5 Policy Options: Audio and Audio-visual Content Services

5.1 Introduction

Convergence, the move to digital terrestrial television, the Internet and the introduction of more devices such as connected TVs will increasingly change how, where and when people in South Africa will access and interact with audio and audio-visual content. This offers great opportunities for audiences, service providers and content producers but also will require a change in the way “broadcasting” is regulated and the policy framework for the sector so that public interest goals continue to be met. A range of questions will need to be considered in crafting a new White Paper, such as:

- How in a multichannel, multiscreen environment does policy and law ensure that all South Africans, regardless of geography, income, age, gender, home language, ability ... have access to a wide range of creative and compelling content in all languages, from diverse sources (including community, provincial, national and international content)?
- How can Government promote constitutional rights such as equality and freedom of expression and ensure a new information divide is not inadvertently created – with some people able to access a range of content and others only able to view and listen to content provided by a limited number of traditional broadcasters?
- How does policy continue to protect children from harmful and age-inappropriate content and ensure audiences can make informed choices about what to view and listen to?

The terms “audio” and “audio-visual” content recognise the changes increased access to high-speed broadband and the introduction of digital terrestrial television and new digital radio will bring to both audiences and content providers. Broadcasting-like content will be increasingly available across a number of platforms and on a range of devices (over the air, on the internet, on television and radio sets, and on computers, tablets and mobile phones). Audiences will be able to watch and listen to content “any-time, anywhere, any how”: In real-time (as per the programming schedule), on catch-up services (scheduled programmes made available to be viewed or listened to outside the schedule), on demand via catalogues/search engines (e.g. video on-demand) and on the Internet via managed/closed or open portals (such as Internet Protocol TV, Web TV, social media, or other web pages). This content will originate from both inside South Africa and elsewhere and will be provided by South African, international and multinational institutions.

Policy will therefore need to adapt to facilitate and promote the availability of public interest programming, including South African music and content in all languages. At the same time, a new White Paper and related laws will need to focus on ensuring that traditional broadcasting services are viable so that they can fulfil South African content and news and information obligations even as they compete for audiences, advertising and content with both additional traditional channels and radio services and with newer media distributed from inside and outside the country.

As with other chapters/papers of this Discussion Paper, the key issues identified by those that responded to the Framing Paper and Green Paper and/or participated in consultative meetings are
highlighted. Possible policy options to address these issues are then outlined for comment. The options proposed reflect submissions from stakeholders, contributions from people and organisations that participated in national and provincial workshops on the Green Paper and findings of research commissioned as part of the policy review process.

Several issues which were highlighted by stakeholders which are not covered in this Chapter/Options Paper:

- Regulatory principles and net neutrality: Given convergence, these issues are relevant not only to audio and audio-visual content but affect and apply all sectors and areas covered in this Discussion Paper. They are therefore dealt with in Chapter Two: Policy Options – Key Principles and Approaches.
- Spectrum related policies and principles are covered in the Infrastructure & Services Paper (Chapter Three) as are issues related to signal distribution/transmission.
- Skills training and industry growth matters are focused on in the Industry Growth Paper (Chapter Six).

5.1.1 Scope

This chapter covers all audio and audio-visual content carried over electronic communications networks and services. While it focuses on policy suggestions relating to regulation, it does not only deal with regulated and/or licensed broadcasters or content providers. Government policy is aimed at stimulating audio and audio-visual content production and investment across a range of genres, formats and languages. It also recognises that compelling content is critical to drive take-up of technologies such as broadband and the importance of ensuring that audiences not only access programming but also produce, share and engage with content.

5.1.2 Projections

It is important in developing policy to consider future projections. It is recognised that reliable projections for the audio and audio-visual content sector are particularly difficult given uncertainties about how (or if) audiences will change the ways that they access broadcasting and broadcasting-like content. What is certain, however, is that with the introduction of multichannel television via DTT, there will be audience and revenue fragmentation on the terrestrial platform.

Pricewaterhouse Cooper Inc (PwC) releases an annual Entertainment and Media Outlook with their projections for the sector for the next five years. The latest Outlook report (2014) predicts that traditional broadcasting services (pay and free-to-air) will continue to dominate both audiences and revenue until at least 2018. Audiences will though increasingly supplement their viewing and listening with over-the-top services as access to broadband increases.¹ This is in line with international trends, where, for example, in the UK, despite greater access to high speed broadband, traditional television viewership numbers have not dropped significantly (though there are slight variances dependent on age predominantly) and those viewers that do access content via the Internet, mostly make use of traditional broadcasters’ catch-up services.² Key projections in the PwC report relevant to the broadcasting and audiovisual content sector/s include:

- South Africa’s total entertainment and media market (including broadcasting, print and magazines, music, cinema, out of home, sports and spend on accessing the Internet) will see a consolidated

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annual growth rate (CAGR) of 10.2% to 2018 (from R117 billion actual in 2013 to R190 billion in 2018). Spend on accessing the Internet will be the largest and fastest growing segment.

- The number of mobile Internet subscribers is forecast to rise from 15 million in 2013 to 35.2m in 2018.
- Television is the second largest segment with combined revenues from TV subscription and advertising (including traditional television services, video-on-demand and pay-per-view) projected to reach an estimated R39.6 billion in 2018 (5.2% CAGR). PwC states: “A growing middle class with greater disposable income will lead to a rise in pay-tv households. This, alongside regular increases in the licence fee and the perennial popularity of television as a mass medium for advertisers, will account for growth”.
- Television advertising alone, according to PwC forecasts, will see a CAGR of 6.8% from 2014 to 2018 (from R13.2 billion to R18.4 billion).
- The subscription share of total TV spend is likely to drop from 57% in 2013 to 53.6% in 2018, while TV advertising's share will increase from 43% to 46.4% over the same period. The number of subscribers will increase to 6.8 million households from 4.8 million in 2013.
- Radio is expected to have a higher revenue growth rate than TV with a CAGR of 8.2% over the period (to R6.2bn in 2018) as its “reach across a wide demographic will keep it at the forefront of advertising campaigns”.
- Internet advertising will have the sharpest increase – at a CAGR of 22.7% - but off a low base. The spend on internet advertising will increase from R1.6 billion to R4.4 billion in 2018.
- The Report states that it expects over-the-top TV to “remain nascent” over the period due to limited broadband subscribers. While radio listenership will continue to grow with an increase in the number of hours spent commuting and its focus on regional and local traffic and weather, internet streaming of music will start to grow over the period.

5.2 Definitions

One of the first issues that must be addressed in reviewing current broadcasting related policies is the definition of “broadcasting/content services” and which services would need to be licensed. The Electronic Communications Act (EC Act) currently defines broadcasting as “unidirectional” and therefore linear. It also states that a ‘broadcasting service” excludes “a service which provides no more than data or text (including associated still images)” and “a service in which the provision of audio-visual or audio material is incidental to the provision of that service”. ICASA is empowered to prescribe other services or classes of services which do not have to have a broadcast licence.³

Given convergence, many countries have expanded such definitions to include non-linear television and/or broadcasting-like services (such as VOD and over-the-top television) and a graduated approach to regulation. Respondents to this section of the Green Paper generally agreed that the current definition should be amended to cover both linear and non-linear broadcast-like content, regardless of the distribution platform used. Some however expressed caution, stating that the approach to regulation of content services should not stifle innovation.⁴ Stakeholders suggested that definitions in the European Audiovisual Media Services Directive (AVMS) and proposals made by the Australian Convergence Review panel should be considered. A concern was raised that the policy and legislation should clearly differentiate between e-commerce and audio-visual content services.

³ Electronic Communications Act, Section 1: Definitions
⁴ Submissions include ACT-SA, e.tv, MPDP, MTN, NAB, R2K, SABC, SACF, SOS, Telkom, Vodacom, Intel among others
It should be noted that the definition of content services/broadcasting could impact on other entities and laws. For example, the Film and Publications Act excludes broadcasting from the Film and Publications Board ambit.

**OPTIONS**

There is general agreement that there is a need to more broadly define content services so that linear (traditional broadcasting) and broadcasting-like non-linear (on-demand) services are covered.

### 5.2.1 Exclusions

There seemed to be agreement to continue to specifically exclude data or text services and those where the “provision of audio-visual or audio material is incidental to the provision of that service”.

It is proposed that current exclusions (data or text services and those where the provision of audio-visual and/or audio material is incidental) remain.

- Do you agree with this proposal?

### 5.2.2 Focus

The options below are based on the European AVMS and the proposal from the 2012 Australian Convergence Review. There are differences in these approaches but both limit regulation to:

- Services under the editorial control of a content services/media services provider; and
- Services which provide programmes/professional content/broadcasting-like content to the general public by electronic communications networks.

This excludes, for example, social media, blogs, and sites such as YouTube.

It is proposed that similar limits apply in South Africa, i.e. content regulation only applies to:

- Services which are under the editorial control of a provider
- Services which provide programming/professional content to the general public.

Do you agree with this proposal?

**Option One: Graduated approach to linear and non-linear services:**

In Europe distinctions are based on the level of control audiences and end-users have over programming. The AVMS directive applies to on-demand (non-linear) and broadcasting (linear) services, with lighter touch regulation for on-demand content providers.

Minimum provisions that apply to all audio-visual services:

- Rules prohibiting hate speech;
- Requirements to make services accessible to people with a visual or hearing disability; and
- Rules to ensure adherence to copyright and rights regimes;
- Stipulations that editorial content must be distinguishable from commercial content; and
- Requirements on editorial independence from sponsors and advertisers.

Rules specific to non-linear services:

- Measures to protect children from harmful content; and
- Requirements to promote European content, including those on financial contributions and on prominence of European works in catalogues of programmes.
Provisions specific to broadcasters (linear services):

- Measures to limit exclusive rights to events of major importance to society.
- Regulators should ensure broadcasters have access to “short news reports” on a reasonable and non-discriminatory basis to “events of high interest” to the public, acquired exclusively by any content provider. Short extracts can only be used for news broadcasts.
- A majority of transmission time must be dedicated to European programming.
- Detailed rules on editorial independence from advertising and teleshopping, including limits on the number of breaks for commercials in children’s programmes, news and films (only one break every 30 minutes for programmes longer than half an hour).
- Rules limiting advertising to no more than 12 minutes in any hour.
- Requirements to protect children; and
- Right of reply rules.

Other European directives that affect content service providers include:

- The Access Directive which allows regulators to impose ‘must carry’ obligations on radio and TV services if a significant number of viewers use such networks as their principal means to access these channels. Regulators can also impose obligations on operators to provide access to electronic programme guides.
- The E-Commerce Directive which applies in some instances to on-demand services; and
- Competition rules including state aid rules and specific rules/case law applied to, for example, premium content and vertical and horizontal integration.

**Option Two: Regulation dependent on influence:**

In 2012, an Australian government appointed committee set up to review the regulatory framework in light of convergence issued its final report. It proposed amending the law to only regulate significant content providers which influence the Australian public and are under the editorial control of providers. Others it recommended should not be licensed/regulated. It proposed “thresholds” to define what would be regarded as significant and therefore subject to regulation. Providers would have to meet all thresholds:

- They must have a large number of Australian users of that content. The review proposes that this be set at 500,000 or more initially; and
- They must receive a high level of revenue (proposed at AUS$200m based on 2011 revenue of commercial TV services) derived from supplying professional content to Australians.

It proposed that the threshold for users and revenue be finally determined by a new content focused regulator so as to exclude start-ups and small content providers. The focus of regulation of content service enterprises should be on universal access (including access to public interest programming), media ownership, content standards and common classification systems across different media, the protection of children and Australian content. In Australia the competition and consumer protection authority is given responsibilities in relation to ICT providers and thus in that country the regulator does not deal with competition or consumer protection related issues.

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5 In terms of the EU framework, the rules set are minimum requirements. Member countries must therefore rules that at least set the minimum requirements, but are allowed to introduce additional measures and impose greater limits (i.e. some countries have stricter limits on advertising breaks for different sectors of broadcaster).

6 Note that shortly after the Review was published there was a change of Government in Australia and all recommendations have seemingly not been addressed/considered by the new Government.
Option Three: Combination

The South African definition of content services could combine the approaches adopted in Europe and proposed in Australia. It could thus stipulate that all broadcasting and broadcasting-like content services as suggested by the AVMS directive be covered, but that even the minimum obligations only kick in when identified thresholds are reached (including audience levels and/or revenue).

- Which of the above options should be considered?
- Please make suggestions on what thresholds would be fair and how these should be determined.

5.2.3 Grey areas

It is important to reflect on the impact of definitions and possible grey areas.

5.2.3.1 Existing on-demand/Internet services

There are currently a number of Internet audio/radio services available in South Africa. Several of these might qualify as radio or non-linear audio services if the European approach is adopted.

- Should existing South African based Internet radio services be licence/authorisation?
- If so, what approach should be taken to those services which are already available online? Would there, for example, need to be provisions for grandfathering?

5.2.3.2 Future possible blurring of distinction between traditional and on-demand services

The distinction between traditional broadcasters and on-demand providers might become increasingly blurred on connected devices (including connected television sets). Given that the Internet allows service providers to monitor a data trail, on-demand providers might increasingly suggest a “schedule” of programmes based on the user’s profile, for example. Broadcasters provide programmes via a schedule whereas on-demand providers generally provide subscribers/audiences with a catalogue to choose programmes from. The “lighter touch” regulatory approach is based on the assumption that audiences have greater control over what they view or listen to. This distinction could however be increasingly blurred.

- How, if at all, should policy and regulation best respond to the possible blurring of distinction between traditional broadcasting and on-demand services?

5.2.3.3 The Internet is global

The Internet is also “borderless” and, for example, Internet Protocol Television Services (IPTV), web TV and on-demand audio and audio-visual services can be streamed into South Africa from anywhere in the world. Some such services might not specifically target South African audiences but could end up competing for audiences and advertising with licensed South African providers. Others might opt to operate outside of South Africa to avoid regulation, including content regulation, but specifically target and market services to South African providers.

Enforcement of provisions that no provider can “broadcast” without a licence could be difficult when content is streamed from elsewhere in the world. If these services are streamed from countries that South Africa has relationships with (e.g. Southern African Development Community countries), agreements could be reached to ensure that services have to be licensed or authorised in their “source” country to address this problem. However, services can be streamed from anywhere in the
world, and therefore this will not always be a remedy. If special devices are needed to access this content, it will be possible to restrict the sale of these, but this also will not always apply.

How, if at all, should South African policy approach Internet content providers from outside the country?

5.3 Focus of regulation

As can be seen from the above examples of approaches to regulation, countries also differ on the focus areas of regulation. The European Directive outlines a number of areas for regulation, while the Australian Review Panel proposed limiting the focus to four key issues. While several responses to the Green Paper said that the existing objectives in the White Paper and EC Act remain important,\(^7\) MultiChoice and M-Net in a joint submission said these are “outdated”, had in some instances been achieved and therefore should be reconsidered. The submission said the viability of broadcasters given new competition from, for example, on-demand services and social media, should be considered. They suggested that regulation be limited to specific objectives “e.g. to protect children, stimulate local content development, create an enabling environment”.

In this regard it is important to highlight that submissions the principles adopted (see Chapter One: Introduction) are based on rights set in the Constitution. The question is therefore if new technologies might impact on the need for regulatory intervention/s to meet each goal. The debate therefore centres on whether it is possible to determine this up-front or rather regularly assess the need for intervention on an “objective-by-objective” basis.

OPTIONS

**Option One: Status quo**

Regulation would continue to address a broad range of goals with the public service broadcaster having greater obligations than commercial services. Subscription services and on-demand providers would be subject to lighter touch regulation. The ongoing need for regulatory interventions to achieve each objective, and, if so, what type of intervention, would be continuously assessed.

**Option Two: Narrow focus**

The focus of regulation of commercial services would be limited to, for example:

- Universal access;
- Ownership plurality;
- The promotion of South African content;
- The protection of children; and
- Ensuring fair competition.

The public broadcaster (and to a more limited extent community broadcasters) would be responsible for fulfilling other objectives.

Which option do you prefer? Are there other options? Please also indicate what objectives you propose should be prioritised.

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\(^7\) These include SOS, the MPDP, the MMA and R2K as well as submissions from individuals
5.4 Licensing

5.4.1 Licence Categories

There are currently two categories of broadcast licence:

- Class – for community broadcasters; and
- Individual - for commercial and public broadcasting service licensees

All broadcasters also require a frequency spectrum licence.

Given that the definition of broadcasting might be extended to include on-demand service providers, and in recognition of the changing environment (including, for example, the introduction of multi-channel terrestrial television), it is necessary to consider if these two categories are still the best approach to licensing or whether new categories should be introduced, taking into account the new content value-chain which introduces not only non-linear services, but also new operations, processes and players in relation to television (radio is not affected to the same extent as yet) i.e.:

- Channel packaging of individual channels;
- Channel aggregation into bouquets;
- Aligned services such as electronic programme guide (EPG) development and backdoor services such as subscriber management, complaints etc.;
- Mux operation;
- Multiplexing;
- Platform operation (an end-to-end service, managing a platform and the content); and
- Platform service operator – same as above, but on the basis of lease of platform.

ODM in its submission on the Green Paper stated that there is a need to review separate licences for content, transmission and operation of services as new service providers will be able to perform all these functions and the current approach of separate licences is untenable.

Other related issues are:

- Which category of licence would new services (VOD, OTT etc.) require? MultiChoice and M-Net suggested that they be categorised as class licences.
- If there is a need to introduce a multiplex operator licence separate from a transmission/distribution licence? Sentech has proposed this.

It is also useful in considering these issues to look at approaches in other countries. In the UK, for example, there is a two-tier licensing process with platform licences (including a multiplex licence) separated from programme/content provider licences. The following categories of television licence are provided for:

- Television licence (awarded to the existing FTA services which are required to provide some public content programming i.e. the Channel 4, Channel 5 and ITV companies)
- Digital Television Programme Service licence for a block of transmission capacity on the digital multiplex for TV programmes (including interactive enhancements). The applicant has to provide proof of an agreement with the multiplex network operator regarding capacity.

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8 Note that challenges identified in the review process relating to the class licensing process for community broadcasters are dealt with in the section on community broadcasters
- Digital Television Additional Service licences which include services such as electronic programme guides (EPGs) and teletext on the multiplex.
- Television Licensable Content Services licences for those that provide television programmes or EPGs over electronic networks other than the DTT network (e.g. satellite, cable, Internet or mobile). This includes conventional programming and ancillary services (such as subtitling). Ofcom stipulates that this licence does not guarantee space on the relevant platform.

The licensees have to abide by the Ofcom Broadcasting Code and other relevant rules (e.g. on advertising). Television and DTPS licensees also have to meet requirements on European content (at least 50% of programming should be European), commissioning of independent production, original content and listed sports events. Network/platform licensees are required to adhere to must-carry provisions and have conditions relating to the range and nature of services they cover.  

Ofcom has, in line with the European AVMS, also provided for licensing of on-demand services and entered into a co-regulatory agreement with the Authority for Television on Demand (Atvod) which requires services notify it before providing services and comply with the Authority’s codes. Radio licences include those for local radio, community radio, digital radio and radio restricted services (e.g. services that provide only information on weather and traffic).

