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Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X10002, Sandton, 2146

ICASA DRAFT SOUTH AFRICAN TELEVISION 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 Television 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 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.



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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 sections 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 in the ICASA Act and Underlying Statutes will have that meaning unless the context indicates otherwise.

"Animation" means any form of television programming in which the images of character and action are made by photographing drawings, puppets or similar images in order to create the illusion of movement and includes such images created by computers;

"Animated Drama" means a scripted fiction or non-fiction story conveyed primarily through animated pictures and visuals;

"Arts Programming" means programming on culture and the arts, including, but not limited to the performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture and music but excluding programmes that exclusively feature music videos;

"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;

"Channel" means a single defined television programming service of a licensee other than a video on demand programming service;

"Children's Programming" means programming which is specifically produced for persons between the ages of 0 to 6 years and 7 to 12 years, which is educational, made from their point of view, and which is broadcast at times of the

day when persons in this age group are available in substantial numbers to watch;

"Current Affairs Programming" means programming that is not a news bulletin but which focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, national, regional and local significance;

"Documentary Programming" means a factual treatment or analysis of people, events or social issues, whether past or present, with a normal minimum duration of about half an hour with a single theme;

"Drama" means an audio-visual interpretation whether involving live actors or animation of a fully scripted screenplay or teleplay, literary work, dramatic work, folklore or improvised storytelling or performance, in which the dramatic elements of character, theme and plot are introduced and developed so as to form a narrative structure. It includes genres of drama such as situation comedy, soap operas and other genres in any of the following formats: one-off dramas including feature films, tele-plays and tele-movies, animated dramas, episodic drama series, serial dramas and mini-series;

"Educational Programming" means programming specifically and primarily designed to support structured educational activity whether such structured activity relates to institutional-based education;

"Feature Film" means a film produced primarily for theatrical release in cinemas;

"First Release Programme" means a programme that is first broadcast by a television licensee in South Africa and has not already been broadcast by another South African broadcasting licensee;

"Historically Disadvantaged Persons" means black persons, women, and people with disabilities;

"Knowledge-Building Programming" means programming acquired through personal experience, outside of the formal learning environments such as schools and training courses which provides information on subjects such as, for example, science, technology, health, law and citizens' rights, religion, culture, business, finance and the natural or built environment;

"Mini-Series" means a series with a pre-determined number of episodes usually drama and usually 26 episodes or less;

"Post-production" means the processes following completion of production including the editing of images and sound, creation of special visual effects, subtitling, processing and duplication of programmes as well as any other process necessary for the completion of the production;

"Prime Time" means the period between 18H00 and 22H00 every day;

"Produced" means a process of acquiring and/or developing a story or programme theme, selecting and engaging key creative personnel and exercising control over decisions relating to the development, costing, pre-production, production and post-production of the programme;

"Production" means the recording of images and sound to form the substantial and integral part of the programme;

"Production Costs" means, for the purpose of section 61 (2) (a) (vi) of the ECA, a minimum of 20% of the pre-production and production costs is incurred in the Republic;

"Repeat" means television programming that is not a first broadcast by a South African television licensee and has been broadcast by another South African television licensee;

“Serial Drama” means a drama series containing story-lines and developments that flow from episode to episode;

“Situation Comedy” means a television comedy set within a defined situation location, environment and characters and their relationships;

“Soap Opera” means a drama, usually daily, with an indefinite number of episodes and usually long-running;

“South African Drama” means drama programming which consists of South African television content and in which South Africans have exercised direction over the creative and administrative aspects of pre-production, production and post-production. South Africans will be taken to have exercised such direction if:

(a) in the case of programmes which have been produced in terms of section 61 (2)(a) (i), (ii), (iii) or (iv):

- (i) the director or directors of the programme and/or the writer or writers of the programme are South African;
- (ii) not less than 50% of the leading actors appearing in the programme are South African;
- (iii) not less than 75% of the major supporting cast, are South African; and
- (iv) not less than 50% of the crew are South African;

(b) in the case of programmes produced in terms of section 61 (2)(a) (v) and (vi):

- (i) not less than 50% of the production crew are South African; and
- (ii) South Africans are involved in post-production.

“South African Television Performance Period” means the total number of hours between 5H00 and 23H00 every day;

“Tele-play” means a drama usually located in a narrowly defined geographical area, and usually less than 90 minutes in length and often adapted from a play written for stage drama;

“Tele-movie” means a film produced for television.

