Format Factor (unit) x number of tracks:

for promoting new musicians whose debut albums have been on the market for six months or less = 1

**Ten points are worth 1% towards the South African music content quota on a weekly basis.**

## 7. Records

(1) The holder of a sound broadcasting licence must keep and maintain logs, statistical forms and programme records containing:

(a) particulars of –

(i) the percentages of South African music broadcast including quota calculations using format factors in the performance period; and

(ii) the time and duration of every such broadcast.

(b) such other particulars as may be required by the Authority.

(2) The logs, statistical forms and records contemplated in sub-regulation (1) must be preserved in original for a period of not less than 12 months after the date of last entry.

## **8. Repeal**

These Regulations repeal the 2006 ICASA South African Music Content Regulations published in government gazette no. 28453 of 31 January 2006.

## **9. Short Title**

These regulations are called the ICASA South African Music Content Regulations and shall commence upon publication in the government gazette.