Policy and legislation will need to take account of the changes introduced by the migration to DTT as well as any new definition of “content services/broadcasting”. The proposals and options below separate out general issues, licence categories and the process to be adopted in approving, authorising and/or registering services.

5.4.1.1 Options: Spectrum licences
General spectrum related issues, including fees, are dealt with in Chapter 3 (Policy Options - Infrastructure and Services) This section focuses on new issues. Policy applying to television will need to recognise that a digital licensee will be allocated capacity on a multiplex (MUX) rather than a specific radio frequency. The multiplex will operate across a number of frequencies. The legislative requirement that all broadcasters should get a radio frequency spectrum licence might need to be reviewed, therefore. It should also be noted that on-demand and broadcasting-like services distributed over the Internet will also not use frequency spectrum.

It is recognised that this has been a lengthy debate – with broadcasters and signal distributors adopting different positions on this in the 2005 Digital Migration Working Group recommendations on the migration from analogue to digital terrestrial television. Broadcasters have expressed concern that if they do not have licences that specify the frequencies used, they could be more easily moved off these frequencies which would have consequences for viewers. These concerns are noted, but could be addressed through, for example, linking the licence to the MUX and the capacity they have been granted very directly, or by including such provisions in the licences granted to signal distributors for the MUX or introducing a MUX operating licence.

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Traditional radio licensees would still require a radio frequency spectrum licence.

- How do you propose the above issue is resolved?
- Are there any other general considerations that should be included in a final policy?

5.4.1.2 Options: Licence categories

**Option One: Status quo adapted**

The current class and individual licensing approach would be retained, but adapted to accommodate new categories, if necessary, such as VOD or national non-profit services (see section on community broadcasting). As indicated in later sections, a specific content services class licence category could be introduced, recognising the distinctive nature of broadcasting/content services.

**Option Two: New categories**

New categories of broadcasting and content services licence would be set out which would outline lighter touch requirements for certain categories such as non-linear services. For example:

- Community broadcasting licence (radio and television);
- On-demand programming services/content services licence;
- Special event licences/restricted service licence;
- Digital television licence;
- Analogue commercial radio licence;
- Public broadcasting licences (digital or television and analogue/digital for radio);
- Additional services licences (for EPG’s, new services such as teletext services or radio services which give particular information e.g. weather/traffic updates); and/or
- MUX operator licence.

**Option Three: Other options?**

Are there alternative options for categorising licences?

- Which option do you propose the policy adopts? Please give details of the types/categories of service you propose under your preferred option.

5.4.1.3 Options: Multiplex operator licence

If it is determined that there will be a separate multiplex (MUX) operator licence, it will be important to consider who this would be awarded to (e.g. the signal distributor, the broadcasters, and broadcasters and signal distributor or a separate entity) and what licence conditions would be placed on this licensee. Based on an assessment of approaches in other countries, the term ‘multiplex operator’ here refers to the entity responsible for managing the bandwidth allocated to a particular multiplex and the relationship between the different players involved (broadcasters assigned capacity on the MUX and signal distributors appointed to transmit this signal). It does not incorporate the activity of multiplexing (encoding and packaging). As there will be different broadcasters on each of the multiplexes, the introduction of a multiplex operator licence could assist in defining the relationship between each licensee.
Different countries have allocated differing responsibilities to multiplex operators – with some, for example, setting requirements for the EPG on the MUX operator and others including open access requirements.\(^{11}\)

Note that the introduction of this licence category could assist in addressing the issue of the allocation of frequencies via a spectrum licence as this could be awarded to the multiplex operator which could include broadcasters operating on the MUX.

Given the range of possibilities, different options are not listed below, but rather questions asked. Stakeholders should elaborate on their responses in order to assist the policy development process should it be decided that a multiplex operator licence would be introduced.

- Which entity or entities should be granted the multiplex operator licence if this is introduced – i.e. should broadcasters allocated capacity be required to set up a company/entity which would be allocated the licence? Should the signal distributor be granted a separate licence with specific licence conditions? Should it be given to both broadcasters and signal distributor?
- What specific licence obligations should apply to a MUX operator?

5.4.1.4 Options: Process and requirements

For each category of service, the policy should define the process to apply for and renew the licence. It would also need to stipulate the scope of regulation for each category i.e. what sorts of obligations should apply to on-demand services. It must define:

- Which categories of licence would have to wait for an invitation to apply and what obligations would apply to these.
- What considerations would guide the granting of individual licences.
- Which services/categories of licence could apply at any time and/or be registered and the processes involved. For example, a simpler and quicker process to award community broadcasting licences is likely to still be necessary, though the regulator might be required to consider whether or not an applicant would meet the requirements set for the sector (i.e. is non-profit and controlled by a community). On-demand services are likely to require an even simpler licensing process.
- Whether there are instances when co-regulation could assist and, if so, what criteria should be considered in adopting this approach. Any co-regulatory framework would need to define the responsibilities of the regulator i.e. what rules and/or guidelines would need to be set for accredited co-regulators and what considerations and processes should be taken into account if the regulator might want to review its decision on co-regulation.

The policy could further require the regulator to perform a public value test/regulatory impact assessment before inviting applications for significant licences (e.g. new major commercial radio or television services), including an assessment of the market impact of a new service and an analysis of what, if any, specific criteria would be set to ensure specific policy objectives such as diversity.

\(^{11}\) The individual approaches are not listed here due to the many variations adopted. The following reports however include information on this which could assist stakeholders in considering the issues: The European Platform of Regulatory Authorities, “Plenary Session 2: Regulatory and Licensing Models for DTT “, 32nd EPRA Meeting, Belgrade, 6-8 October 2010, [http://epra3-production.s3.amazonaws.com/attachments/files/817/original/DTT_summary_answers_final_revised.pdf](http://epra3-production.s3.amazonaws.com/attachments/files/817/original/DTT_summary_answers_final_revised.pdf) and the International Telecommunications Union, Guidelines for the transition from analogue to digital broadcasting, ITU 05-2010, [http://www.itu.int/dms_pub/itu-d/opb/hdb/D-HDB-GUIDELINES.01-2010-R1.PDF-E.pdf](http://www.itu.int/dms_pub/itu-d/opb/hdb/D-HDB-GUIDELINES.01-2010-R1.PDF-E.pdf)
5.4.1.5 Options: Multi-channel broadcasting - authorisation vs. licensing of channels

There is a need to specifically consider the licensing processes for multi-channel services in light of DTT. This issue is isolated as several stakeholders made specific submissions on this issue.

The SOS raised questions about the best way to ensure public interest objectives are met through licensing and noted that it did not believe the channel authorisation process adopted by ICASA for DTT would achieve this. The SABC meanwhile stated that under ICASA’s DTT regulations, it is the only broadcaster required to undergo a public value test for each channel authorisation and said that it is concerned this would result in delays, potentially negatively affecting on its ability to compete with other licensees and therefore its viability. The broadcaster further recommended that ICASA be compelled to conduct a market study before inviting new individual licence applications. The SABC also stated that it and other terrestrial broadcasters should be licensed as a network – with licence conditions applying to the network rather than individual channels. It stated that this was essential so that licensees could have sufficient flexibility to respond to audience need.

Channel authorisation provisions were introduced in the White Paper on Broadcasting in 1998 with the adoption of a framework for licensing of satellite television. As FTA television broadcasting was then all analogue, the policy did not specifically consider whether the authorisation process was appropriate for FTA licensing. The 1999 Broadcasting Act promulgated in line with the White Paper stated that a broadcasting licence consisting of more than one channel could not introduce new channels unless these were authorised in terms of the authorisation process prescribed by the Authority. ICASA in its subscription broadcasting position paper and regulations set out a very simple authorisation process that gives the regulator limited powers to refuse such application.

ICASA has in its digital terrestrial television Position Paper and Regulations outlined the process for authorisation of channels by commercial and public broadcasting licensees. The authorisation process set out for FTA broadcasters is largely administrative, but the SABC would have to undergo a public value test for each channel. There are several key issues which need to be considered in reviewing the current framework relating to the approval by ICASA of channels in a multi-channel environment:

- If licence conditions would be network-wide or if there would be a need to include any channel specific conditions.

12 Section 4(4) and 4(3) of the Broadcasting Act. These sections were repealed with the introduction of the EC Act.
- Whether or not the authorisation process as outlined in regulation allows ICASA to fulfil its mandate of ensuring that individual broadcasting licensees offer a diverse range of programming, including South African content.
- If, given the different approaches to regulation of FTA and subscription services, the channel authorisation process should be the same for these two categories of broadcaster. Fair competition principles would be important to consider in relation to this.
- If there should be a different approach for satellite versus terrestrial broadcasters (whether FTA or subscription).

The options below are not all mutually exclusive.

**Option One: Network licences**

Licences would be given to a network though ICASA would be required to review its current standard licence conditions for terrestrial television broadcasters in order to ensure diversity across the network. Policy and legislation could specify that the network licence conditions would be adapted if a licensee introduces additional channels (i.e. a licensee offers six rather than five channels). This might be necessary if a licence, for example, specifies that the network should have a certain number of minutes of a particular genre of programming across its bouquet rather than sets a minimum percentage. This would not necessarily preclude specific conditions being set on individual channels.

**Option Two: Individual channel licences**

The current approach of individual channel licensing would remain for FTA broadcasters. While a broadcaster would be allocated capacity on the multiplex, each channel provided would have individual licence conditions.

- Which option do you think would be most efficient and effective?
- How can the licensing process best promote policy obligations such as diversity?
- What other options could be adopted?

**Options: Channel authorisation**

If it is decided that the network approach would best meet policy objectives, there might be a need to review the channel authorisation process. In considering this it will be necessary to weigh up the need for efficiency in authorising new channels to promote take-up and offer audiences a range of channels, with the need to ensure fair competition and promote real content and language diversity. It will also be necessary to consider if the same approach should be adopted for subscription and FTA services, public and commercial services and for satellite and terrestrial broadcasters.

There are a range of options:

- More stringent approval processes could be set for public broadcasting services than for commercial services (as currently in the DTT regulations). It might however be necessary to more clearly define what would constitute a public value test for public broadcasting channels (i.e. what the regulator should take into account in assessing public value).
- The process for authorisation of public and commercial FTA terrestrial services could be similar e.g. all licensees would have to show that the channel would enhance diversity.
- There could be lighter touch approaches for satellite FTA channels or satellite licensees could have to comply with similar provisions to those in place for terrestrial broadcasters.
There could be lighter touch approaches for terrestrial subscription services – though this process too could be more rigorous than that for satellite services.

What channel authorisation process do you propose would best meet policy obligations of diversity, fair competition and promotion of the viability of individual services?

Please indicate if you propose that different approaches are adopted for the different categories of multi-channel licensee. Please motivate your response.

5.5 Three tier system

The current regulatory framework for broadcasting licensees (linear content providers) is focused on facilitating diversity and plurality of content and service. The three tier broadcasting framework of public, commercial and community services (whether FTA and subscription) is one of the key ways of achieving this. All tiers have to fulfil some public interest obligations with differing responsibilities allocated to each tier and service.

Questions have been raised by some stakeholders about whether, with convergence, the three tier system is still relevant or the best means to promote public interest objectives. The SACF, for example, indicated that its members had different opinions on the compatibility of a three tier system in the long term given convergence. It stated that some members indicated that with “all communications migrating towards integrated packet switched technologies”, the policy should make provision for future changes to the system to make sure that “opportunities for each tier” are not lost. The SACF proposed that the White Paper take into account that “a migratory path from the current three tier system to a fully converged and flexible horizontal sector structure should be anticipated”. National Treasury in its submission raised a concern that the three tier system could result in unfair competition and the entrenching of the SABC if it was seen as an end and not a means of achieving key principles.

Others have suggested that there is a need rather to adapt and/or strengthen the system. The NAB, for example, submitted that the three tier system still has a role to play in the converged environment, but needs to evolve to achieve the objectives, recognising that “broadcasters...can now be accessed online, public interest and local content can be made available on various platforms, broadcasters are no longer geographically confined to a specific footprint and audiences engage with broadcasting content on a range of social media platforms”. SOS stated that it believes the three tier system needs to be strengthened to ensure each tier is distinct. The Coalition said that an over-reliance by all three tiers on commercial funding blurs distinctions exacerbated by ICASA’s failure to effectively monitor compliance by licensees.

Both Mindset and ACT-SA meanwhile raised the possible need for a “fourth tier” – national/provincial FTA non-profit broadcasters. Such service/s could be specifically focused on fulfilling key objectives in the Act (i.e. education) or a neglected sector of the audience (e.g. youth).

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13 SACF, Green Paper Submission, page 37
14 National Treasury, Green Paper Submission, page 3 paragraph 3.1
15 NAB, Green Paper Submission, page 10
16 SOS, Green Paper Submission, pages 9 & 10, paragraph 5.7
This section does not deal with the individual tiers in detail as sub-sections on public, commercial and community services outline proposals to make each tier distinct. It also includes proposals on the introduction of a fourth tier (see above) to give stakeholders an opportunity to comment. The below policy proposal merges the different submissions on this issue.

The final policy would highlight that convergence and digitisation might render the three tier system irrelevant and propose that:

- In the short- to medium-term the three tier framework would continue to apply to linear content providers (traditional broadcasters).
- The classification would not apply to on-demand audio-visual content providers. Traditional broadcasters should be encouraged to ensure their content is available as catch-up services, for example.
- The policy would stipulate that the ongoing relevance of the three tier system as a means of achieving plurality and diversity of service and content at a local, provincial and national level would be reviewed by government and/or the regulator within five years of the policy being adopted, and at regular intervals thereafter.

The policy would also emphasise the need to ensure access across all platforms and devices to:

- Public content promoting news, education, information and quality South African content for all South Africans,
- Community content and news and information relevant to communities in languages spoken in the community, and that mechanisms be in place to ensure that individuals and community organisations can create and disseminate such content themselves; and
- Entertainment content, including South African drama and music.

The policy could, in line with this, strengthen existing provisions to ensure that the individual sectors are distinct and collectively meet identified policy objectives by, for example:

- Specifying the objectives specific to each tier and type of service and stipulating the distinct responsibilities of the public broadcaster, commercial licences (FTA and pay services) and community broadcasters. Particular options in relation to this are contained in proposals on the individual sectors.
- Strengthening the regulation of fair competition (addressed in sections dealing with competition).
- Strengthening provisions related to licensing and/or the regulator’s capacity to reinforce the underlying objectives for each sector through its licensing. This could include options such as those highlighted previously requiring the regulator to conduct market reviews and/or public interest tests before issuing any major licence.
- Strengthening the monitoring and enforcement provisions in place and the regulator’s capacity to effectively monitor and enforce compliance with conditions and regulations.
- Requiring the regulator to conduct and publish regular market reviews and analysis of diversity in the sector, including substantive diversity in, for example, formats, genres, news, opinion and analysis and sources of news and information programming. Reviews on diversity could include analysis of diversity for particular audiences, including children, different language speakers, different LSM’s etc.
- Such reviews could also include analysis of the impact of regulatory interventions to assess their effect on the market, whether or not they are achieving the envisaged objectives or should be adapted or revoked, and/or if new approaches are required to promote access by all South African audiences to audiovisual content across different platforms and devices.
Do you agree with the above approach?

How else could policy increase diversity through the three tier system?

**OPTION: FOURTH TIER**

Should the policy introduce a “fourth tier” for national/provincial non-profit broadcasting services? This would only be available on the digital terrestrial television or digital radio platforms due to spectrum limitations of analogue. If so, what should be the criteria which such services would have to meet?

Do you agree with the introduction of a fourth tier? If so, what conditions should apply to this.

### 5.6 Public Broadcasting

There are a range of issues relating to the SABC/public broadcasting which need to be covered in a new White Paper, taking into account the strengths and weaknesses of the current system and the impact of digitisation and convergence, including the nature of the service, its mandate, structure, funding and governance and oversight.

#### 5.6.1 Nature of service

The MPDP stated in its submission that the policy should explore the possibility of establishing a public service publisher with the responsibility of “commissioning, promoting, aggregating and distributing local content, as well as with ensuring the survival of local content in the digital media environment”. Content would be made available “on a non-exclusive basis” to be shared across multiple platforms. It stated that this responsibility could be given to the SABC, or a separate public service publisher could be established. Note that Ofcom in the UK introduced the notion of a public service publisher as part of its 2007 review of public service broadcasting, separate from the BBC, but scrapped the idea subsequently.

Should the policy introduce a Public Service Publisher? If so, how should this be structured and funded?

What would be its mandate? Should it be separate from the SABC?

#### 5.6.2 The mandate of the SABC

What should the roles and responsibilities for the SABC be in a multi-platform, multi-channel, multi-screen environment? This section considers this question in reviewing the current mandate of the SABC and considers approaches to determine the mandate. Issues relating to oversight and accountability are not dealt with here, but rather in a specific section dealing with this below.

The SABC’s mandate is currently outlined in its Charter in the Broadcasting Act and is thus set by Parliament. Parliament approves of the Corporation’s operational plan and budget - taking into account its mandate. ICASA is required to translate the Charter into licence conditions.

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17 MPDP, Green Paper submission, pages 14-16
5.6.2.1 SABC objectives

The majority of submissions on the SABC mandate said it needed to be adapted – either to address current challenges or due to technological changes.

The SABC said that its mandate is too broad and that this results in it “unintentionally” neglecting some aspects. It proposes that its Charter be categorised into high priority and general objectives. It proposed that the following be set as high priorities:

- Universal service;
- Providing audio and audio-visual services in all official languages;
- Providing a diversity of services/programmes which are educative, informative and entertaining;
- Providing services targeted at people with disabilities, youth, children and women;
- Providing international, national, regional and local news and information; and
- Development of the creative industry.

The public broadcaster further indicated that, while it sees the broadcasting of sports of national interest and development sports as important, it is expensive to fulfil these requirements (over R600m was spent in 2012/2013 on rights for sports of national interest). It stated that any obligations relating to sports should be funded.

The SOS recommended that the Charter be redrafted as obligations are currently contained in several different sections of the Broadcasting Act. It stated that that the mandate must reinforce SABC’s distinctive role and that it should be required to focus explicitly on educational programming. The MPDP said that a recent study it had participated in showed that while South African youth use media (particularly radio and television), the youth “do not feel that the media are relevant to them”. It stated that the SABC mandate should specifically address this as youth make up a large proportion of the South African population. It further proposed that a new obligation be added requiring the SABC to interact with audiences using mobile phones and the Internet.

Veer Singh from the Ethekwini Municipality stated that the SABC must be accessible to everyone in the country and “its programming must be understandable to and followed by everyone”. Its programming he said should be “popular” – i.e. it must provide a public forum for all to participate in, not just the elite. He stated that the SABC must promote comprehensive, objective and unbiased discussions and play an active role in preventing conflicts while promoting culture. Editorial control must be protected from political and economic interference.