2. Purpose

The purpose of these regulations is to develop, protect and promote national and provincial identity, culture and character. In achieving this, these regulations will seek to promote programming which:

- (a) is produced under South African creative control;
- (b) is identifiably South African, and recognises the diversity of all cultural backgrounds in South African society;
- (c) will develop a television industry which is owned and controlled by South Africans;
- (d) will establish a vibrant, dynamic, creative and economically productive South African film and television industry.

3. Public Television Broadcasting

- (1) A public television broadcasting licensee must ensure that after eighteen (18) months of the gazetting of these regulations in the case of an existing licence holder or such longer period as the Authority may determine, a minimum weekly average of 65% of its programming, measured over the period of a year, during the South African television performance period consists of South African television content and that such South African television content is spread evenly throughout the said performance period and prime time.
- (2) An incentive channel must ensure that a minimum weekly average starting at 30% after launch, increasing by 10% on an annual basis until reaching the minimum weekly average of 65% measured over the period of a year, during the

South African television performance period consists of South African television content.

- (3) In complying with its obligations in terms of sub-regulations (1) and (2) a public television broadcasting licensee must ensure that a minimum of:
- (a) 35% of its drama programming consists of South African drama;
 - (b) 80% of its current affairs programming consists of South African current affairs;
 - (c) 50% of its documentary programming consists of South African documentary programming;
 - (d) 50% of its knowledge building programming consists of South African knowledge building programming;
 - (e) 60% of its educational programming consists of South African educational programming; and
 - (f) 55% of its children's programming consists of South African children's programming.
- (4) The commercial arm or wing of a public television broadcasting licence is subject to the provisions of regulation 5.

4. Community Television Broadcasting

- (1) A community television broadcasting licensee must ensure that after eighteen (18) months of the gazetting of these regulations in the case of an existing licence holder or such longer period as the Authority may determine, a minimum weekly average of 65% of its programming, with at least 50% of the quota produced from the coverage area, measured over the period of a year, during the South African television performance period consists of South African television content and that such South African television content is spread evenly throughout the said performance period and prime time.
- (2) A new broadcast service licensee and any incentive channel must ensure that a minimum weekly average starting at 30% after launch of their services,

increasing by 10% on an annual basis until reaching the minimum weekly average of 65% measured over the period of a year, during the South African television performance period consists of South African television content.

5. Commercial Television Broadcasting Licensees

- (1) A commercial television broadcasting licensee must ensure that after eighteen (18) months of the gazetting of these regulations or such longer period as the Authority may determine, a minimum weekly average of 45% of its programming, measured over the period of a year, during the South African television performance period consists of South African television content.
- (2) A new broadcast service licensee and any incentive channels must ensure that a minimum weekly average starting at 20% after launch of their services, increasing by 10% on an annual basis until reaching the minimum weekly average of 45% measured over the period of a year, during the South African television performance period consists of South African television content.
- (3) In complying with its obligations in terms of sub-regulation (1) and (2) above, a commercial television licensee must ensure that a minimum of:
 - (a) 20% of its drama programming consists of South African drama;
 - (b) 50% of its current affairs programming consists of South African current affairs;
 - (c) 30% of its documentary programming consists of South African documentary programming;
 - (d) 30% of its knowledge-building programming consists of South African knowledge building programming; and
 - (e) 25% of its children's programming consists of South African children's programming.

6. Subscription Television Broadcasting

- (1) A subscription television broadcasting licensee that commission programmes must ensure that annually, a minimum of 15% percent of their channel acquisition budget is spent on South African content programming.
- (2) In complying with its obligation in terms of sub regulation (1), a subscription television broadcasting licensee must, to the extent that it is applicable to the type of broadcasting service, ensure that a minimum of 3% of its South African television content programming consists of South African drama programming.
- (3) A subscription broadcasting service licensee that acquire channels must ensure that annually, a minimum of 15% of their channel acquisition budget is spent on South African content channels that are compiled and up linked from South Africa.
- (4) The broadcasting by a subscription television broadcasting licensee of licensed free-to-air public television broadcasting services, licensed free-to-air commercial television broadcasting services and licensed community television broadcasting services will not count towards compliance.

7. Independent Television Production

- (1) A public, commercial, community, and subscription television broadcasting licensees must ensure that a minimum of 40% of their South African television content programming consists of programmes which are independent television productions and the independent television productions are spread evenly between, South African arts programming, South African drama, South African documentary, South African knowledge-building, South African children's and South African educational programming.
- (2) A public, commercial and subscription television broadcasting licensee must ensure that fifty percent (50%) of annual independently produced programmes budget is spent on previously marginalised local African languages and/or

programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities.

