Regulation of Internet Protocol Television (IPTV) and Video on Demand (VOD) services in South Africa


This advisory is intended to reflect in simple terms the position set out by the South African communications regulator, the Independent Communications Authority of South Africa (ICASA) as set out in its Position Paper in relation to Internet Protocol Television (IPTV) and Video on Demand (VOD) Services.

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Summary

IPTV services which fall within the ITU definition of IPTV services are regarded as broadcasting services for the purposes of the Electronic Communications Act (the ECA) and an individual or class broadcasting service licence will be required.

VOD services (not including on-demand services provided over the public Internet) are regarded as electronic communication services for the purposes of the ECA and a class ECS licence will be required.

Programming content made available over the public Internet (Web TV / Internet TV / Internet broadcasting) falls outside ICASA’s regulatory jurisdiction and no licensing under the ECA is required.

In its Final Report in ICASA’s Review of the Broadcasting Regulatory Framework towards a Digitally Converged Environment (published on 25 June 2013) ICASA indicated that it regarded a review of this position as a long-term priority.

IPTV

South Africa works with the ITU definitions of IPTV services:

"a system where a digital television service is delivered by using [IP] over network infrastructure, which may include delivery by broadband connection"

2 http://www.ellipsis.co.za/content-regulation-in-a-digitally-converged-environment/
"IPTV is defined as multimedia services such as television/video/audio/text/graphics/data delivered over IP based networks managed to provide the required level of quality of service and experience, security, interactivity and reliability."\(^{3}\)

In South Africa IPTV services – services which provide scheduled television programming over a managed network and may provide additional features such as data, text and audio which are ancillary to the scheduled television programming – are regarded as broadcasting services because they are primarily unidirectional.

ICASA has decided that an individual broadcasting service (IBS) licence is required where IPTV services are provided on a for-profit basis and that such service will be subject to the various requirements of Chapter 9 of the Electronic Communications Act regarding content.

Applications for IBS licences can only be made pursuant to an ITA issued by ICASA and a relatively extensive adjudication process, so the current pool of licensed IBS licensees is unlikely to be expanded in the short to medium term.

An IPTV service that is provided by a community broadcasting service (i.e. to service the needs of a particular community and on a non-profit basis), will require a class community television broadcasting service licence.

In future ICASA will consider whether:
- further free-to-air or subscription broadcasting services should be licensed and whether an ITA for licences to provide such services should be issued;
- IPTV services that are provided on a commercial basis have a significant impact on socio-economic development or not for the purposes of section 5(5)(c) of the ECA;
- it would be appropriate to differentiate between IPTV services and television services that are delivered on other platforms and to make a determination that only a class broadcasting service licence is required to provide commercial or public IPTV services or certain types of commercial or public IPTV services; and
- broadcasting services (including IPTV services) that are provided on a more limited basis fall within the definition of broadcasting services in the ECA.

**VOD**

VOD services are regarded as electronic communication services (ECS).

This includes both "push VOD", i.e. on-demand content that is downloaded onto a user’s device allowing the user to select from a limited and defined list of programming, and "pull VOD" or TVOD, i.e. on-demand content which is accessed from an external server.

According to ICASA, the element of viewer choice distinguishes VOD services from IPTV services by giving the former a sufficiently bi-directional character.

As VOD service providers do not require the use of numbers from the national numbering plan, a class ECS licence will be sufficient for the provision of VOD services on national basis. ICASA

\(^{3}\) International Telecommunication Union focus group on IPTV (ITU-T FG IPTV)
considers that this is appropriate and that it does not in any event have the power to impose requirements in relation to the content distributed on VOD services at this time.

This is because programming content made available by VOD providers is a "content service", which does not form part of the licensable service over which the Authority has regulatory jurisdiction.

ICASA has jurisdiction only over that part of the service that involves the movement of packets, and not over the content of the packets themselves. The ASASA and the FPB have limited jurisdiction in respect of advertising and child sexual abuse images and the exposure of children to harmful content.

Notwithstanding this lack of jurisdiction, ICASA requests that VOD providers comply with the standards set in the Broadcasting Services Code of Conduct where relevant as well as implementing appropriate controls which limit children’s access to inappropriate programming.

Prospective VOD providers who register for class ECS licences to provide such services should provide information on any such measures which they intend to adopt at the time of registration.

**Content services provided over the public Internet**

On-demand services which are provided over the public Internet are to be regarded as content services and as such fall outside of ICASA’s jurisdiction.

ICASA confirmed that it is “concerned only with regulating services which consist primarily of the carriage, or conveyance, of signals over an ECN rather than the provision or editing of material that is intended to be carried over an ECN”.

There are accordingly no licensing or other requirements relevant to these services under the ECA.

**ICASA’s review of the broadcasting regulatory framework (June 2013)**

As part of its broadcasting regulatory review process ICASA received and considered submissions relating to the status quo on IPTV and VOD services as set out in the Position Paper. There were three principal strands to these submissions:

- Sentech and others argued that the Position Paper should be reviewed and that convergence dictated that IPTV should not be regarded as a broadcasting service. There was a further argument that the Position Paper is not a regulation and ICASA should introduce a regulation under section 4 of the ECA in order to support its position. This should be done after a regulatory impact assessment to inform the regulatory environment going forward.
- eTV and others submitted that there should be no change to the status quo and expressed support for a position under which broadcasting services were treated in the same manner as services that looked like broadcasting services.
- Vodacom and the SABC argued that light touch regulation would be appropriate to encourage the provision and adoption of new services until they gain traction.
ICASA concluded that “there is consensus among most stakeholders of support of the current position paper”. It indicated that, while it regarded a review of the Position Paper as a priority, there were other, more compelling, priorities in the short to medium term.

**Registration with the Film and Publications Board (FPB)**

Those considering providing IPTV and VOD services should note that the FPB regards VOD providers as “distributors” as defined in the Film and Publications Act 1996. It follows that the FPB’s position is that content distributed over this channel falls under its jurisdiction and providers are subject to FPB regulation.

The FPB requires VOD providers to register with it and to be in possession of a valid ECS licence.

**Conclusion**

It appears unlikely that the regulatory position as spelt out in ICASA’s Position Paper is likely to change in the next five years. It should be noted, however, that there appears to be some substance to the submissions arguing that the Position Paper is not a legally-binding instrument.