MultiChoice & M-Net stated in a joint submission that the focus of the SABC should be on airing diverse information and viewpoints and providing multicultural programming which informs, educates and entertains and contributes to the development of the SA production industry. The NAB emphasised the need for any review of the mandate to specify that the SABC’s licence conditions should be reviewed by ICASA to ensure that they match mandate obligations.

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20 SABC, Green Paper Submission, page 21, paragraph 7.2.4
21 SABC, Green Paper Submission, pages 43 & 44, section 9.3.2
22 MPDP, Green Paper Submission, pages 9-14, section 3: Broadcasting and Youth
23 Veer Singh, Green Paper Submission, page 3 section 3
24 NAB, Green Paper Submission, page 32, paragraph 118
The NCRF outlined a suggested charter in its submission, adding on responsibilities for providing foreign services. The Progressive Professionals Forum (PPF) highlighted universal access as a critical mandate for the SABC and stated that generally government needed to strengthen oversight of the public broadcaster.25

**OPTIONS: THE MANDATE**

The SABC’s existing mandate is outlined below so that stakeholders can make concrete suggestions on amendments. This is extracted from the Broadcasting Act.26

“*The SABC in pursuit of its objectives and in the exercise of its powers, enjoys freedom of expression and journalistic, creative and programming independence as enshrined in the Constitution.*

“The Corporation must encourage the development of South African expression by providing, in all South African official languages, a wide range of programming that

- Reflects South African attitudes, opinions, ideas, values and artistic creativity;
- Displays South African talent in education and entertainment programmes;
- Offers a plurality of views and a variety of news, information and analysis from a South African point of view;
- Advances the national and public interest

“It shall:

- Make its services available throughout the Republic;
- Provide radio and television programming that informs, educates and entertains;
- Be responsive to audience needs, including the needs of people with disabilities;
- Nurture South African talent and train people in production skills;
- Reflect both the unity and diverse cultural and multilingual nature of South Africa and all its cultures and regions to audiences
- Strive to be of high quality in all the languages served;
- Provide significant news and public affairs programming which meets the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests
- Include significant amounts of educational programming, both curriculum-based and informal educative topics from a wide range of social, political and economic issues, including but not limited to, human rights, health, early childhood development, agriculture, culture, religion, justice and commerce and contributing to a shared South African consciousness and identity
- Enrich the cultural heritage of South Africa by providing support for traditional and contemporary artistic expression
- Strive to offer a broad range of services targeting particularly, children, women, the youth and people with disabilities
- Include national sports programming as well as developmental and minority sports.

Please highlight which aspects of the remit you believe should remain, be strengthened or removed. Please also identify additional mandates you propose should be added, noting the following:

- Suggestions by stakeholders that a specific mandate on interactivity and using new media be included;
- Proposals that the SABC be required to focus on youth and/or education and/or debate and discussion on key issues;

25 PPF, Green Paper submission, page 15
26 Note that this is extracted from different sections of the Act, namely section 6, section 8 and section 10
The possibility in the multichannel environment of the public broadcaster also providing a parliamentary channel or coverage (dealt with in more detail below);

The current role of the SABC in relation to foreign services.

ICASA would be required to review licensing conditions based on the revised Charter.

OPTIONS: PROCESS FOR SETTING REMIT

The SOS stated that processes be put in place to regularly review the obligations set for the SABC. It highlighted that this could allow for the remit to be specifically aligned to its budget for a set period. International benchmarking conducted for this review identified different approaches to reviewing public broadcaster mandates and for setting specific objectives over three to five years. The options below capture this.

Option One: status quo
The broad mandate would continue to be set in law. Changes would require legislative amendment.

Option Two: Act sets out mechanisms for review
The Charter would be separated from the law (e.g. could be an appendix). Policy and legislation would outline the broad objectives and set out a process for regular review of the mandate by Parliament through a public process. Such a review should provide opportunities for members of the public to contribute to the Charter, for the regulator to make recommendations based on its analysis of public need, the SABC to make proposals and Government to contribute. The agreed on remit could also be used to set funding, such as licence fees for a set period.27

Please identify which option you prefer. Feel free to suggest alternative options.

5.6.3 SABC structure
The SABC currently includes three FTA television channels and 18 radio stations covering all official languages. All radio stations stream online. In addition, it produces a 24 hour news channel on the DSTV subscription platform, intends to provide an entertainment channel for the same satellite platform and international radio services (Channel Africa) available on shortwave, satellite and the Internet. Two regional SABC licences (SABC 4 & 5) were granted by ICASA in 2005 but these were never issued pending confirmation of sufficient funding.

With the introduction of the White Paper on Broadcasting in 1998 and the Broadcasting Act in 1999, the SABC was required to separate into two divisions – public (with two television channels and 15 radio stations) and public-commercial (SABC 3 and three radio stations). The division was aimed at protecting the public mandate from commercial influence. Revenue from commercial services according to the policy would cross-subsidise public interest programming and obligations. The introduction of DTT and the increased number of television channels requires the policymaker to

27 In the UK, the BBC Royal Charter is set for ten years and amended following widespread consultation by government that starts a few years prior to this. The BBC Charter sets out broad objectives (public purposes) for the broadcaster and is accompanied by an Agreement which includes details on how the BBC will fulfil the broad public purposes over a set period and determines the licence fee for the period based on an assessment of costs.
consider whether these will be divided along public and public commercial lines as previously and, if so, how such a division will be effected.

It is important to note that it is difficult to assess the effectiveness of the division on the funding model of the SABC as the broadcaster has not produced audited separate accounts for the two wings as required by law. It is thus not possible, for example, to assess if the commercial services have in any way cross-subsidised the public stations and channels.

DTT and the additional capacity that will be available to the SABC also raises the possibility of introducing new channels, such as an educational channel, FTA parliamentary channel and/or regional/provincial services. The migration will also affect radio, as stations which were limited by spectrum scarcity to particular licence areas will now be available on the STB and thus be able to be heard around the country at least in the home. Convergence, moreover, introduces the possibility of SABC becoming a major developer and distributor of public interest content for multiple platforms, screens and devices, which might also necessitate a change in the structure of the broadcaster. The responsibilities of SABC in relation to its foreign services also need to be explored. It currently administers Channel Africa on behalf of government and receives separate funding for this, though it has indicated that the funds provided do not always cover costs. The Department of International Relations and Cooperation (DIRCO) established an online radio station in 2013.

While the structure of the public service broadcaster/content provider must be based on its mandate (form follows function), and is dependent on its funding, it is important to consider the implications of the new environment on the structure so that a final White Paper can include policy perspectives on this.

There were several submissions on each of these issues. The SABC stated that the current division into public and public commercial services is not practical or implementable. It said that it is “close to impossible to expect three commercial radio stations to fully subsidise the public mandate of the 15 public radio stations”. It further said that obligations to keep separate books of accounts for the two divisions have “serious administrative implications”.28 The SABC suggested the following options:

- Divisions are removed, though policy could include limits on commercial content and stress public service responsibilities. ICASA could be required to determine the criteria for public service versus commercial service programming. This is the SABC’s preferred option.
- The public commercial division could be privatised and established as a separate company. The SABC could be a shareholder or majority shareholder in this new company.
- The possibility of public/private partnerships (note this was not expanded on but could include partnerships on production of individual channels).29

National Treasury, while not commenting directly on the structural division of the SABC, emphasised that separate accounting should be a requirement for all public entities. It said: “(T)here is a need for a new paradigm where all SOEs including the SABC must be compelled to publish separate accounts for their

28 ICASA in its DTT regulations has stated that one third of all channels would be public commercial though it has not provided detailed reasons for this determination. It is presumed that this is based on the current ratio in an analogue environment.
29 SABC, Green Paper Submission, Section 6: SABC Structure in terms of section 9, page 19
public interest and commercial businesses. This will assist in evaluating the degree to which cross-subsidisation between the commercial and the public components is occurring”.

The SOS in its submission said that the division had not achieved intended objectives and should therefore be scrapped and all services categorised as public. E.tv made similar charges, stating that SABC practices have negated the objectives of the division and that there is “no real and meaningful distinction” between the two. It proposed that any new policy include specific restrictions on commercial activities as it alleged that the SABC currently engaged in unfair competitive practices. ACT-SA raised a number of questions regarding the structure of the SABC (with a focus on television). It said, for example, that it was not convinced that the SABC should be allocated almost an entire multiplex with DTT and asked if what it said are “over inflated budgets” for such services could not be allocated more “evenly” to other stakeholders.

The NCRF was the only stakeholder to make a submission on foreign services. It stated that foreign services should be specifically incorporated into the mandate and funded as part of this.

**OPTIONS: SABC DIVISION INTO PUBLIC AND PUBLIC COMMERCIAL DIVISIONS**

*Option One: Status quo*

The SABC would continue to be required to have two divisions, both reporting to the same Board with separate board committees. Provisions that one out of the three TV channels operate as a commercial service would be amended given DTT. The policy would include more clarity on the distinctions between the divisions and ensure fair competition.

*Option Two: Remove divisions*

The requirement that the SABC be divided into two separate administrative divisions would be removed. The policy would instead define what commercial activities the SABC would be allowed to engage in. All services would be required to focus on meeting public interest objectives, though the SABC would be allowed to subsidise these through commercial activities. *Note that while the SABC proposed requirements to produce separate accounts should be revoked, this is not proposed here.*

*Option Three: Commercial services formally separated*

The SABC would be required to establish a separate company housing its commercial services. Private shareholders would be invited to participate in the company, though a portion of shareholding would be retained by the SABC. Such an option could also include a public/private partnership to manage the commercial services for a management fee/share of profits.

*Option Four: Privatise commercial services*

Specific services of the SABC would be privatised completely (e.g. the three commercial radio services, and commercial television channels and/or a portion of the capacity allocated to the SABC in DTT). Such services could either be “sold” (with ICASA making final determinations on licensing through a competitive licensing process) or could be allocated to other non-profit or public interest entities (such as national interest groups or to establish a youth service).

- How should the SABC be structured in future? Please elaborate.
OPTIONS: FOREIGN SERVICES

**Option One: Status quo**
The SABC would continue to administer foreign content services on behalf of government. The policy should clearly specify the funding model for this to ensure adequate resources are provided.

**Option Two: SABC given mandate**
SABC would be given a mandate to provide foreign services. There are different variants in other countries in relation to this. For example, the BBC World Service was administered as a separate service by the BBC funded by their foreign affairs ministry until recently. The existing model for Channel Africa is based on the old BBC model. This changed however in 2014 and the BBC World Service is now funded from the TV licence fee. In Australia, foreign services are part of the remit of the ABC and its funding from government includes a specific budget for these services.

**Option Three: Government takes it over**
The administration of Channel Africa could be handed to the Department of International Relations and Co-operation (DIRCO) as it has now established its own online radio service. DIRCO could formally outsource management to the SABC or another broadcasting services but would be responsible for funding the service.

- Which option would be best to deliver foreign services?
- Are foreign services still relevant?

OPTIONS RE PARLIAMENTARY SERVICE

The first question in relation to a parliamentary channel is whether or not such a service should be made available on the DTT platform. If so, there are a range of approaches to this.

- Should policy specify that a parliamentary channel is provided on the DTT platform?

**Option One: Administered by SABC and funded by Parliament**
SABC could administer the channel on behalf of Parliament and be paid by Parliament for this.

**Option Two: SABC mandated to cover parliament**
The SABC mandate could specify that it must provide a parliamentary channel and ensure coverage of Parliament across all platforms. This would be funded by the SABC.

**Option Three: Parliament to take responsibility**
Capacity could be set aside on a DTT multiplex. Parliament would be allocated such capacity and could outsource this to an independent service provider.

5.6.4 **SABC Funding**
Funding requirements are inevitably affected by the remit and structure of the public broadcaster, and the mandate and structure is to some extent limited by what funding is available. This section
focuses on possible funding models for public service programming. All respondents to the Green Paper who made submissions on funding of the SABC said this is a critical area given past challenges.

The SABC currently has a mixed funding model – with revenue from advertising and public funding (government allocations and licence fee funding). It is though reliant predominantly on commercial revenue (over 80% of its revenue is from advertising). Some stakeholders argued that this limits its capacity to fulfil its mandate adequately as certain audiences or genres and formats of programming are not attractive to advertisers and that this affects its capacity to provide quality services to all audiences and language groups.

This section deals with four key issues relating to funding and the funding model:

- Broad approaches to funding
- How to determine how much funding is needed (the quantum required);
- The ideal ratio of different sources of funding; and
- Mechanisms for funding (e.g. licence fees or other possibilities).

5.6.4.1 Broad approaches

The NCRF and ACT-SA proposed that the SABC be funded from a more general public broadcasting fund that would also allocate funds to community broadcasters.

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<th>OPTIONS: BROAD APPROACHES</th>
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<td><strong>Option one: Dedicated fund</strong></td>
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<td>Public funding would be earmarked only for the SABC.</td>
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| **Option two: Contestable fund** |
| A public service fund or public content fund would be established providing funding to the SABC and other entities (including community broadcasting and possibly public interest programming provided by others). If this approach is adopted, policy would need to determine who would manage such a fund and how it would be established, among other things. |

*Which option do you prefer? Please motivate your choice and provide further detail where necessary i.e. who would be able to source funds from a contestable fund and how it should be established and managed.*

5.6.4.2 Cost of mandate and what should be funded

While the SABC did not fully break down the cost of its existing mandate, it did state in its submission that in 2012/2013, the overall cost of meeting its mandate was over R3bn. This included over R400m for news on its radio and television services, R600m for sporting rights, R500 000 on interns and R9m on signal distribution, including expanding its network through low power transmitters to meet universal service obligations.

The SABC also highlighted particular areas that it said require government/public funding:

- Expansion of its radio network: SABC noted that although radio penetration stood at about 90% of the population, this was based on access to any radio service rather than to a service in a person’s

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31 New Zealand currently has a contestable fund for public interest programming
preferred language. It said that first language radio penetration is much lower for African language population groups and that expansion would cost over R30m.

- Transmission costs: The SABC said that it has on average spent over 8% of its funds on transmission and that this would increase with the migration to DTT and the ongoing expansion of its radio network.
- Funding for the acquisition of rights to sporting events of national interest (unspecified).
- Funding for children’s programmes, educational programming and sporting events (both minority and developmental sports and sports of national interest).

National Treasury noted that the failure by the SABC to produce separate accounts made it difficult to assess the costs of the broadcaster’s mandate. The NAB emphasised the need for an independent assessment of the costs of the public mandate as part of the policy review process.

**OPTIONS: COST OF MANDATE AND WHAT SHOULD BE FUNDED**

As noted, the cost of the mandate is unclear. Although the SABC in its submission gave some indication of costs, it has not provided separate accounts, detailed information on how it calculated expenditure or information on current revenue/revenue shortfalls for public obligations. It would not be efficient or responsible use of public funding to determine funding needs without considering what aspects of the mandate are or could be funded by other means. The principle underpinning government and public funding is that it should be used to meet clear public interest objectives that would not be delivered without such resources. Further, any costing of the current mandate would not necessarily be relevant given that the policy process includes a review of the remit.

Finally, it is critical not only that public funds and resources are used efficiently to meet specific mandates, but that there is a perception by the public that public funding equates to public value. This requires an independent evaluation of any costs provided by the SABC as there are perceptions that it has not always used public funding prudently given recent adverse auditor general and other such findings.

In light of this Government is exploring the development of a model which could be used to cost the mandate not only for this policy review but into the future. The adoption of a model would assist in ensuring transparency in relation to budgeting. Given this, this section of the Discussion Paper makes suggestions on the broad approach that could be used to determine what is funded by public funds (including licence fees/levies).

**Option One: Status quo**

Public funds (licence fees and parliamentary allocations) are allocated generally rather than to specific budget lines (there are exceptions to this, such as funds from government for particular capital projects or for a specific project such as elections).

**Option Two: Earmarked funds**

Policy and other instruments would specify which budget lines/mandates would be funded if there is a shortfall. For example, the costs of extending transmission network could be funded, transmission costs, and particular types of programming (educational, news, children’s etc.) and sports.
Comment is invited on which approach should be adopted. Submissions on other approaches are also welcome. If Option two is your preferred choice, please detail what specific mandates you propose should be funded or how these should be determined.

5.6.4.3 Funding sources

Most stakeholders that made submissions proposed that the mixed funding model (public and commercial revenue) be retained, but that the ratio of public funding to commercial revenue change. The SABC stated that it should be able source funding from the Universal Service Fund (USF). MTN said that policy must be based on an in-depth review to determine how SABC could be self-funded from TV licences (with a new strategy and model), advertising and sponsorship (with a five year plan in place), commercial enablement of third party content providers, commercial business models (free and paid for), content development and sales and mobile and other e-services.

OPTIONS: RATIO

The SABC will continue to be funded by a mix of commercial and public revenue. Government together with the SABC will also explore possible new revenue streams opened up by convergence such as content sales and new opportunities for partnerships.

- Submissions are sought on what the ideal ratio of funding should be to ensure certainty of funding and insulate the SABC from undue influence from commercial, political or other significant interest group influence.
- Note that e.tv has proposed that policy, law and regulations specifically limit commercial revenue for the public broadcaster and comments are invited on this proposal.
- Proposals on possible additional sources of funding are also invited.

5.6.4.4 Mechanisms

The SABC in its submission proposed a number of different mechanisms for consideration:

- The television licence fee could be replaced with a tax to solve the problem of evasion or a specific levy on particular services (such as electricity, telephone or other utility bills)
- The licence fee could remain but policy and legislation address collection challenges. This it said could include provisions for inflation-linked increases to licence fees and extending the range of devices linked to payment of the fee. The SABC stated that the current definition of a television set in the Broadcasting Act should be revised to cover all devices that can receive audio-visual content in recognition of convergence.

National Treasury also noted that the licence fee system currently in place is inefficient. MultiChoice and M-Net proposed that the public remit be funded via budget appropriated by Parliament. It said that a more efficient mechanism for collecting licence fees should be explored such as a line item on a tax return or on a utility bill. This could, it stated, be delinked from viewing devices and framed rather as a public broadcasting service levy so that collection mechanisms in place in SARS or municipalities be leveraged to reduce administration and collection costs.

The NCRF suggested that the licence fee be replaced by a 1% tax transferred to a Public Service Broadcasting Fund accessible to the SABC and community broadcasters. Additional sources of
revenue for the fund could include expropriations from Parliament, contributions from other broadcasting licensees (commercial) and business. The Fund should be managed by the MDDA.

Paul Hjul proposed that the SABC become a mutual public company with 100 million shares. Sale of these shares (25 million on basis of current valuation of SABC and the rest handed over for payment of a TV licence or calculated at the cost of a TV licence). The TV licence would fall away and the SABC would become a “savings instrument with a minor return on investment”.

OPTIONS: FUNDING MECHANISMS

The following funding mechanisms are possible options to consider exploring further. Note that Government has not yet determined whether or not any of these options would be viable in the long term. The options proposed are not the only possible approaches, but are based on submissions to the Green Paper and international benchmarking. Many countries have in recent years abandoned a traditional TV licence fee, and/or changed the mode of collection due to disproportionate collection costs, evasion rates and/or recognition that with convergence the television set is not the only means to access content.