8. General Provisions

- (1) South African Local Content requirements will apply per bouquet and not per channel approach for any new digital broadcast service licensees and incentive channels.
- (2) Broadcasters must obtain genre points only for one category of genre.
- (3) Licensees must submit audited monitoring reports.
- (4) Submission of false, misleading or inaccurate information will be dealt with according to Section 17 H of the ICASA Act.

9. Contraventions and penalties

- (1) A licensee that contravenes any regulation of these Regulations 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 4 of these Regulations is liable to a fine not exceeding R50 000,00 (fifty Thousand Rand)

10. Formulas (Format Factors)

In order to assist a broadcasting service licensee not meeting the local content quotas, Format Factors only apply to the following listed categories:

- (1) The Drama Score for a South African drama is calculated using the following formula:

$$\text{Drama Score} = \text{Format Factor (unit)} \times \text{Duration (hours weekly)};$$

- (a) for a South African drama program that is a once-off (including feature films, telemovies, and mini-series) = 4
- (b) for a South African drama that is a series/serial produced at the rate of one hour or less per week = 3
- (c) for a South African series/serial produced at the rate of more than one hour per week = 2

The formula for scoring drama points is:

Drama Score = Format Factor x Duration.

For example, a feature film is calculated as Format Factor (4 points) x 2 hours = 8 points.

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

- (2) The African Language Drama Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for drama in any of the following languages: isiNdebele, Sepedi, Sesotho, Setswana, Siswati, Tshivenda, Xitsonga, isiXhosa and isiZulu = 4

The formula for scoring African language drama points is:

African Language Drama Score = Format Factor x Duration.

For example, a Tshivenda drama is calculated as Format Factor (4 points) x 1 hour = 4 points.

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

- (3) The Children's Programming Score is calculated using the following formula:

Format Factor (unit) x Duration (hours weekly);

- (a) for South African children's drama = 3
- (b) for South African children's knowledge-building programme = 2

The formula for scoring children's programming points is:

Children's Programming Score = Format Factor x Duration.

For example, South African children's drama is calculated as Format Factor (3 points) x 2 hours = 6 points.

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

- (4) The Arts Programming Score is calculated using the following formula:

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

- (a) for South African performing arts, visual arts, literature, fine arts, craft arts, creative writing, architecture, and music (excluding programmes that exclusively feature music videos) = 2

The formula for scoring arts programming points is:

Arts Programming Score = Format Factor x Duration

For example, a programme on South African literature is calculated as Format Factor (2 points) x 1 hour = 2 points.

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

- (5) The Score for Diversity in Commissioning is calculated using the following formula: Format Factor (unit) x Duration (hours weekly);

- (a) for programming produced by an independent production company based in Mpumalanga, the Northern Province, the North West, the Northern Cape, the Free State, and the Eastern Cape = 3
- (b) for programming produced by an independent production company based in Kwazulu-Natal = 2
- (c) for programming produced by independent production company controlled by historically disadvantaged persons = 3

The formula is:

Independent Production Company Score = Points x Duration

For example, the formula for commissioning a Mpumalanga-based company is calculated as Format Factor (3 points), plus controlled by historically disadvantaged person(s) (3 points) x 1 hour = 6 points.

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

- (6) The Score for the production of the following genres in African Languages, specifically for public regional and community television broadcasting services, is calculated using the following formula: Format Factor (unit) x Duration (hours weekly):

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

- (7) The Score for any programme that do not fall under any category or genre as contemplated in these regulations such as magazine, talk shows, religious and game show programmes:

Programme = Format Factor (unit) x Duration (hours weekly)

One hour or less per week = 2

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

- (8) The Repeats Score is:

- (a) for first repeat of a South African programme = 50%;
- (b) for a South African programme originally screened on another South African television channel = 50%;
- (c) for a rebroadcast of the week's episodes = 50%; and
- (d) any further repeats of the programme shall not count towards compliance with the South African content quota.

11. Records

- (1) Public, community, commercial and subscription television service providers must keep and maintain logs, statistical forms and programme records in a format prescribed by the Authority:-
 - (a) full particulars of all South African content programming broadcast in each week, indicating each category of South African television content;
 - (b) full particulars of name(s) of the author(s) of the drama script indicating their nationalities, or that of the adaptor if it is drawn from a literary source;
 - (c) full particulars of the name(s) of the drama director(s) indicating their nationalities;
 - (d) a list of the creative and technical personnel involved in drama production indicating their nationalities and, in the case of performers, the roles they play; and
 - (e) 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 for a period of not less than 36 months after the last date of entry.

12. Repeal

These Regulations repeal the 2006 ICASA South African Television Content Regulations published in government gazette no. 28454 of 31 January 2006.

13. Short Title

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