It is also important to highlight that the proposal made by some stakeholders of a blanket one per cent tax on income, as put forward in 2009 in the draft Public Service Broadcasting Bill is not included. After further consideration it is not deemed viable as it would apply to individuals rather than households and thus negatively affect those sharing residences with numerous working adults. Moreover, such an earmarked tax is contrary to South Africa’s general taxation and fiscal policies.

Option One: Status quo tweaked

The SABC would continue to collect licence fees per household/business, but the following options would be explored further to address some of the current weaknesses:

- The definition of the type of equipment that requires a TV is expanded in light of convergence to include any device capable of receiving television;
- Any subsidies (e.g. for the elderly or those on social grants) are recovered from government;
- An automatic inflation-linked increase to the licence fee versus a process of linking the licence fee to commitments over a set period (i.e. an agreed programme of action);
- A due diligence on the collection process is conducted to address any inefficiencies.

Option Two: SARS/another agency collects the licence fee

The licence fee would be determined as above, but collected by another entity such as SARS. The viability and costs of this would have to be explored to assess if this would address inefficiencies.

Option Three: Replace TV licence with public broadcasting fee

Several countries (e.g. the Netherlands) have introduced a public broadcasting fee for all households to replace the TV licence fee to simplify collection. It is based on the fact that everyone benefits in some way from public broadcasting in the digital environment. Such a fee is collected by a range of entities (utility or telephone companies, the revenue collection agency, the post office etc.).

32 Paul Hjul, Green Paper submission, page 39
Option four: Once-off levy

A once-off levy/tax on sale of selected devices through which TV/audio-visual content can be accessed would be introduced e.g. smartphones, computers, television sets, STBs, car radios. This would remove the challenge of annual collection of fees and could address to some extent concerns raised by some stakeholders that the licence fee is in effect regressive taxation. In some countries (e.g. Turkey) this tax is payable by producers/importers of equipment. It would have to be determined if a once-off levy would raise sufficient income. It should be noted that it would not be possible to accurately project revenue. It would also be important to ensure that such a fee did not make the cost of devices prohibitive and thus increase the digital divide.

Option Five: Tax other companies

A tax on telecommunications companies and/or advertising and/or commercial broadcasters could be considered. France and Spain have introduced similar schemes along with legislated limitations on advertising on their public broadcasters. At the moment, all SABC TV channels have the same limits on advertising as FTA commercial television services: 12 minutes per hour maximum with an average of 10 minutes per hour. Should such an option be further explored, it would be important to consider other levies/taxes that services currently pay, e.g. broadcasters and telecommunications licensees are required to contribute a percentage of their profits to the USAF or to the MDDA.

5.6.5 Reporting, oversight and accountability

As stated in many submissions, it is critical that SABC reports transparently on its use of funds and is held accountable for performance against its mandate. This is in line with general principles on accounting for public resources and provisions on effective and transparent management of public entities. Improved reporting could also address perceptions of over expenditure and inefficient use of funds by the SABC. This could assist in addressing evasion rates.

OPTIONS: REPORTING AND OVERSIGHT

While the SABC has suggested that the requirement that it separate its accounts be reconsidered, as National Treasury has noted, such a requirement should become compulsory for all public entities. Separate accounting is in place in many public broadcasters according to benchmarking conducted (e.g. separate accounts are required by EU State Aid Rules and the Australian Broadcasting Corporation annual reports include both separate narrative and financial reports on commercial and public service activities). This is to ensure that public funds are not used to distort competition. In addition to this, policy and relevant legislation could further specify additional reporting requirements to strengthen accountability. Options include:

- Requiring the public broadcaster to regularly review and report on its performance against its remit, including a review of efficiency in delivering on this. This could include independent evaluation and assessment of, for example, audience and major stakeholder views. The BBC Trust is required to
publish such a review every five years. 33 The SABC has suggested in its submission that public report-backs could be held every three years;

- Requiring the SABC to include specific details on identified issues. Both the BBC and the ABC include detailed breakdowns on expenditure on content related and operational activities. The BBC gives a detailed narrative and financial breakdown of how licence fee income is used. The ABC gives a detailed report of how it has met its programming remit (including, for example, expenditure on original Australian content per genre comparative to previous years). The BBC provides a financial breakdown of spend in different categories (content, distribution, infrastructure/support) per service.
- Provisions requiring the regulator to report on compliance with the remit could be strengthened. The regulator could, for example, be required to submit an annual report to Parliament on compliance to be considered along with SABC’s annual report.
- The SABC could be required to develop its three year/annual operational plans in consultation with the regulator so that the regulator could ensure that such plans incorporate mandate requirements. Performance against these would then be audited by the auditor-general.

- Stakeholders are invited to comment on provisions to increase transparency. Additional options are also welcome.

5.6.6 **SABC Governance and Management**

The SABC has faced a number of governance issues over recent years resulting in audit and other findings against the broadcaster. This has led to questions about governance provisions in place, including:

- The role of the Board versus that of management;
- The appointment and removal procedures for Board members (both executive and non-executive); and
- The mechanisms and structures in place to ensure effective oversight and leadership.

Parliament has also raised concern about whether or not the roles of the Minister as shareholder on behalf of the public versus that of Parliament need to be clarified. A number of stakeholders made submissions on these issues.

The MPDP and SOS said that policy should specify that the Board is solely responsible for appointment of executive members. They argued that the current provisions that the Board recommends candidates for Ministerial approval are unconstitutional and cause confusion about whether the Board or the Minister is responsible for holding executives to account. The SOS further proposed that:

- The Minister representing the public as shareholder of the SABC should not be the same Minister responsible for policy for the sector.
- The SABC should be a Chapter 9 constitutional institution.

The SABC submission dealt primarily with limitations in the Broadcasting Act on the number of members of its executive committee (Exco). It argued that the limit of 14 members impacted on business growth as the “changing business environment” would necessitate expansion of the Exco. It proposed that limits removed from law and rather be dealt with in the shareholder compact

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33 The most recent review published by the BBC Trust is available at [http://www.bbc.co.uk/bbctrust/our_work/services/television/service_reviews.html](http://www.bbc.co.uk/bbctrust/our_work/services/television/service_reviews.html)
The NCRF proposed that the Board of the SABC only include 12 non-executive members and no executive committee members and that it be required to set up an international broadcasting committee along with public and public commercial service committees. It said that the Board should appoint executive members, but stated this should be “in consultation with the Minister”.

In addition, the NCRF proposed that the Board be required to appoint a Public Broadcasting Advisory Council to act made up of nine members representing different provincial and regional interests. Members in turn would be expected to set up provincial forums/platforms to solicit views on access, content and compliance with the mandate. The Council would have to submit half yearly reports to the Board and an annual review of the SABC’s compliance with its mandate. Other proposals made by the NCRF in relation to governance include:

- Policies and laws should require the chairperson to resolve conflicts and provide leadership;
- Policy and laws should give the shareholder/Minister the power to intervene in limited circumstances to address governance problems. The NCRF stated that the Minister should have the power to “instruct the Board of the SABC to take any action considered necessary by the Minister” in specified circumstances, such as mismanagement or breach of the law.

Paul Hjul in his submission proposed that the SABC be structured as a mutual shares company owned by members of the public rather than a state owned company. Shareholders (members of the public) would then vote for board members.  

**OPTIONS: BOARD SIZE**

The size and criteria for membership of a board is in many ways determined by its overall responsibility. International benchmarking identified different structures in place in different countries.

The BBC has a two tier Board: A Trust (12 non-executive Trustees appointed by government including four regional representatives) and an Executive Board (chaired by the director general with 12 members including seven executive members). The Trust sets the strategic direction for the BBC while the Executive Board is responsible for financial oversight and management. There is a separate executive management team. The Trust in many ways performs the role of a regulator, as it issues service licences to channels and stations. The Board of the ABC in Australia includes up to seven non-executive members. It is responsible for ensuring the broadcaster brings maximum benefit to the public and is managed efficiently. The Canadian Broadcasting Corporation has 12 members including two executive members.

Both the BBC and ABC Boards appoint the chief executive officer, while the head of the executive team at the CBC (the President) is appointed by government.

**Option One: Status quo**

The Board would as currently include 15 members (12 non-executive members and three executive members). The distinct roles of the Board and executive management could be further clarified.

**Option Two: Reduce**

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34 Paul Hjul, Green Paper submission, page 39
The number of directors is reduced to between 7 – 12 members, including executive members. Again the roles of the Board and management could be clarified.

Option Three: No executive members

The Board include only non-executive members (as per the NCRF recommendation). In all instances, the memoranda of incorporation should be made public.

Please indicate your preference regarding the size of the Board and its structure.

OPTIONS: APPOINTMENT OF NON-EXECUTIVE MEMBERS OF THE BOARD

It is noted that it is important that the appointing body has the capacity to thoroughly assess nominees against the requirements set in law and confirm what experience/expertise is most needed when filling a vacancy. It is further essential that thorough checks are done on candidates before appointment, including, for example, screening to ensure the candidate has fully disclosed all interests, credit checks, verification of qualifications, confirmation of past work experience etc.

Option One: Status quo

The status quo would continue: Parliament calls for nominations and after a public process recommends members for appointment.

Option Two: Appointment committee

Parliament or Government could establish an appointment committee through public nomination, including representatives from sectors of society, provinces, Parliament and Government. The appointing committee would be responsible for recommending members to the Board of the SABC.

What is your preferred option for appointment of the SABC Board. If you have alternative suggestions, please put forward such proposals. Please motivate your suggestion/s.

OPTION: TERM OF OFFICE

Policy will also have to review the terms of office of Board members. It is proposed that the current term of office stands (five years), but that a system is put in place to ensure continuity on any Board.

Please comment on the preferred term of office for non-executive Board members.

OPTION: APPOINTMENT OF EXECUTIVE MEMBERS

The issue of appointment of executive members was raised in submissions as noted and it was suggested by some that the Board be solely responsible for this. Note that there is also a need to review the number of executive directors – particularly if the overall number of directors is reduced.

Comments are welcome on submissions recommending that the Board appoint executive directors and on the preferred number of executive members.

OPTION: BOARD COMMITTEES

The NCRF recommended that the Board establish an advisory council responsible for engaging with audiences in each province (see above).
Please give your views on this or on other options, if any, to involve audiences/the public more formally in the SABC

OPTION: ROLE OF SHAREHOLDER/MINISTER

Comment is also invited on the NCRF proposal that the Minister/shareholder be empowered to intervene and direct the Board to take actions in clearly defined circumstances and if so what limitations should be set on this (see above).

5.7 Community broadcasting

There are three core issues in relation to the community broadcasting sector (TV and radio):

- How to ensure the sector is distinct from others and that target audiences are involved in the services;
- How to ensure community-based content and programming is available across a wide range of platforms and devices and that communities have the means to distribute their own content across these; and
- How to ensure non-profit entities are sustainable and viable

Several submissions were made in relation to these. The SOS stated that the challenges with the sector currently are due to the regulator’s failure to adequately monitor community services.

ACT-SA said that the policy should introduce specific community TV models. It suggested that provincial community channels, sub-regional community services (television service operating out of a metropolitan area and covering surrounding rural areas) and metropolitan community channels be recognised. Two to three sub-regional services could be awarded in any one province, though policy should specify that only one licensee should operate out of any one metropolitan area to ensure that services did not compete with each other. It proposed that a more rigorous licensing process be introduced: “Licences should not be awarded on a ‘first come, first served’ basis, but ICASA should call for licence applications ... and award licences to the strongest applicant”.

The community television membership organisation said that many of the existing community TV services rely on partnerships with the private sector for survival. This should be evaluated to ensure that if such partnerships are necessary, “the public interest prevails”. ACT-SA suggested further that advertising revenue on community services be limited to no more than eight minutes per hour and that airtime sales should not constitute more than one third of any channel’s revenue.

The NCRF in its submission also emphasised the need for the regulator to play a more proactive role. It stated that the regulator should:

- Intervene quickly when there is conflict at a station or non-compliance with rules;
- Work with sector bodies such as the NCRF to resolve conflicts (i.e. co-regulation); and
- Adopt a “managed approach to the licensing of the sector to ensure sustainability”.

The SABC expressed concern that community television broadcasters are increasingly competing with other FTA services with the extension of their coverage via satellite (on the DSTV platform and others). It said that increased coverage resulted in community TV services losing their distinctiveness.
In relation to ensuring community content across a range of platforms, ACT-SA said that government should facilitate the development of digital content hubs as proposed in the Digital Migration Policy to promote content development by a range of producers across the country.

Funding of community audio and audio-visual services was also raised in several submissions. The SOS proposed that the roles and responsibilities of existing funding agencies, including the MDDA, should be reviewed. The Coalition further submitted that a final policy “explicitly reject any funding model that ties community broadcasting to the dictates of provincial and municipal authorities”.

ACT-SA stated that policy should oblige provincial and local government to fund community broadcasting. It further proposed that the DTPS “negotiate policy alignment between particular funding bodies and the community TV sector ... to stimulate the development of the sector”. This would include agencies such as the MDDA, USAASA, the NFVF and the MICT Seta. Other proposals made by ACT-SA for leveraging support for community broadcasters include:

- The SABC should be required to make its public interest programming available to community broadcasters either for free or at a minimal licensing fee.
- DTI film and television production support programmes could provide incentives and support for community based production collectives and “super-collectives”.
- The NFVF scope should be broadened to provide support for public interest programming for television including series and documentaries.
- The Seta could support learnerships, internships and training programmes for community media; Nemisa should work with the sector in accrediting courses and training producers.
- USAASA could subsidise transmission of community broadcasting services.
- Municipalities could provide office space for broadcasters.
- The DOC/DTPS support for community broadcasters should focus on funding for infrastructure and programming, the MDDA cover start-up and core costs and other entities such as the National Lottery provide support for infrastructure (including studios, equipment and vehicles) and for arts, cultural and sports programming.
- SARS to grant 18(a) tax status to community broadcasters to ensure the release of corporate funding on the basis of corresponding tax breaks.

The NCRF as highlighted in the section on SABC funding proposed the introduction of a public service broadcasting fund established with revenue from a 1% tax on income. They also proposed:

- Assistance from municipalities, including office space and access to resources.
- Subsidised transmission for community broadcasters.

### 5.7.1 Reach of community broadcasters

<table>
<thead>
<tr>
<th>The ICT Review Panel invites comment on the proposal made to extend the coverage of community television and allow for:</th>
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<tr>
<td>- Provincial community services (provided by a coalition of providers in a province)</td>
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<td>- Sub-regional services, and</td>
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<td>- Metropolitan channels</td>
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<td>- Community radio would still be limited to particular geographic areas.</td>
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In this regard, SABC’s concern that extension of the coverage blurs the distinctive nature of the sector and therefore the reason for its existence should also be considered.

5.7.2 Open access TV

While no submissions on alternative models for community access to television were put forward, it is important that such options are also explored. Concerns have been raised that the cost of establishing a television service and the resources (including human and technical) required to operate a channel limit access by all communities across the country. A FTA community/public/open access service or open television channel could be introduced to address this. Such a service could be charged with facilitating community content on a range of platforms and devices.

In the US, cable companies are required to make space available for community access, access by local educational institutions and local government. Public access centres are established to facilitate access to the means of production. These are funded by cable operators and/or local municipalities from rights of way fees paid to them. The programming on such services is unmediated by the cable operator and allocated on a first come/first served basis. Other countries have adapted this model – with Canada, for example, limiting access to local government and community organisations rather than individuals.

Norway on the other hand has introduced national and/or regional non-profit channels on their DTT platform managed by NGO forums, while both Germany and the Netherlands have models for open access local TV (including content from municipalities).

- Should a model for open TV be further explored?

5.7.3 Strengthening licensing and monitoring

The following mechanisms could be considered to strengthen oversight and monitoring:

- Specific provisions could be introduced to ensure that community services remain in the hands of the community. Such rules could be included in policy/legislation or ICASA could be charged with promulgating regulations to ensure that any partnerships or agreements entered into do not in any way undermine community control.

- A specific community broadcasting class licence could be introduced to ensure that the policy objectives of diversity are met, and that the framework does not inadvertently favour more advantaged communities. The regulator could be specifically tasked with ensuring diversity through the licensing process. The policy/law could also bar licensing or authorisation of services that would directly compete with each other.

- The process for renewing licences could specifically allow the regulator to refuse applications if a licensee has not complied with rules and regulations.

- The regulator could be given power to intervene in situations where challenges are experienced. This could include provisions enabling co-regulation – with ICASA being empowered to set criteria to be met by such co-regulatory structures and developing partnerships in this regard.

- ICASA could be required to conduct and publish regular reviews of the status of the sector, including assessment of whether or not programming is distinct and diverse and levels of competition.

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36 http://frikanalen.no/english
Submissions are invited on the above proposals.

5.7.4 Funding and sustainability

There is a need to coordinate different support programmes for the sector across government to ensure there is no duplication and that resources are used effectively. This includes coordination between the MDDA and other community broadcasting support programmes based within Government departments, content/programming funds in other content entities (e.g. the NFVF, the National Lottery and Provincial Film Commissions) as suggested by stakeholders. Discussion between the different entities will be coordinated as part of the policy review process to ensure a holistic approach to support the sector/s. It should be noted, however, that the DTPS cannot develop policy that impose responsibilities on other Ministers.

It is further important to highlight that the Constitution sets out the powers and responsibilities of each level of Government – national, provincial and local – and areas of concurrent and exclusive competence. The Constitution thus precludes a national department determining policies and rules for provincial and local government in specified instances. The Minister and the Department will nevertheless engage with provincial and local governments regarding some of the suggestions made on their involvement in the sector.

Finally, discussions around the establishment of a contestable fund have been included in the section dealing with SABC funding above, and are not repeated here. Additional support mechanisms/approaches that could be further explored in the policy review process include:

- The possibility of developing with DTI a specific framework for music royalty payments to SAMRO by community broadcasters. Research conducted by the Department showed that payment of SAMRO royalties is prohibitive for some community radio stations. In Australia, for example, community and non-profit services pay a once-off annual fee rather than a fee based on income and this option might assist the sector.
- The possibility of granting section 18(a) tax status to community/non-profit media projects. This could assist such services to raise funds from a wider base.
- Developing a framework to assist community and non-profit services with transmission costs.

Please comment on the above proposals

5.8 Private broadcasting

Many of the issues raised by stakeholders on private broadcasting/audiovisual content providers, such as those dealing with fair competition, diversity and plurality and South African content in a multi-channel, multi-screen environment are dealt with in other sections of this Chapter/Policy Options Paper. Issues around spectrum are dealt with in the Infrastructure and Services Paper/Chapter. This section does not repeat these, but rather focuses on digital radio as this is not covered anywhere else.

The 1998 White Paper on Broadcasting recognised developments in digital radio (Digital Audio Broadcasting or DAB and Digital Radio Mondiale or DRM rather than audio services on the DTT
platform) and recommended that a Digital Advisory Council report on this. Given ITU timelines for migration to digital terrestrial television, the focus of Government has been predominantly on developing policy for the television sector. This does not mean that digital radio has been neglected, and there have been ongoing discussions about DAB and DRM between government, the regulator and industry forums such as the Southern African Digital Broadcasting Association (Sadiba). DAB was adopted as a South African standard by the South African Bureau of Standards (SABS) in 2005. Trials of digital radio services are currently being undertaken by the NAB and Sentech.

Unlike television, the ITU has not made it mandatory for radio to migrate to digital radio transmission. It has therefore been left up to individual governments to decide on approaches to digital radio and whether or not to migrate to the new platform. ICASA in its 2013 Terrestrial Broadcasting Frequency Plan indicated that a switch-off date for AM and FM transmission in South Africa would not be set, though it stated that digital audio broadcasting would be an additional audio service available. The NAB in its submission emphasised that a decision on South Africa’s approach to digital audio services should be determined in national policy rather than by the regulator. It noted that FM spectrum “has already reached saturation point in the major metropolitan areas in Gauteng, Western Cape and Kwa-Zulu Natal and no further high power FM broadcasting licences can be issued in these areas”.

Digital radio will increase capacity, and allow further licensing of local, regional and national radio services. It thus has the potential to address some of the spectrum scarcity related challenges in ensuring universal access to a range of services and to radio content in all languages. At the same time, unless policies are developed to ensure widespread access to digital audio receivers, such services are not likely to be received by all audiences – thus increasing an information divide.

The NAB stated that while FM and AM switch-off is not likely in the short to medium term, South Africa ought to move quickly towards digital audio services. It noted that countries such as Norway, Denmark, Germany, Australia, the Netherlands, Italy, Poland and Switzerland have decided to ultimately switch off FM transmission, while in the UK, trials are currently being carried out to test the effect of a potential FM switch-off on a selected community. In these countries, major car manufacturers have included DAB receivers as standard equipment and household penetration of DAB and DAB+ receivers is also increasing with the devices readily available in retail outlets.

| OPTIONS: DIGITAL RADIO |

**Option One: Status quo**

The status quo would remain: i.e. the policy endorses the ICASA decision not to make a determination on the switch off of AM and/or FM signals but to facilitate the licensing of DRM and DAB services alongside these. Government, together with other stakeholders, in the meantime focuses on trialling technologies, developing a licensing framework, setting aside spectrum, encouraging take-up of receivers (in motor vehicles and in houses) and actively promoting awareness of the technology. The policy could set timeframes for this position to be reviewed.

**Option Two: Set switch-off date for analogue**

Note that the then Minister established the Digital Advisory Council which was dissolved after it submitted a report.
The policy would state that AM and FM signals would be switched off in the medium to long term, and either set a deadline, or outline a process to determine and facilitate switch-over.

- Which approach do you propose should be followed? Please motivate your response and give details on what policy stipulations you suggest to be included in a White Paper in this regard.

### 5.9 Competition related issues

A number of concerns relating to fair competition were raised in responses to the Green Paper. These include issues about competition for premium content, concerns about competition within particular broadcasting sectors (i.e. the pay TV market or FTA market), between different tiers (FTA and pay TV) and between broadcasters and new services (including social media, internet television and audio streaming, IPTV and VOD for example). While digitisation and convergence do lower certain barriers to entry (including spectrum constraints), new challenges relating to market access and consumer choice may arise. There may also be a need to reconsider market definitions if telecommunications operators, for example, increasingly distribute broadcasting-like content.

There are inevitably different opinions among stakeholders about what are the threats to fair competition. MultiChoice and M-Net have stated, for example, that the real threat to the viability of broadcasting is new media audio and audio-visual content, while e.tv asserts that commercial FTA television is under threat from subscription and public TV services. There are also differences on the roles of ICASA and the Competition Commission in dealing with such issues. Essentially these centre on when ex post or ex ante regulation should be used to address alleged unfair practices. MultiChoice and M-Net suggested that a final policy should clearly delineate “those limited circumstances in which it would be appropriate for ICASA to consider ex ante regulation”.

Several respondents further raised concern about ICASA’s capacity to deal with competition-related concerns, stating that the regulator had failed to finalise any broadcasting-related competition inquiries, even though the EC Act had empowered it to do so since 2005. The following areas are dealt with under this section:

- Competition between FTA and pay TV
- Competition within the free to air market
- Premium Content
- Vertical integration
- Access to audiences
- Ease of switching services for customers

Some of the issues are inevitably inter-related – for example fair opportunities to bid for rights to premium content and vertical integration of companies that distribute content are linked. The list is not finite and suggestions of other areas where policy interventions might be necessary are welcome.

It is further clear from submissions that additional clarity on what issues should be resolved by ICASA and which determined by the Competition Commission could be necessary. While this matter will be
dealt with in more detail in the chapter dealing with institutional frameworks, stakeholders are welcome to propose which areas would require ex ante regulation and which ex post regulation.

5.9.1 Competition between FTA and pay TV services

The existing White Paper on Broadcasting stipulates that pay-TV services should rely primarily on subscription fees and free to air broadcasters must have access to “revenues that are sufficient to allow them to meet their public service obligations”. In line with this, the EC Act states that advertising and/or sponsorship may not “be the largest source of annual revenue” for subscription broadcasters (section 60(4)). Pay TV operators are, given this, subject to lighter touch regulation and free to air services given greater responsibilities.

Since the promulgation of the EC Act in 2005, the number of subscribers to pay TV and thus total subscription revenue has increased and now exceeds total TV ad revenue. According to PwC, total subscription revenue was less than total TV ad revenue in 2005, but has since overtaken adspend.

![TV advertising revenue vs TV subscription revenue 2005-2012](chart)

Figure 3: Source PwC South African Entertainment and Media Outlook Reports 2010, 2011 and 2013

Given this, there is a need to assess whether or not limitations on access to advertising/sponsorship by subscription operators are still relevant given convergence and if there is still a need to protect free to air broadcaster’ access to advertising and sponsorship revenue in order to ensure that they are able to meet public service obligations.

MultiChoice & M-Net argued that existing limitations on subscription broadcasters’ advertising revenue are “unwarranted and inappropriate”. They said that subscription services are naturally constrained to limit the amount of advertising as excessive advertising “would push away, rather than attract or retain, subscribers”. The submission said that the real threat to television broadcasting revenue comes from an increase in online advertising and the introduction of international content service providers. The two broadcasters proposed therefore that viability of the broadcasting sector as a whole be secured through a less restrictive regulatory framework.

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38 Note that PwC adjusted previous figures for advertising and subscription revenue in its 2013 report. This chart therefore uses historical information from all three reports.

E.tv on the other hand said it is urgent that policy and legislation increase the existing limits as the viability of the commercial FTA broadcasting sector is immediately threatened. It stated that this affected its capacity to fulfil public interest obligations, and therefore access by millions of viewers to, for example, a range of South African content. The broadcaster stated that DSTV subscription revenue for the year ended March 2013 is estimated at R15.5 billion and the annual gross revenue for TV advertising in SA over the same period is estimated at R16.5bn. It argued that under current limitations on subscription revenue, broadcasters’ could earn “up to R15.5 billion in advertising revenue (94% of the total television advertising revenue)”.

The SABC proposed that the advertising limitation on subscription broadcaster be retained but that this must be “effectively monitored by ICASA to ensure that there is fair competition in the market for advertising by the television broadcasters”. Other stakeholders that made submissions on this issue all proposed that the existing limitations be tightened. These included the SACF and SOS.

## OPTIONS PAY TV ADVERTISING RESTRICTIONS

### Option One: Remove limits

The current limits on advertising and sponsorship revenue for subscription TV broadcasters would be removed. In considering such a provision, it could also be necessary to review the regulatory regime for the different categories of broadcaster as the current policy, legislative and regulatory framework is based on an assumption that Pay-TV licensees have fewer public interest obligations as they rely predominantly on subscription revenue.

### Option Two: Increase the limits

The limitations on advertising and sponsorship revenue for pay TV broadcasters would be increased to protect free-to-air broadcasters as originally intended. The policy and law could set the limits, or require that the regulator do so after studying the effects on both the FTA and pay TV markets. Singapore, for example, limits advertising and sponsorship on subscription players to 25% of total revenue. A similar restriction in South Africa would limit subscription services to a share of between 20-25% of the total TV advertising revenue in 2017 based on PwC projections on advertising and subscription revenue. The viability of obligations imposed on Pay-TV would need to be reviewed in light of the projected reduced income.

The policy could further specify that the regulator regularly monitor the impact of provisions on the total television market and on particular sectors such as FTA and subscription services. ICASA could use this to advise the policy maker of any changes that should be introduced in related legislation. This would ensure that any limitations set are based on market conditions.

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41 SABC, Green Paper Submission, section 9, page 46
43 PwC in its 2013-2017 Entertainment and Media Outlook projects that total subscription revenue will be R19.6 billion in 2017 and that the total television advertising on traditional broadcasters will be R15 billion by that date.
Please indicate which option you support, or if you propose any alternative approaches. If you propose increasing existing limits please comment on what would be an appropriate limit and/or how this should be determined.

5.9.2 Competition: FTA broadcasting sector

E.tv in its submission accused the SABC of unfair competitive practices. It said that the reliance by the SABC on advertising undermines the public broadcaster’s public mandate and results in unfair competition with commercial broadcasters. As noted above, the White Paper on Broadcasting divided the SABC into public and public commercial divisions. It stipulated that advertising revenue for the public wing of the SABC “will be less than that of the commercial arm” and should not be the “predominant form of revenue” for public stations and channels. The SABC has not to date provided separate accounts for its commercial and public services.

E.tv stated that the broadcaster’s failure to produce separate accounts makes it impossible to determine if public funds are used to give the broadcaster a competitive advantage, but asserted that the three channels operate effectively as “a single dominant commercial network”. It raised the following instances as evidence of unfair competitive practice:

- SABC cross-sells advertising across all three channels and therefore is able to discount heavily. E.tv says the SABC also gives discounts for exclusive advertising on SABC.
- SABC collectively purchases international content for all three channels. E.tv said that the SABC recoups the costs across all three channels – thus limiting its costs comparative to competitors. For example, first and second runs are often on SABC 1 and 2 and then repeated on SABC 3 or vice versa.
- SABC 3 moreover according to e.tv uses repeats on different channels to meet its SA content requirements – resulting in it in effect having lesser obligations than e.tv, and
- The SABC shares legal and administrative costs across all services, as well as commissioning and core operational costs. This, e.tv argued, results in reduced costs for the commercial service.

E.tv said that the final policy should include provisions restricting the SABC from the above practices and limit its access to advertising.44

The SABC, however, stated that increased competition and the introduction of DTT will further segment advertising revenue and threaten its viability. It suggested that it be allowed to offer more advertising and therefore increased advertising minutes per hour to remain financially secure.45

Public broadcasting funding has also been raised as a competition related concern in other countries. The European Commission has developed specific requirements for public broadcasting as part of its State Aid Rules Treaty.46 In summary, these state:

- The public remit must be clear and concise and based on fulfilling clear social, political and/or economic goals that would not be met by commercial services.

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44 E.tv, Green Paper Submission, pages 13-15
45 SABC, Green Paper Submission, page 46
There must be accountability mechanisms in place to ensure that public funds are allocated to the net cost of fulfilling the public remit. There must be separate accounts for commercial and public service activities.

**OPTIONS: FAIR COMPETITION IN THE FTA MARKET**

The options proposed here are not necessarily mutually exclusive and therefore stakeholders should indicate if they propose that a combination of the different approaches be included in policy.

**Option One: Status quo**

The status quo would remain as it could be argued that proposals highlighted above on strengthening the remit of the SABC, resolving issues relating to the public and public commercial division, improving accountability and enforcing provisions related to separation of accounts, will address the concerns raised by e.tv and that therefore no further interventions are required.

**Option Two: Regulator/s to be required to address the issue**

ICASA and/or the Competition Commission could be given explicit responsibility to ensure that the SABC does not use public funds to unfairly compete with commercial operators. ICASA could further be requested to conduct a hearing within a specified period to determine appropriate measures to be taken and to report explicitly on its monitoring of compliance by the SABC in relation to this. ICASA and/or the Competition Commission could be tasked with resolving complaints relating to alleged abuse of public funds to gain competitive advantages over commercial operators. Stakeholders should in their responses indicate which regulator they think would be best placed to fulfil these responsibilities and motivate their proposal.

**Option Three: Restrict SABC from anti-competitive practices**

Policy and law could include explicit restrictions limiting the SABC from engaging in specified anti-competitive practices, in addition to enforcing provisions relating to separation of accounts. Parliament and/or ICASA could be given responsibility for ensuring compliance. Stakeholders should indicate what provisions they think should be included in law if they select this option and how they propose they be enforced.

Which option/s do you prefer? Please motivate your answer.

**5.9.3  Competition: Ease of switching/technical access**

New services driven by new technologies can potentially facilitate a vibrant, dynamic and competitive environment with increased audience access to a diverse range of content. They can also however result in new bottlenecks, entrench incumbent positions and/or create new dominant players. The ease with which customers can switch between different content providers/platforms linked to the possibilities for providers to reach audiences/inform them of their products/services are key consumer and competition related issues. In the 1998 White Paper on Broadcasting, Government dealt with these competition-related issues by stipulating that content distribution systems must be open and interoperable and that the regulator should develop policies to ensure that content providers have access to distribution facilities and end users (broadcasters and
audiences) have access to content. ICASA has not conducted such an inquiry nor developed policies relating to interoperability.

While the principles and objectives identified in the White Paper might still be relevant, achieving these becomes more challenging given the range of different providers and technologies that will be able to deliver content to audiences. In considering any policy interventions it will also be essential to ensure that these do not even inadvertently stifle innovation and investment.

Some of the issues related to this are highlighted below:

- Given technology fragmentation due to the range of proprietary devices such as tablets, computers, cell-phones, STBs, connected television sets, and the range of proprietary operating systems (e.g. android, Apple, Microsoft) it will become increasingly difficult for content providers to access all the devices used by end-users. In the linear environment, some policy makers considered rules relating to open access, conditional access systems (CAS) and Application Programme Interfaces (APIs). Can this be transposed into a multi-screen environment? In addition, is it practical for a country the size of South Africa to impose interoperability of these platforms considering that the development is on a global scale and the need to also build internationally competitive industries? Is it still relevant to consider these interventions in this new environment?

- Smaller or new content providers (producers and those that aggregate content) will have particular difficulties as they will not necessarily have the means to ensure that their content/services are compatible with all the devices and interfaces used by their potential customers. Provisions to ensure interoperability and/or open access and/or standardisation of the API could address some of these issues, however, such rules could also limit investment in technological innovations or increase costs for consumers. Can policy encourage different players to work together to ensure interoperability/open access? Is it feasible to promote standardisation for the South African market alone?

MultiChoice and M-Net in their submission cautioned against “extensive regulatory intervention” stating that this would “distort the markets and results in a lessening of competition”. They said that “greater reliance should be placed on market forces” and that broadcasting should be regulated to meet clearly identified objectives and “only to the extent that standard competition principles are insufficient to cope with market failure”. missile MTN in its response to the Green Paper said that access by citizens to a range of content could be promoted by “a regulated content producer environment, a technical platform that allows for content management, a citizen discovery and education platform and an efficient content delivery platform that allows easy plug and play for integration with other e-services”.

The SOS said that interoperability of set top boxes is a “particularly critical issue” to address the “dominance of DSTV in the pay TV market and the impact this has on the sustainability and viability of other subscription broadcasters”. The SCAF proposed that policy and regulation should “support the development and adoption of voluntary, consensus-based standards that enable interoperability, but should avoid dictating specific technologies or standards to industry”. It further stated that it supports interoperability of set-top boxes for both the pay TV and FTA TV markets. “If consumers

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48 MultiChoice & M-Net, Green Paper submission, page 16
49 MTN, Green Paper submission, page 54
50 SOS, Green Paper submission, page 10
51 SCAF, Green Paper submission, page 25
were able to access content from all licensed broadcasters with one interoperable set top box, competition would be greatly enhanced in the sector”. 52

**OPTIONS: EASE OF SWITCHING**

It is important in considering options to recognise that convergence and digitisation will introduce new content services. In developing approaches to the new environment, it is necessary therefore to create an enabling environment for the development of the South African sector and allow it to be competitive both in the country, on the continent and internationally. At the same time, it is vital to pre-empt market domination and foreclosure. Flexibility will be essential.

*Option one: Status quo*

The current legislative provisions on competition would be used to address these issues allowing the regulator to identify if specific regulatory interventions are required or if these matters should be resolved by competition and/or consumer protection authorities. If necessary, a Ministerial direction could be issued to request ICASA to investigate the new environment and challenges around this.

*Option Two: Policy promotes open access/interoperability*

The policy and linked legislation would include specific proposals on interoperability and compatibility of operating systems and interfaces, standards, transparency and limitations on gatekeeping. Such policy interventions could include directions to ICASA on consumer protection measures and technical access areas as well as co-regulatory/voluntary standards options. Specific roles could be set out together with other Ministries for competition and consumer bodies.

| What option would best address the issues raised? Proposals on co-regulatory and self-regulatory approaches are also invited. |

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### 5.9.4 Competition: Premium Content

Premium content is content which is time critical and demanded by a mass audience. It is essentially specific content which cannot be substituted with other content (e.g. newly released blockbuster movies, premium entertainment programming or major sporting events). Premium content is critical to attracting and retaining audiences and subscribers and therefore to the success of pay TV. Agreements giving a broadcaster exclusive rights to premium content over an extended period are therefore seen as a potential significant barrier to entry to new content services. At the same time, exclusive rights to such content are critical to the attraction and retention of subscribers/audiences and therefore the viability of services. The selling of exclusive rights is also an important source of revenue for rights holders, such as certain sporting codes. Policy interventions, if necessary, are therefore generally focused on ensuring fair opportunities for audio-visual content providers to compete for exclusive rights.

Convergence introduces new complexities given that there are now new platforms for audio-visual content delivery. Potential barriers to accessing high value content in the new environment include the possible integration of content and platform providers (including telecommunications operators), existing contractual arrangements in place between rights holders and broadcasters,

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52 SACF, Green Paper submission, page 38
legacy arrangements between dominant broadcasters and rights holders and the potential for telecommunications providers to introduce “walled gardens” (only allowing access to a select group of content providers). The premium content market is not growing to the same extent as the number of service providers and therefore access to the supply of such content is becoming relatively scarcer for providers.

In South Africa, Government has indicated that it intends to intervene to ensure fair access to premium rights. ICASA has also issued a notice indicating that it would be exploring competition related concerns, including exclusive access to premium content, across the sectors it regulates.

MultiChoice and MNet in a joint submission suggested that concerns on premium content should be dealt with primarily on an *ex post* basis stating “there have been only isolated instances in other jurisdictions where this has been dealt with by way of *ex ante* regulation”. Others disagreed.

Sumeer Mohanlall said that ICASA “has been too hands-off” and proposed that SuperSport (a subsidiary of MultiChoice) be forced to resell some of its content to competitors in a fair, equal and non-discriminatory manner. Mr Mohanlall further suggested that rules be put in place to ensure that companies cannot block access by providers on other platforms to content procured, saying that the National Geographic channel, for example, is blocked on the Internet in South Africa.

E.tv stated that the length of exclusive rights licences creates challenges for free to air players. The broadcaster did not make specific proposals in this regard. Vodacom and Cell C said that the introduction in policy of regulation of a wholesale content rights regime to facilitate access on fair and non-discriminatory terms would address current challenges in relation to access to premium content, including international content, and would assist in driving uptake of broadband. Intel supported this, stating that it seemed that certain South African public interest content might become a “must have” for service providers to compete and “measures could be needed to ensure that new providers of broadband and convergent services are able to gain access to this content”.

### OPTIONS PREMIUM CONTENT

The fundamental question in relation to fair access to premium content is:

- Should access to premium content be addressed by ICASA or by the competition authorities?

Submissions are invited on this.

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56 MNet and MultiChoice, “Green Paper Submission”, paragraph 230, page 68

57 Sumeer Mohanlall, “Green Paper Submission”, pages 10-11


59 Vodacom, “Green Paper Submission”, page 54 among others

60 Intel, “Green Paper submission”, page 42
Although dependent on the response to the above question, there are a number of possible approaches which could be adopted in relation to fair competition for high value content.

- Stakeholders are invited to make submissions on their preferred option/s (see below). Please substantiate your position and indicate what provisions you suggest be included in policy.

**Option One: Status quo**

The policy could confirm the status quo – i.e. indicate that the regulator has broad ranging powers to address unfair competition in the ICT sector through *ex ante* regulation and that this includes the power to intervene if necessary in the content market. ICASA should decide whether or not premium content issues should be dealt with by the regulator or by competition authorities.

**Option Two: Policy requires ICASA to conduct an inquiry**

The White Paper could include a specific requirement that ICASA conduct an inquiry into the content market to ensure fair access to premium rights and investigate wholesale content rights regulation.

**Option Three: Competition Commission**

This issue would be resolved by the Competition Commission. In some jurisdictions, competition bodies have dealt with such issues by setting rules for rights holders – including, for example, single buyer limitations inhibiting rights holders from selling all packages to a single buy.

**Option Four: Policy sets out specific provisions**

The policy could set out specific provisions on access to premium content which could, if necessary, be translated into law. There are a range of policy interventions that could be included. It should be noted that setting provisions in policy and law could limit flexibility and the capacity of the regulator to be responsive to challenges faced. If such an option is preferred, the policy, and therefore any amended law, could for example:

- Set a limit on the length of exclusive rights licensing contracts, or specify that the regulator do so. It could stipulate that any process/bid for such rights must be transparent, non-discriminatory, fair and open to all television/audio-visual content providers.
- Introduce cross-carriage provisions: Singapore has introduced such provisions for pay TV operators, stating that a subscription service must make any exclusive content to, for example, specified sports rights available on its competitors’ platforms. Policy could outline such a policy and request the regulator to develop specific rules/determine which sports rights would fall under the provisions.\(^\text{61}\)
- Wholesale ‘must-offer’ content regime: Include provisions requiring licensees holding rights to make content or channels available to competing providers on the same basis that these are made available to its own services. Such provisions could require an entity such as SuperSport to make its channels available to competitors to DStv or M-Net on the same terms as it provides these to DStv or M-Net.
- Introduce rules on vertical integration of content and channel developers and television/audio-visual content providers.

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\(^{61}\) Media Development Authority, “Cross-carriage to be implemented from 1 August 2011”, [http://www.mda.gov.sg/Documents/Newsletter/Issue08/Pages/05.aspx.html](http://www.mda.gov.sg/Documents/Newsletter/Issue08/Pages/05.aspx.html)
5.9.5 **Competition: Vertical integration**

The 1998 White Paper on Broadcasting stated that vertical integration between distribution and broadcasting services should be minimised and the regulator should hold an inquiry into this. ICASA has not held such an inquiry. Given digitisation and convergence, is vertical integration still an area that policy should deal with? Note that horizontal integration (cross-media limitations) is dealt with specifically in the section below on diversity of ownership of content service providers.

Vertical integration of content producers, broadcasters, technical platforms, telecommunications/network services, devices and/or customer management services can result in market foreclosure by making products and programmes exclusive to certain devices or platforms or by bundling TV and communications services (triple play) at a discount, for example. Vertically integrated broadcasting/communications, distribution and content companies can furthermore limit access by end-users to products and programmes/content produced by competitors. With convergence, regulators and/or competition bodies have in recent years begun exploring whether or not it is necessary to put in place *ex ante* and/or *ex post* rules on mergers or existing vertically integrated companies.

While this issue is linked to access to premium content and, for example, a wholesale content regime might mitigate some of the potential concerns, a dominant vertically/horizontally integrated company might also be able to affect upstream providers by dictating terms and prices for content/programming, for example. At the same time, vertical integration has some advantages, allowing South African companies to compete against global players and potentially reducing costs for viewers/end-users. Many companies around the world have acquired other companies to give them access to content, platforms etc. so that they have ownership of the full value chain from content creation to providing a service to the subscriber. It is therefore important in considering vertical integration to consider the impact any rules would have on ensuring South African companies can compete with multinational companies that enjoy economies of scale. It might be difficult to enforce such provisions on global companies and local companies could therefore be severely restricted comparatively.

Concerns around media mergers have increasingly been raised in several other countries and specific tests proposed/advanced to assess the effects of these on diversity. In the UK, for example, a media plurality test is included in the Enterprises Act to assess the effects of media mergers. In terms of this, if the Secretary of State believes a merger raises media public interest considerations, s/he can issue an intervention notice specifying these considerations. The regulator, Ofcom, must then provide a report on the specified media public interest considerations. Ireland in October 2014 introduced a dual-notification system for media mergers where the Minister of Communications, “White Paper on Broadcasting Policy”, Chapter 7: Digital Convergence and Multimedia, section 7.3, Policy Framework, 1998

63 The CRTC in Canada and the FCC in the US have for example recently held inquiries into the impact of vertical integration in the broadcasting sector.

64 Ofcom, “Public Interest Test: The legal framework”, http://stakeholders.ofcom.org.uk/broadcasting/guidance/other-guidance/pi_test/pi_legal/
Communications decides if a media merger is in the public interest, and the Competition and Consumer Protection Commission determines if a deal can go ahead on competition grounds.\textsuperscript{65}

Are there any policy or legislative measures that can be put in place to mitigate the effects of vertical integration on providers, audiences/end-users given that convergence means that not all entities that provide content to audiences are licensed at all or as content service providers/broadcasters?

### OPTIONS

**Option One: Watch and wait**

The status quo would remain: Policy and regulation give the regulator the right to determine if there is a need to introduce \textit{ex ante} provisions. The Competition Commission deals with \textit{ex post} regulation. The policy could, as previously, highlight possible challenges and request the regulator to investigate this issue either on its own or together with the Competition Commission.

**Option Two: Strengthen provisions**

The policy and law could introduce specific provisions on vertical integration. A wholesale content rights regime could constitute one such intervention, policy provisions related to carriage of independent channels/services and/or cross-ownership/cross-platform rules might be other mechanisms for consideration.\textsuperscript{66} The regulator could also be specifically mandated to consider the impact of any merger/s of licensees on diversity, plurality and consumer choice.

- Stakeholders are invited to make inputs on this issue. Proposals on alternative mechanisms are welcome.

#### 5.9.6 Competition: Discoverability of content

Discoverability of channels/programming is another issue linked to access to content and vertical/horizontal integration. While prominence of public interest content is dealt with in below, discoverability of channels/programming on the electronic programme guide (EPG) of a multichannel television service or, with convergence, on home screens of connected TV sets or on-demand platforms, is also potentially a competition related concern. EPGs have been used by multichannel subscription services in South Africa and with the introduction of FTA multichannel television will be used on the DTT and FTA satellite platforms as well.

In the UK, EPG providers are licensed and are bound by Ofcom’s EPG Code. This Code deals predominantly with prominence but also has requirements on fair competition. These include requirements to ensure that agreements with broadcasters are made on fair, reasonable and non-discriminatory terms, rules on the allocation of listings and limits on giving undue prominence to channels with which an EPG provider is connected.\textsuperscript{67}

\textsuperscript{65} Laura Slattery, “Media mergers regime change tomorrow”, Irish Times, 30 October 2014, \url{http://www.irishtimes.com/business/sectors/media-and-marketing/media-mergers-regime-change-tomorrow-1.1980794}

\textsuperscript{66} Note that cross-media control and horizontal limitations on ownership are also dealt with in the section dealing with diversity of ownership

\textsuperscript{67} Ofcom, “Code on Electronic Programming Guides”, \url{http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/epg-code/}
With convergence and the introduction of, for example, connected televisions, new issues might arrive, for example, which services are shown on a TV set/device’s home screen, and what apps are available (including for example broadcaster’s apps). The discoverability of content/programming on an on demand services catalogue might also be relevant.

**OPTIONS: DISCOVERABILITY OF CONTENT**

Alternative options are not proposed but rather questions asked for stakeholder input.

- Is this an area that policy should address? If so how?
- Should the regulator be empowered to address issues of fair competition linked to the discoverability of content? Which entities would such rules apply to if promulgated (linear and non-linear)?

## 5.10 Diversity

Diversity and plurality at an ownership, content and audience level are key principles underpinning the South African broadcasting policy and legislative framework. As highlighted previously, a three tier system is one means to facilitate this. Existing broadcasting laws and policies also specifically require the regulator to consider diversity at an ownership, audience and content level in deciding on licences and developing regulatory policies. In the future, broadcasting-like content will be available across a range of platforms, channels and devices – potentially increasing the diverse range available. How can policy assist in realising this potential?

After considering related responses to the Green Paper, this Discussion Paper focuses on four core linked areas:

- Diversity of ownership;
- Diversity of news, information and analysis;
- Language diversity; and
- Audience diversity.

### 5.10.1 Diversity: Ownership

Note that this section focuses on current restrictions in law and policy that apply only to broadcasters. General provisions applicable to all licensees under the EC Act such as promotion of black economic empowerment are dealt with in Chapter Six (Policy Options - Industry Growth). A number of limits aimed at promoting diversity of ownership of broadcasting services and media are included in current policy and law. These include limits on the number of radio and television services any one entity can control, cross-media controls and limits on foreign ownership. The rules are aimed at ensuring that the broadcasting sector is South African controlled and at limiting the potential effects of media concentration.

Such rules have been seen in many countries as vital to a well-functioning democratic society by preventing too much influence by any one media owner. Given changes in the environment, several countries have reviewed existing ownership limitations to assess whether or not they remain relevant given that digitisation and convergence allow for many more licensed and unlicensed services and, if so, how these should be changed and which entities they should be applied to.
There were very different opinions on this in responses to the Green Paper – although all those that made submissions on the issue agreed that the current limitations must be reviewed.

MultiChoice and M-Net said that historically the rationale for horizontal and cross-media limitations on control was to ensure plurality of voices and a diversity of content, particularly as regards news and current affairs programming. They argued that developments in recent years and the abundance of sources of every kind of content, including news and current affairs (originating from local and international sources), meant there is no longer any basis for retaining the existing cross media limits and that therefore the limitations should be reviewed. They said that these limits were introduced for a single channel analogue terrestrial commercial free-to-air environment and that traditional linear broadcasting services in South Africa are “facing increasing competition for the provision of audio-visual content from the Internet/over-the-top players, as well as from telecommunications operators (both fixed-line and mobile)”. They noted that many new content providers are multinational companies, not subject to South African regulation.  

Vodacom stated that ownership and control restrictions “may, in addition to being difficult to enforce, deter investment in new broadcast services”. It proposed that ownership limits focus on traditional broadcasters and not be extended to new broadcast media such as IPTV as this would stifle innovation. The MPDP and FXI on the other hand both argued for strengthening existing limitations in light of convergence and digitisation. The MPDP cited data from the DMMA/Effective Measure stating that this showed that the most accessed South African Internet sites are “published largely by the already dominant providers of news and entertainment, which calls into question whether the introduction of online and mobile sites has in fact increased diversity to the point where ownership rules have become anachronistic.” The MPDP suggested that new policy strengthen provisions by introducing a “a diversity of voices test which would be used to monitor the extent to which existing patterns of ownership and control actually enable diversity of voices”.

As ICASA conducted a review of ownership limitations relatively recently (2011), this Paper uses the Authority’s proposals as a basis for discussion. ICASA proposed specific amendments to each of the ownership limits in the law, while also suggesting that the Act be amended to remove limits and give the regulator the power to prescribe limitations. The individual proposals are highlighted under each of the relevant sub-sections below, but it is important to interrogate whether or not such rules should be set in policy and law or if the regulator should be given the power to determine these.

- Should the White Paper and linked legislation set specific limitations on broadcasting ownership controls or should this be delegated to the regulator?
- Is there a need to introduce a requirement that the regulator develop a diversity of voices test, as suggested by MPDP?

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68 MultiChoice & M-Net, Green Paper submission, pages 42-47
69 Vodacom, Green Paper submission, page 49
70 Vodacom, Green Paper submission, page 51
71 MPDP, Green Paper submission, pages 19-22
72 ICASA, “Findings document on the review of ownership and control of commercial services and limitations on broadcasting, electronic communications services and electronic communications network services”, Government Gazette no 34601, 15 September 2011. This paper considered recommendations on changes to ownership controls made by ICASA in 2004 and endorsed proposals made then.
5.10.1.1 Limitations on the number of radio licensees

Policy and law currently allow one entity to control two AM licences and two FM licences. ICASA has proposed three amendments to current provisions:

- Dispense with the distinction between AM and FM licences;
- Provide for a percentage based rather than numerical limit and that “no person may control more than 35% of the number of commercial sound broadcasting services”;
- One person may not exercise control over more than two commercial radio licences which have the same licence areas or substantially overlapping areas.

As no submissions were made proposing that the radio limitations be removed, this is not included as an option. There is also general agreement it seems on setting a percentage based rather than numerical limitation.

- Should the policy and relevant law stipulate as recommended by ICASA that no person may control more than 35 per cent of the number of licensed commercial radio stations?
- Should the ICASA proposal limiting control by one person to no more than two licences in the same licence area/substantially overlapping areas be endorsed?

5.10.1.2 Limitations on the number of television licences

ICASA proposed that the limitation that no person can control more than one commercial television licence remain. In 2005, ICASA stated that it would recommend that limitations on the number of television licences any one entity can control not apply to subscription broadcasting services.\textsuperscript{73}

MultiChoice and M-Net proposed that the limit on the number of television licences any one person can control should be removed, but that if such limits remain “they should be confined to single channel analogue terrestrial commercial free to air television services”.

Option One: Limitation removed

The limitation on the number of television licences any one entity can control would be removed.

Option Two: Limitation retained but limited

The limitation would be retained only for single channel analogue terrestrial commercial free to air television services and thus would not apply following switch-off of the analogue television signal with the migration to DTT.

Option Three: Limitation retained

The limitation would be retained or increased and apply to all broadcasting (linear) services.

- Please select your preferred option. If Option Three is selected, please make submissions on whether or not the limit should remain or be increased.
- Comment is also invited on whether or not limits should be extended to other broadcasting-like and/or non-linear services with significant influence on the South African market.

5.10.1.3 Cross-media controls

ICASA proposed the following cross-media controls:

\textsuperscript{73} ICASA, Subscription services: Position Paper, 1 June 2005
• No person who controls a newspaper should be allowed to control both a commercial radio and commercial television licence.
• No person who is in a position to control a newspaper may be in a position to control a radio or TV broadcasting licence in an area where the newspaper has an average weekly ABC circulation of 25% of the total newspaper circulation if the licence area of the radio or TV service licence overlaps substantially with the circulation area of the newspaper.

Note that in 2005, ICASA recommended that cross-media limitations not apply to subscription broadcasting services.74 In addition, in 2013 and 2014, ICASA approved amendments to the ownership of two commercial radio licences which give Times Media Ltd control of these. 75 As the regulator has not to date published reasons for its decision, it is not possible to outline what considerations underpinned the decision to exceed current cross-media requirements.

MultiChoice and M-Net said existing cross-media controls should be removed “particularly as regards television broadcasting services” as these had become irrelevant as broadcasters will face competition from new content providers and OTT services which would not face the same limits.

The MPDP disagreed. It stated that ICASA’s recommendation that cross-media controls not apply to subscription broadcasters needs to be reviewed as it charged this had allowed Naspers to become a “major media player in both legacy and new media spaces, to the detriment of plurality and diversity”. It said that any new policy should consider broadening the scope of the current rules to not only cover existing platforms but also “new platforms with significant public influence which could be determined on the basis of a specified threshold of traffic to popular sites”.

Option One: Remove cross-media limitations
Cross-media limitations would be removed. Note that these could be replaced by a specific public interest test for media mergers as provided for in legislation in the UK.76

Option Two: ICASA proposal - only applied to FTA commercial broadcasters
The ICASA proposal would be adopted (or amended), including its proposal that these not apply to subscription services.

Option Three: ICASA proposals applicable to all licensees
ICASA’s proposal would be adopted (or amended) and as currently in law apply to all broadcasting licensees (i.e. include pay TV operators)

Option Four: Cross-media limitations are extended to incorporate other platforms
Limits would be extended beyond print media/broadcasting to cover other platforms distributing news, including news websites with significant public influence (as per MPDP submission – see above).

74 ICASA, Subscription services: Position Paper, 1 June 2005
5.10.1.4 Foreign ownership limitations
ICASA proposed the following limitations in relation to foreign ownership of commercial broadcasting licensees:

- One foreign person may not hold securities, either directly or indirectly, equal to or exceeding 25 per cent in a South African unlisted company which controls a commercial broadcasting licence;
- More than one foreign person may not hold securities, either directly or indirectly, equal to or exceeding 35 per cent in a South African unlisted company which controls a commercial broadcasting licence;
- No foreign person may hold securities, either directly or indirectly, equal to or exceeding 25 per cent in a South African listed company which controls a commercial broadcasting licence.

ICASA also proposed introducing a clause allowing it to exempt a licensee from the limits on good cause shown and if necessary impose additional obligations as a result of the exemption.

ODM in its submission argued that foreign limitations should be relaxed as these limited investment, growth, innovation, diversity, affordable access to services and fair competition thus “defeating the objectives” of legislation. It said the limits supported the continued domination of monopolies in broadcasting. The broadcaster stated that the limitations are obsolete and if retained will result in “discrimination” against traditional broadcasters as international and multinational content providers increasingly enter the market. National Treasury in its submission said that limits on foreign ownership do not recognise that anyone can trade through the JSE and that such restrictions therefore could not be imposed on listed companies.

**Option One: Remove restrictions**

The foreign ownership restrictions would be removed.

**Option Two: Increase the percentage of foreign ownership**

As per ICASA’s recommendation, foreign ownership levels could be increased to a maximum of 35 per cent as proposed by the regulator or different limits set. The regulator would be allowed to exempt an operator on good cause shown.

**Option three: Status quo**

The current foreign ownership limitations would be retained.

- Submissions on these options are invited. Please provide recommendations on what percentage of foreign ownership should be allowed if you select option two.

5.10.2 Diversity in news

A number of submissions specifically raised diversity in news, information and analysis. MultiChoice and M-Net suggested that increased access to the Internet would ensure access to a diverse range of news and information. MPDP, the FXI and Right2Know however cautioned that an increase in the

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77 ODM, Green Paper submission
number of outlets offering news and information would not automatically result in diversity in sources and range of news, analysis and opinion.

Internationally, the need to re-emphasise local news and current affairs of significance to a specific geographic areas has been highlighted. Both Australia and the UK have noted that news and information of local significance could be threatened as broadcasters and content service providers extend their reach using the Internet and regulators have developed specific licensing requirements for local broadcasters to address this.\(^78\) Stakeholders also raised that there could in future be an increased focus on exclusive news agreements which could limit the range of news, analysis and opinion.

**OPTIONS**

The options presented below are not necessarily mutually exclusive as they address both whether there is a need for policy on diversity of news, as well as if mechanisms to promote local news and current affairs should be introduced.

**Option One: Status quo**

The status quo would remain. Increased licensing, new television channels, on-demand and internet based media services will result in increased diversity.

**Option Two: Status quo with specific monitoring**

The status quo would remain, but the regulator would be required to conduct regular reviews to assess diversity of news.

**Option Three: Strengthen regulator’s focus on diversity of news**

ICASA is currently required to broadly consider diversity when licensing services. This could be extended to require the regulator to specifically consider diversity of news, review any related regulations to accommodate this and bind licensees to any promises made in relation to this.

**Option Four: Focus on local news**

Policy could introduce a specific focus on local news and information of significance. Broadcasters covering a particular geographic area could be required to devote a minimum amount of programming to material of local significance. Incentives could be introduced to facilitate innovative ways to deliver such local content, including on new delivery platforms. For example:

- Significant investment by broadcasters in delivery of local news across different platforms could be cited as a crucial consideration that would give competing applicants in new licence bids competitive advantage.
- Existing funds (including the MDDA, CRSP and other funds for content) could be used to assist broadcasters and content service providers to develop innovative ways to extend local coverage to emerging platforms, such as developing location-based apps.
- New/existing innovation funds could be developed together with the private sector to promote innovative technological solutions to meet the demand for local news.

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Stakeholders are encouraged to propose specific interventions including incentives to promote diversity of content, news and local news/material of local significance across all platforms.

5.10.3 Language diversity

The need to extend content in all South African languages, including sign language, across all platforms in line with constitutional objectives is another key issue. The introduction of the multiscreen, multichannel environment provides great opportunities for content distribution in all languages. Content in all official languages could also be a key driver of uptake of broadband technology, given the popularity of multilingual television drama content.

The SABC and community broadcasters have been the primary mechanisms for delivering language policy objectives. SABC has been limited in relation to TV as they have only three channels to cover 11 official languages. In radio, spectrum constraints have limited national coverage in all languages, with Radio 2000, Radio Sonder Grense and SAFM having the largest transmission reach.

MMA in its response to the Green Paper said that monitoring of SABC services showed that English seemed to dominate SABC TV schedules, as with other television broadcasters. As noted by several respondents to the Green Paper, while new technologies increase opportunities, they also pose challenges as with convergence services will no longer necessarily have local or national boundaries and will be aimed at appealing to audiences and users both inside and outside South Africa (the SOS, e.tv, the SABC and MultiChoice & M-Net raised similar concerns relating to this). Stakeholders suggested that incentives and funding could assist in this.

OPTIONS: LANGUAGE DIVERSITY

Note that this section does not deal with sign language as this is dealt with more holistically below. Again the options proposed are not necessarily mutually exclusive.

Option One: Status quo

As currently, the SABC would be primarily responsible for fulfilling policy objectives to extend the reach of all South African official languages. The SABC’s capacity in relation to all official languages will be extended with the introduction of DTT and radio stations will be available across the country with their inclusion on the multiplex. Any language related promises of performance made during licence applications for community and commercial broadcasting licences would be captured in licence conditions. Other mechanisms such as South African content quotas would continue to be used to incentivise production in the more marginalised languages.

Option Two: Review SABC radio footprints

The SABC has stated that it plans to continue to extend its transmission coverage of its public radio stations to expand access in all official languages. The introduction of digital radio will allow all stations to have national coverage, though access to the devices to listen to these will be limited in the medium- to long-term. Research conducted for the ICT policy review highlighted that those radio stations with lower audiences and first language populations (in English and Afrikaans) have the

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79 MMA, Green Paper submission, page 13
widest geographic coverage, and that the SABC commercial radio services which cover all metropolitan areas also broadcast predominantly in English.

- **Policy could require that the SABC, Sentech and ICASA review existing frequency allocations to SABC public radio services to address the current apparent inequities in relation to language. Policy could further require that the format of Radio 2000, currently licensed as a facility service, be reviewed to address language challenges.**

**Option Three: Review regulatory approach to language**

Policy could require the regulator to review its current approach to meeting language related mandates. The regulator has opted to address language objectives through licensing rather than setting specific targets or measures. Most commercial radio applications have focused predominantly on English (with some Afrikaans, a few providing isiZulu programming and others incidental use of other languages). ICASA has introduced incentives in its SA TV content framework to promote programmes in languages other than English, in particular the more marginalised languages.

Policy could suggest that the regulator, among other things, explore specifically requiring introduction of new channels on DTT in different languages (Canada has provisions on French language channels), or setting aside capacity and/or frequencies for radio, for language services. Provisions could also be considered requiring on-demand services to include content in languages other than English and Afrikaans on their catalogues.

**Option Four: Promoting all languages across all platforms**

Several respondents highlighted funding and/or incentivising South African audio and audio-visual content development in all languages for all platforms as a means to promote uptake of broadband. No specific suggestions on implementation were put forward, including what types of incentives, how to fund any such content fund and which agency should be responsible for this.

- **Comments on the identified options are invited. Submissions should where relevant provide details of the types of funding and/or incentive programmes they believe would promote the development of content/programming in all languages for all platforms.**

#### 5.10.4 Diversity: audiences

Several submissions said that the objective of reaching all audiences, regardless of locality, class, gender and age, among other things, had not yet been achieved. The SOS, MPDP, R2K and MMA, among others, raised the issue of audience diversity and stated, for example, that women, children and youth are not adequately catered for currently. A range of organisations representing persons with disabilities stated that there are limited programming choices for this sector. MMA further stated that its monitoring of broadcasting services indicated that programming mainly targeted urban dwellers and that “news analysis reveals that provinces with well-defined metropolitan areas receive better coverage” than others.\(^\text{80}\)

While they proposed that the public broadcaster should be specifically charged with such responsibility, it was also suggested that the term diversity should be explicitly defined to cover all

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\(^{80}\) MMA, Green Paper submission, page 13
audiences and that funding programmes such as the MDDA or the CRSP, could incentivise content aimed at neglected audiences and promote its distribution across all platforms and devices.

**OPTIONS: AUDIENCE DIVERSITY**

**Option One: ICASA to review and recommend**

ICASA could be asked to review the extent to which policy and regulation has ensured that all audiences are catered for. Such a review could be conducted regularly to assess the impact of provisions and the regulator could make amendments to its current frameworks based on this and/or make recommendations on other initiatives to address gaps identified (including any legislative amendments which might be needed).

**Option two: Other interventions?**

Several respondents to the Green Paper proposed that policy should incentivise and/or provide funding support for initiatives to promote diversity and South African content on broadcasting services and across other platforms. No specific recommendations were made in this regard. It is recognised that existing development agencies/incentive schemes such as the USAF, MDDA, NFVF and DTI/provincial film commission incentive schemes could be adapted to support such aims. As many of these, report to other Ministries, such issues can be raised with them, but a new White Paper cannot prescribe policy interventions for these.

Stakeholders are requested to submit concrete proposals around incentive/funding proposals so that these can be considered. Submissions on how else to address apparent challenges relating to audience diversity are also invited.

5.11 South African music and television content

The 1998 White Paper says that “broadcasting plays an integral role in developing and reflecting a South African identity, its character and cultural diversity within the framework of national unity”. In line with this, it stipulated that all broadcasters should commit resources and airtime to South African programmes and music and:

- Television broadcasters must provide a mix of their own productions and programmes produced by independent South African producers.
- Programming on all broadcasting services should be “predominantly South African”.

Subsequent to the publication of the Green Paper, ICASA has issued a Discussion Paper reviewing its regulatory framework for South African TV and music content, and published research on the costs and benefits of its regulations. While the review process was still ongoing at the time of finalising this Discussion Paper, several initial findings are of relevance to the review of Government policy:

- Most broadcasters according to the study met or exceeded the content related quotas;
- Certain television content, particularly multilingual dramas, has increased in popularity and is now a commercial imperative for television broadcasters. However some content, such as children’s content, does not generate sufficient revenues to cover costs;

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81 Department of Communications, ‘White Paper on Broadcasting Policy’, 4 June 1998, Section 1.3.3: Public Interest
Some commercial radio stations raised supply side concerns regarding South African music, stating that the recording industry did not produce sufficient music to support increased quotas across all formats.

ICASA has asked stakeholders to make submissions on the existing definitions for South African music and television content (i.e. if these should be changed to include sports programming) and if the policy framework should promote African as well as South African content. ICASA noted that it would make proposals to Government on these issues. This Discussion Paper therefore does not deal with such questions but will consider any outcomes of the ICASA process related to such issues.

Respondents to the Green Paper differed on the best approach to promote South African content in future. Differences centred on whether content regulation would remain relevant and which entities requirements should apply to. Most however proposed that there is a need to find innovative ways to fund traditional South African programming and content for new media platforms.

Vodacom in its submission said that South African content regulation is “better suited” to traditional television and that new broadcast media should not have to comply with fixed content quotas “given the...costs associated with customising content”. It said that there was a need to rethink the approach to South African content promotion and proposed that policy makers consider establishing a “Production Fund” with contributions from all content providers which could be accessed by broadcasters and digital content providers.

MultiChoice and M-Net argued that the approach to regulation of South African content is “outdated, ineffective, unnecessarily restrictive and increases the costs of compliance”. They said that broadcasters already exceed the minimum quotas due to audience demand, but that regulation increased the costs of regulatory compliance. The subscription licensees said that quotas should focus on the public broadcaster, that those on commercial broadcasters be removed and that policy adopt creative mechanisms to “promote, encourage and incentivise local content” and a flexible approach so that providers could “decide how best to promote and include local content on their services”.

The SABC focused only on its own responsibilities. It said that the approach should change from channel-based quotas to network requirements in light of the migration to DTT. The public broadcaster further suggested that government establish content hubs in all provinces as it could not alone be the “sole driver of the creative industry development”. It further proposed the introduction of mechanisms so the SABC could “exploit its archive content in the digital space ... to use so-called orphan works on the basis that it can set aside 10% of revenue generated by such contention a trust account to be used for the benefit, and development, of the creative industry”.

The SOS Coalition said it is critical that the “credibility, professionalism, quality and creativity of SA Content” is boosted to counteract the impact of international companies streaming content into the country. It proposed that content requirements (including provisions on independent production) be extended for all broadcasters. Other mechanisms proposed by the Coalition include:

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83 Vodacom, Green Paper submission, page 51
84 NAB, Green Paper submission, page 27
85 MultiChoice and M-Net, Green Paper submission, page 18
86 MultiChoice and M-Net, Green Paper submission, pages 36-41
A shift in the intellectual property regime to enable independent producers to exploit content rights on different platforms and in different territories.

- Strengthening South African production tax and incentive rebates managed by the DTI and increasing support for the NFVF;
- Investigating the establishment of a South African content fund to support production of local content across a number of platforms; and
- Strengthening ICASA’s capacity to monitor compliance with South African content requirements.\(^\text{87}\)

The MPDP noted that the popularity of South African educational, drama and soaps programming was evidence that the quotas have been successful in stimulating demand for local content. It agreed that convergence and digitisation raise challenges for the local content framework, but argued that these concerns should not lead to local content quotas being removed as emergent services “may take many years to reach maturity, and may not even take root at all”. It proposed that all broadcasters and other content services/distributors “targeting South African audiences” should have SA content obligations. Where it is impractical to subject new media platforms and services to quotas, “expenditure requirements could be considered, where services such as ISP’s are required to contribute a certain percentage of their annual revenue to a local content production fund". It suggested that any public broadcasting fund established to support the SABC also provide funding for South African public interest content.\(^\text{88}\)

E.tv emphasised that its capacity to fulfil public interest obligations such as South African content quotas depended on the concerns it had raised about unfair competitive practices by subscription broadcasters and the SABC being addressed. It said the new approach to South African content should be based on ensuring parity between like services regardless of delivery platform.

ACT-SA suggested that the policy approach to community television consider the sector’s particular circumstances, and thus not require commissioning from independent producers as channels did not have the funds to commission programmes. It further proposed that a contestable fund for public broadcasting set aside grants for community TV programming, and that government explore adapting existing incentives and funds in place for the film industry to boost South African content production capacity across all platforms.

**OPTIONS: INCENTIVES, FUNDS AND PAY-OR-PLAY PROVISIONS**

While many responses to the Green Paper suggested it would be important to develop creative ways to boost South African audio-visual content production, such approaches are not necessarily new. The EC Act provides for a range of mechanisms to meet the objective of ensuring South Africans have access to a range of creative programming, including airtime and expenditure quotas. ICASA has to date, however, only imposed quotas on the amount of programming or music to be aired. Government will explore such pay-or-play options further to establish how any funds collected could best be used to promote the industry. Provisions in place in other countries, including Canada, France and Australia will also be considered in this regard.

\(^{87}\) SOS, Green Paper submission, pages 8 and 9

\(^{88}\) MPDP, Green Paper submission, pages 16-19
Submissions on how best to use such funds, which agency should be responsible for these and how to determine the amount of any pay or play levies are welcome.

Proposals made regarding adapting existing tax and other incentives/grant funds will also be discussed with other Ministers and Departments to develop a holistic approach to supporting South African content. In addition, concerns raised by ICASA regarding the music recording industry will be discussed with the DTI to ensure these are addressed through its music development strategies.

OPTIONS SOUTH AFRICAN CONTENT ON TRADITIONAL BROADCASTING SERVICES

Note that most of the submissions focused on television provisions and not on the framework for promoting of South African music on radio licensees. It is important therefore to ask whether or not a different approach should be adopted for radio, given that the sector is not facing the same challenges associated for example with the migration to DTT. The options below are therefore focused on linear television services, regardless of what platforms they are aired on (thus they would also relate to Internet Protocol TV (IPTV)). They presume that the South African local music requirements for radio remain the same.

Note it is presumed that regulation would be applied across a bouquet/network and not per channel. Policy could also require broadcasting/platform services to meet quotas/requirements through promoting inclusion of independent channels produced by South African companies.

Option One: Status quo plus

The status quo would remain, with an emphasis on the need to continue to reinforce South African content and music in all genres and formats across all tiers, with a graduated approach. The policy would make a commitment to explore pay or play options so that these could be implemented.

Option Two: Focus on specific genres across all broadcasters

Policy would continue to reinforce the importance of promoting South African content generally and across all tiers. It though would focus on regulation of content in specific genres such as children’s content, drama/film, documentaries and/or education.

Option Three: Only focus on public and community broadcasting

Regulation would focus only on the public broadcaster and community services while noting the importance of incentivising SA content on commercial services. A range of options for incentivising the airing of particular genres of programming are possible – including, for example, limiting funds and existing incentives (such as tax breaks on content) only to broadcasters that meet certain minimum quotas (financial or airtime based) or voluntarily opt to comply with regulation. Note those selecting this option should propose how South African content would be promoted or incentivised.

Option Four: Focus on significant broadcasters

Regulation would focus only on significant broadcasters (those with specific audience and revenue levels). This would give some regulatory relief to new broadcasters, though they would be required to meet requirements when they reached certain audience levels/revenue targets.

Which option do you propose be followed?

Are there alternative options
**OPTIONS: NON-LINEAR/ON-DEMAND SERVICES**

**Option One: South African content requirements do not apply**

As stated, on-demand services would be excluded from South African content requirements, though mechanisms could be put in place to encourage them to ensure prominence of South African content on their catalogues and in any search engines.

**Option Two: SA content requirements apply to on-demand services**

ICASA would be tasked with developing regulations to ensure prominence of South African content on the catalogues of on-demand services or to contribute to a “pay-or-play” fund (see above).

**Option Three: Content requirements only apply when on-demand services reach set revenue targets/subscription or user levels**

As stated. This would exclude new services and therefore allow for innovation.

- Which option do you prefer?
- Are there alternative approaches which could be adopted?

**OPTIONS: GENERAL**

As noted above, a number of general issues were raised in submissions as well as in the research conducted. These are reflected below to invite comment from stakeholders on these:

- The MPDP suggested that services such as ISPs and other telecommunications licensees be required to contribute to a content fund.
- ACT-SA and the SOS stated that government policy should address issues around rights and reinforce a principle that rights should remain with producers so that they could exploit these on other platforms and in other territories.
- ACT-SA proposed that community television services be exempted from provisions on commissioning of independent producers.
- Others raised the need to specifically promote production of more expensive genres, and programming formats that can be licensed and/or require investment in development.

- Stakeholders are asked to comment on these options/proposals

**5.12 Access to public interest programming**

There are currently a number of provisions in place in policy, legislation and/or regulation to ensure that audiences can access public interest programming. These include:

- Must carry provisions
- Rules on FTA broadcasting of sports of national interest.

In the multi-channel, multi-screen era where audio and audio-visual content will be available on a range of platforms and devices, some countries have also introduced provisions on prominence of public interest content/public broadcasting to promote access by audiences to such content. Other questions also arise: For example, if requirements should be extended to newer platforms. These issues are all dealt with separately below.
5.12.1 Must carry rules

What are called “must carry” rules requiring, for example, subscription broadcasters to re-transmit broadcasting services with public interest content, are in place in a number of countries\(^89\) and are aimed at ensuring that audiences have easy access to public interest content. They are intended to ensure that audiences do not have to switch platforms to access such content and/or extending the reach of public broadcasting services. In European law, must carry provisions are technology neutral (i.e. apply to any multichannel distributor of broadcasting content) and thus potentially can cover satellite broadcasters as well as IPTV providers as long as a “significant number” of end-users use these services to access television and/or radio.

The EC Act states that ICASA must develop regulations on the extent to which subscription broadcasters must carry SABC TV programmes, "subject to commercially negotiable terms". The regulator finalised must carry rules for the analogue environment in 2008. There is a need to consider if the legislative requirements on must carry have had the intended effects in South Africa and have achieved the underlying objectives for these requirements. In developing a new policy framework it is also important to consider whether or not such provisions will remain relevant in a converged environment.

There were very different views on whether or not the current provisions should be amended, remain as is or be removed.

The SABC said that while the intentions behind existing provisions are good, they are unnecessary and an “illegitimate intervention inhibiting market freedom” in the multichannel environment. They said provisions should ideally be removed as the SABC is the largest broadcaster in the country and not in need of protection. Alternatively, the SABC proposed that the approach be adapted and the number of channels with must carry status limited (particularly noting that DTT will increase the number of SABC channels) and arrangements around who bears the costs adapted.\(^90\)

M-Net and MultiChoice however argued that the rules provide “an important benefit to the public broadcasting service” as they assist it in meeting its universal service obligations by ensuring the broadcaster can be received in areas not covered by its transmission network. They said the current provisions are “technologically neutral”, “digital ready” and “are working well” and there is no need to amend either policy or legislation in respect of must carry rules.\(^91\)

E.tv on the other hand addressed primarily the issue of costs, linking this to the need to protect FTA television (commercial and public) so it is viable and can meet public interest objectives. It proposed that all FTA television licensees be given must carry status, as they all contribute to meeting public interest objectives, and that subscription broadcasters pay the FTA services carriage or retransmission fees “reasonably approximating the value they contribute to the pay TV platform”. E.tv argued that in South Africa “a near monopoly subscription television service has built a ...very profitable business, in substantial part by re-selling FTA broadcast signals … while avoiding the

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\(^89\) Must Carry provisions are included in the Universal Service Directive of the European Union and applied in several European countries

\(^90\) SABC, Green Paper submission, pages 39-44

\(^91\) M-Net and MultiChoice submission, page 53
considerable costs of public interest obligations”. The commercial FTA broadcaster said that it is one of the most watched channels on the DSTV platform.92 The SACF also proposed that must carry status be extended to all FTA broadcasters and that retransmission fees be paid by subscription services/platforms to FTA services. 93

The options below question whether or not must carry provisions remain relevant, and if so who they should apply to.

### OPTIONS: MUST CARRY - IS IT RELEVANT?

**Option One: Must carry provisions are removed**

This was proposed by the SABC as their preferred option. They suggested must offer requirements, where certain content providers/broadcasters would be required to offer content to subscription broadcasters and other competing content providers, replace these. Must offer specifications are generally linked to fair competition and bar certain content providers/broadcasters from entering into exclusive deals with subscription services.

**Option Two: Status quo**

The current provisions would remain i.e. must carry status is given to public broadcasting channels and the regulator is required to set rules to implement this. The rules could specify that only those subscription services which have a significant number of users/subscribers are required to adhere to the provisions.

**Option Three: Status quo, but limited**

Policy and law would still require that subscription broadcasters/platform operators (either all or only those with a significant number of subscribers/end-users) must carry certain channels, but that this be limited only to select channels and not all public broadcasting services. Note that the SABC did not specify which services this should be applied to, but seemed to suggest only the existing two public channels (SABC 1 and 2) and not any digital only channels.

If this option is selected, please indicate what principles should guide the limitation.

**Option Four: Extend provisions to all FTA broadcasters**

Subscription broadcasters would be required to carry all FTA television licensees. If so, should must carry status be given only to national services or also to regional television licensees (which could be licensed in the future) and/or community services? Note that e.tv did not in its submission outline how they propose such a requirement be applied with the migration to DTT.

**Option Five: Allow FTA broadcasters to elect to opt in or out**

In the USA, cable operators and multichannel audiovisual programming distributors have to carry all local TV licensees if these licensees opt for must carry status (there is no national public service broadcaster). Licensees are required to decide every three years whether or not they want to opt in or opt out of the must carry provisions. Those that request must carry status bear their own costs related to this (as in South Africa). Channels that do not ask for must carry rights can only be

92 e.tv, Green Paper submission, page 10-11
93 SACF, Green Paper submission, page 40
broadcast by a cable operation or programme distributor if they give what is called re-transmission consent. Contracts generally include retransmission fee payments payable by the multichannel provider to the broadcaster. Retransmission consent does not only apply to local broadcasters, but to major commercial television networks as well. The US regulator, the FCC, has set rules and guidelines on retransmission agreements/negotiations.

- Which option do you prefer?
- Are their alternative options which should be explored?

**OPTIONS: WHO PAYS?**

**Option One: Status quo**

The policy would stipulate that must carry status is subject to commercial terms and the regulator interpret this in regulations (currently ICASA states that each must bear their own costs).

**Option Two: Retransmission/carriage fees**

Policy and law would specify that FTA television broadcasters must be fairly compensated for carriage by subscription broadcasters according to the value they add to such networks. The regulator would be tasked with setting out the criteria for determining value.

**Option three: Must carry channels pay subscription broadcaster**

The other option would be for the carried channels to pay for being carried by the subscription broadcaster, the costs would be those that the subscription broadcaster incurs as a result of the carriage.

5.12.2 Prominence of public interest programming/public broadcasters

The issue of prominence on programming guides (EPGs) and other user interfaces relates to must-carry rules. While similar to the issue of discoverability of such programming highlighted in the section dealing with fair competition, prominence is in some countries separately enforced with stricter requirements specifically aimed at ensuring easy access to the public broadcaster/public interest programming (e.g. South African content). Current South African policies, laws and regulations do not deal with the issue of prominence. In the UK, for example, the regulator has set rules and guidelines requiring that public service channels (both the BBC and private channels with substantial public interest obligations) are given “appropriate prominence” on EPGs. The following issues are therefore pertinent to this policy review.

- Whether or not prominence of public interest programming is necessary to ensure easy access by viewers to such programming;
- If so, which broadcasters should be given EPG prominence and what criteria should be used to determine this;
- Whether such rules should only apply to EPGs or be extended to mechanisms used on other platforms for discovery of content i.e. catalogues/search engines/ user interfaces on all platforms with significant audiences; and
- How would prominence apply to new interfaces likely to be developed i.e. those that categorise content available via genre rather than channel etc.

http://www.fcc.gov/guides/cable-carriage-broadcast-stations
**OPTIONS: PROMINENCE**

**Option One: Prominence is regulated**

The regulator would be required to assess the need for regulation to ensure prominence of certain content/channels/services and develop rules as necessary. Rules could be limited to those devices and platforms used by a significant number of people. As with must carry requirements, policy would need to determine whether or not the principle of prominence applies only to the SABC/public broadcaster or is extended to other broadcasters which have public interest related obligations in relation to specific genres of programming, universal service, language and/or South African content. If this option is preferred, please make submissions on which broadcasters would be given prominence.

**Option Two: status quo remains**

Policy would not include any provisions relating to prominence of public interest content.

5.12.3 **Events of national interest**

South African policy and law currently include measures to ensure that sports of national interest are shown free to air. The sporting events that are covered by these provisions are defined by the regulator in consultation with the Minister and the Minister of Sport.

M-Net and MultiChoice said that regulation of the broadcasting of national sporting events has significant consequences for all stakeholders and the wider economy, and that existing regulations successfully balance the competing interests of parties affected by them and strike an appropriate compromise. They said existing mechanisms are “adequate and appropriate” and therefore no amendments are necessary. SABC on the other hand raised concerns with provisions and/or with related ICASA regulations. It said that the regulator’s rules allowed subscription broadcasters to charge high prices to FTA broadcasters for subsidiary right and that policy should ensure reasonable rates for sub-licensing of such events. The public broadcaster further said that rules should stipulate that subscription broadcasters must conclude agreements with FTA services timeously so that these services have sufficient time to recoup costs from advertisers/sponsors.

The SABC highlighted approaches in the UK and Australia. In Australia rights for sports on their anti-siphoning list (those which must be shown free to air) must first be offered to FTA services and only if not acquired to subscription services. Australia requires that FTA broadcasters make available games not broadcast to other services at a nominal fee. In the UK, there is a two tier list of major sporting events. Category A events cannot be broadcast live on an exclusive basis by a subscription service at all. Category B events cannot be broadcast live on an exclusive basis unless secondary rights (highlights packages, delayed broadcasts) have been made available to FTA services. Sporting rights only have to be made available to those services reaching a substantial proportion of the public (so not regional or local channels).

Further issues related to this area of relevance to policy are:

- If the listing should only apply to sports of major importance or more broadly to events (as per the European AVMS); and

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95 M-Net and MultiChoice, Green Paper submission, page 52
If there is a need to also consider requirements (again as per the AVMS) on short reports of key events so that these can be covered on, for example, news broadcasts.

**OPTIONS**

**Option One: Status quo**

The current policy and legislative provisions would remain.

**Option Two: Status quo plus...**

The following principles would be captured in policy and legislation:

- The rights must be made available at reasonable fees (SABC proposed 25% of the cost);
- Pay-TV providers must finalise any sub-licensing agreements timeously (SABC proposes at least three months before the event); and
- Anti-hoarding provisions are introduced.

**Option Three: alternative model explored**

A new approach would be adopted after considering policies in other countries such as Australia which requires rights holders to listed events to first offer these to FTA services.

- Which option do you prefer?

**Options: Other issues**

- Should this be broadened to cover events of major public importance? In some European countries, for example, royal weddings have been designated as such.
- Is there a need to stipulate in policy that the regulator should develop rules to ensure access to news packages for events of high interest/importance?

5.13 Universal Access: Accessibility and inclusion

Many of the issues above deal with universal access more generally, including, for example the mandate of the public broadcaster to extend its reach and ensure access to a range of programming in all official languages. This section therefore deals specifically with access to programming by persons with disabilities.

Accessibility by and fair representation of persons with disabilities was raised extensively in provincial hearings on the Green Paper organised by the Department. In all provincial meetings, people raised concern about whether the SABC provides sufficient sign language/sub-titles for those with hearing disabilities and if ICASA enforces its guidelines and licence conditions in this regard. Concerns were also raised about inclusion of persons with disabilities in programmes broadcast.

It is important to consider in a new policy whether or not current provisions need to be revised to realise or address the possibilities and challenges of new technologies, and the introduction of new services such as on-demand content and broadcasting-like services broadcast over the internet. Some of the specific issues to be considered relate to:

- Accessibility of end-user equipment (television sets, STBs and decoders, remote controls and interfaces such as EPGs);
• Whether it should be mandatory for broadcasters to make certain types of information accessible (via sign-language, captioning, audio description etc.), such as information about national disaster/emergency and information on emergency services.
• Promoting awareness of which programmes and services are accessible by providing information on programme schedules and on any programming guides/audience interfaces.
• Ensuring that guidelines/standards are agreed on in relation to the quality of signal language, audio description and sub-titling; and
• Ensuring any editorial guidelines and codes include provisions relating to fair representation of people with disabilities and inclusion of persons with disabilities in programming.

Policy could require the regulator to address all these issues through regulations, licence conditions, editorial standards, codes of good practice and guidelines. Regulatory, co-regulatory and self-regulatory approaches should be explored in relation to these areas.

Policy should also stress the importance of the regulator ensuring that persons with disabilities are consulted and involved in the process of developing any guidelines or rules and in ensuring their implementation.

OPTIONS

Rather than providing alternative options, this section identifies possible approaches that could be included in any policy and/or law for comment. This is not an exhaustive list of possibilities and submissions on other areas which should be covered in policy and law are welcome.

• In relation to accessibility of terminal equipment, it is suggested that the policy require that television broadcasters and manufacturers together develop common standards/approaches to ensure that hard of hearing persons who use hearing aids are able to use assistive listening devices of their choice. Should the self-regulatory approach not be successful, government will intervene to set standards for terminal equipment.
• Manufacturers and retailers will be encouraged to ensure all television receiving equipment and related software complies with universal design standards and consider the needs of persons with disabilities. Universal design standards will be taken into account when government sets standards for such equipment and the regulator will be required to ensure equipment and software meets universal design standards in type approving equipment.
• The regulator should develop rules and/or guidelines for electronic programming guides/catalogues/user interfaces to ensure that these incorporate features, as far as practicable, to ensure access to such guides by persons with hearing and/or sight disabilities.
• EPG rules or guidelines should also require that broadcasters include wherever available information on which programmes are accessible. Standard symbols to indicate which programmes are subtitled/captioned, have sign language and/or audio description, for example, should be agreed on in consultation with organisations representing persons with disabilities.
• The regulator should develop licence conditions and/or regulations outlining the percentage and genres of television programming/content that should be made accessible to persons with hearing and/or sight disabilities and how this will increase over time.
• The regulator should work with on-demand providers to encourage them to make their services and content available to persons with disabilities and to consult with organisations representing persons with disabilities in developing self-regulatory guidelines and codes.
• The regulator should promote self-regulation by broadcasters acting together with organisations representing persons with disabilities to develop standards for the quality of captioning/sub-titling,
audio description and sign language to ensure these are understandable and meaningful to audiences.

- Regulatory, co-regulatory and self-regulatory codes relating to accessibility must include provisions to ensure awareness of the guidelines and standards set and mechanisms for adjudication of complaints about non-compliance with these.

**Please comment on each of these possible options.**

**What other rules could be put in place to ensure persons with disabilities are catered for adequately?**

### 5.14 Protection of children, classification and content standards

Under current laws, ICASA has sole responsibility for determining rules on content standards, classification and protection of children for broadcasters. The Film and Publications Board (FPB) is responsible for other content (except for news publications that are members of a self-regulatory body). ICASA can recognise self-regulatory bodies to enforce such codes and has accredited the Broadcasting Complaints Commission of South Africa (BCCSA). The BCCSA in interactions with the ICT Policy Review Panel said that it is guided by the FPB and ICASA codes in place. The FPB has indicated that its founding legislation will be amended to address any gaps regarding online content. In terms of this law, all content providers covered by the Act must submit information prior to publication.

Protecting children from harmful or age inappropriate content, ensuring adults have sufficient information to choose what they want to watch or listen to (within the law) and promoting fairness, accuracy and ethical behaviour in news, current affairs and factual programmes are the three core objectives of current provisions in policy and law. These will continue to underpin future policy, though convergence and digitisation might require new ways to realise these, given that content will be delivered to multiple screens from a range of platforms and sources.

Research conducted in other countries is also important to consider. In the UK, for example, the regulator conducted a study on public attitudes and expectations in the converged world. The 2012 study found, among other things, that audiences have high expectations of television content and may want more assurances for on-demand services, knowledge of content regulation in place for broadcasting is high but lower for other services, audiences expect content over television sets and other devices associated with broadcasting to be regulated closer to the level of broadcast TV than internet content accessed from the open internet via computers.  

Comments in submissions on these issues focused primarily on the need for awareness campaigns and digital literacy education so that children, parents and viewers/users are aware of any codes or other rules (e.g. watershed rules on scheduling programming so that children can be protected from harmful or age inappropriate content) and mechanisms that can be used to protect children (e.g. age verification technologies or parental locks on content and search engines). It was also noted that the current co-regulatory system in place for traditional broadcasting has been largely successful.

The FPB has indicated that it is establishing a Regulatory Forum for all related regulators to develop common approaches to this regulation.

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96 http://stakeholders.ofcom.org.uk/binaries/research/tvresearch/UKAudienceattitudes.pdf
This section does not present options but raises issues for stakeholders to comment on. It does not review the current co-regulatory provisions in place as no stakeholders raised concerns about this. Should stakeholders believe this should be reviewed, they are welcome to motivate their position in their response to this Discussion Paper. Issues to be considered include:

- If on-demand providers would be regulated by the FPB as currently, or if the extension of the definition of those that are regulated would mean that they fall under ICASA and/or any approved co-regulatory structure. It is important to consider if audiences/users would view such content as broadcasting or not. It is also important to note that some on-demand services will be provided by traditional broadcasters (catch-up services for example) and audiences might expect to complain to the broadcasting related regulators about these.

- Which body (FPB or ICASA’s CCC/the BCCSA) would be responsible for complaints about online content provided by broadcasters on their webpages? Such pages might include additional news information relating to a story which users might have concerns about.

- How to ensure similar criteria are applied by all statutory regulators in approving co-regulatory and self-regulatory mechanisms and institutions? Should ICASA be required to consult the FPB and ensure any criteria it sets are in line with FPB approaches?

- How can policy ensure that complaints procedures are streamlined so that audiences and end-users can easily complain and do not have to first research which regulatory body deals with content it is concerned about? Should the FPB and ICASA be required to set up a portal/complaints office together with other regulatory bodies (statutory, self-regulatory and co-regulatory) to establish a one-stop-shop complaints mechanism?

- The means to protect children and provide adequate audience advisories will depend on the medium and platform. For example, watersheds (where programmes unsuitable for children are only broadcast at times when children are not likely to be part of the audience) are only relevant to scheduled programming. Access controls are also currently in place across many platforms to ensure age verification and/or parental controls. Audience advisories/labels are required across all content either in terms of ICASA or BCCSA provisions or by the FPB. Is there a need to put in place explicit requirements and develop uniform approaches to, for example, classification and labelling? If so, should the FPB and/or ICASA be charged with developing these, together with co-regulatory and self-regulatory bodies?

- Consumer education will become increasingly important to ensure citizens are aware of mechanisms in place to protect children, avoid content and complain about alleged breaches of codes. ICASA requires broadcasters to provide regular information about the code of ethics and how to complain if they believe standards have been breached. Should the regulator require all relevant licensees to provide similar information about these issues?

- Should ICASA be specifically charged with promoting media literacy, and specific provisions and powers in relation to this added to their mandate?

- Is it necessary for the regulator to require providers to warn audiences if they are moving from a managed platform that adheres to such standards to an unmanaged platform (e.g. the Internet) given that audiences might not necessarily be aware of this when they shift programmes? Some countries have specified that providers include both on screen text messages and audio messages to warn audiences of this.

Stakeholders are requested to make submissions on these issues as well as other issues they believe need to be addressed.
5.15 Commercial communications and editorial integrity

The content of advertisements is regulated by a self-regulatory body, the Advertising Standards Authority. This section does not review this arrangement. It rather focuses on areas currently within the ambit of ICASA i.e. mechanisms to ensure editorial independence from commercial communication (advertising, sponsorship, product placement etc.), protection of editorial integrity and the right to impose limits on the time allocated to commercials. It does not question if these powers remain relevant, but rather raises possible new challenges which might need to be addressed.

**ISSUES**

- Convergence is likely to have an effect on the future of commercial communications and therefore the way the regulator ensures editorial integrity. For example, the Internet allows for overlays of advertising which might not always be controlled by the content provider/media services provider. Will there be a need for policy to address this issue?
- There will also likely be a need, given fragmentation of advertising and audiences and the increased demand for content, to balance protection of editorial integrity, innovation and investment in content. SABC has suggested that current limits on the number of minutes per hour allowed for advertising be increased. In addition broadcasters appear to be increasingly including advertiser funded programming (AFPs) in their schedules. Is there a need for more flexible rules on advertising to support investment and innovation? Should requirements be introduced requiring transparency so that viewers are aware when programming is advertiser funded – in the same way provisions are made to ensure awareness of sponsorship and rules set to enforce editorial independence of sponsored material?

Stakeholders are invited to comment on these issues.

5.16 Piracy

It seems there is agreement on the approaches to address this. Mechanisms proposed to strengthen protection against signal piracy will be incorporated into policy:

- The signal-based approach to piracy adopted by WIPO in its Treaty for the Protection of Broadcasting Organisations will be reinforced.
- The law will reintroduce statutory prohibitions on piracy.

5.17 Conclusion

- Are there any issues that you believe have been neglected?
- Can you suggest any benchmarks and targets which may be incorporated to monitor progress against policies objectives?