

SABC Presentation on the Films and Publication Amendment Bill

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SABC PANEL

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Introduction

- ❑ The SABC welcomes the opportunity to participate in the Films and Publication Amendment Bill public hearings as instituted by the Parliamentary Portfolio Committee on Communications
- ❑ The SABC is mandated to deliver a public value proposition of educating, informing and entertaining all South Africans in all official languages in line with the Broadcasting Act of 1999, as amended
- ❑ The SABC delivers on its mandate through 18 radio stations plus Channel Africa and 5 television channels
- ❑ In the digitally converged environment, the SABC views itself as a multiplatform content provider which delivers public service content that includes content gathering, creation, commissioning, curation, packaging and distribution through a public service media.



Overview of the Bill

- ❑ Whilst the SABC acknowledges the proposed extended mandate of the FPB; it is equally vital for the Bill to be in sync with the provisos of the Constitution, in particular, sections 16 and 192
- ❑ Section 16 (1) (b) of the Constitution advocates the promotion of the right to freedom of expression which encapsulates the right to impart and to receive information or ideas. Thus, the pre-classification of online content should not hinder the right of citizens to exercise this right
- ❑ Section 192 of the Constitution grants ICASA the mandate of regulating the broadcasting industry and it further empowers ICASA to execute its mandate in the public interest
- ❑ It is vital to conduct a Regulatory Impact Assessment (RIA) in order to gauge if the proposed amendments/control measures are in proportion to the current challenges at hand



SABC services affected by the Bill

❑ **The SABC Services affected by the Bill are :**

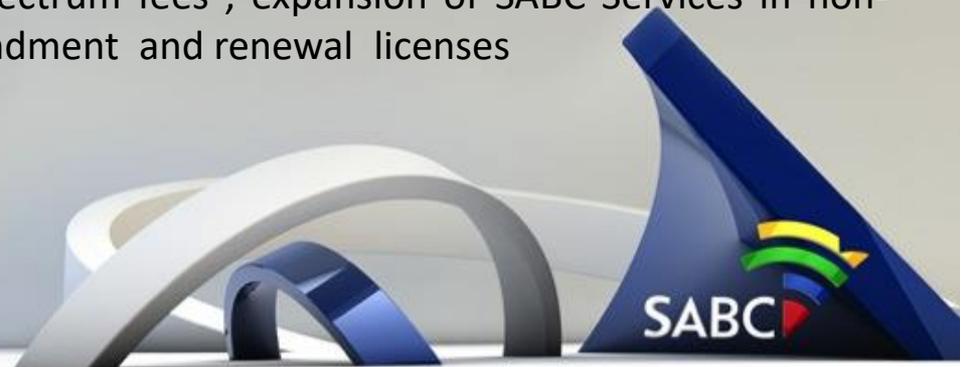
1. Audio streaming services for all SABC Radio Services,
2. Websites for all SABC TV and Radio Services,
3. Podcasts for SABC Radio services,
4. Online video for SABC Radio and TV Services,
5. Social media accounts for SABC TV and Radio Services , and
6. 3rd Party Content (SABC platform used as a conduit)



Areas of concern

❑ Overregulation of the broadcasting service

- The public broadcasting service is currently heavily regulated with respect to strict licence conditions and industry regulations
- Whilst public broadcasting regulation may be necessary, it is also necessary not to overregulate it in order to safeguard the financial viability of the public broadcaster and to allow for ease of public service mandate delivery
- The SABC incurs costs from compliance brought by industry regulation and licence conditions such as universal access of its services etc.
- In addition to that, the SABC pays levies and/or membership fees to various regulatory bodies such as: National Association of Broadcasters , Broadcasting Complaints Committee of South Africa, Advertising Standards Association of South Africa , Press Council of South Africa, Media Development and Diversity Agency, ICASA spectrum fees , expansion of SABC Services in non-commercial areas and ICASA payment of amendment and renewal licenses



Areas of concern

❑ Overregulation of the broadcasting service, continues

- Section 54 of the Electronic Communications Act of 2005 (as amended) requires of all broadcasters to adhere to the Broadcasters Code of Conduct. However, this regulatory requirement applies to broadcasters who are not members of the BCCSA
- The SABC subscribes to the BCCSA Code which regulates its broadcast content. The BCCSA Code prohibits the dissemination of content which contains offensive language , violence, nudity and sexual conduct
- In addition, the SABC has the Editorial Policies which were developed in compliance with section 6 (5) of the Broadcasting Act of 1999 (as amended) to guide all programming matters of the public broadcaster
- The current classification system for broadcasters is more stringent than the one proposed by the FPB Classification System



Areas of concern

Overregulation of the broadcasting service, continues

- ❑ The SABC Editorial Policies provides for the following control measures for acceptance and the screening of programmes for TV and Radio :
 - Appropriate age indicator and warnings(e.g. PG, 13,16 and 18) ;
 - Most suitable slot for the broadcast;
 - Standardised warning symbols which are displayed on any programming containing material that could be disturbing (e.g. V (violence), S (sex),N (Nudity), L (bad language, including profanity), and P(prejudice));
 - Age ratings and warning symbols are displayed at the beginning of the programme after each advertising break;
 - Cautionary announcements are made verbally and /or visually at the start of the programme;
 - Schedules published in the print media all carry audience advisories;
 - On-screen promos and line-ups display the age indicator and warning symbols for each programme, for the full duration of the promo



Areas of concern

Overregulation of the broadcasting service, continues

- ❑ The SABC's policy on consumer advice requires all music **videos and fillers** to be programme accepted, and scheduled in specific time-slots in accordance with content and the watershed.
- ❑ On the SABC **radio services**, the same principles of advisories apply to sensitive material broadcast over the radio, or anything that may disturb certain listeners, or is unsuitable for children.
- ❑ With regards to the **screening of films**, the SABC ensures that the **FPB classifies** the films prior to their broadcast. Furthermore, the SABC ensures that the age restrictions provided by the FPB are never lowered. The current FPB classification are "A"=suitable for all ages, "PG"= parental guidance, "10", "13", "16" or "18" =ages of children. It is also accepted within the SABC that no version of a film that has been refused FPB certification may be broadcast at any time, under any circumstances.
- ❑

Areas of concern

Overregulation of the broadcasting service, continues

- ❑ There are also systems in place for time-slot allocation of content that contain scenes of violence, sexual explicit conduct, nudity and /or bad language, and are intended for adult audience.
- ❑ Such content may not be broadcast outside the watershed period (21:00-05:00)
- ❑ As a rule of thumb, the SABC ensures that if a material is unsuitable for viewing by children, it should not be broadcast when large numbers of them may be expected to be watching TV.
- ❑ All these measures reflect the extent to which inappropriate content is regulated through self-regulation and ICASA regulations

Monitoring and Enforcement of online content regulation

- ❑ The SABC is cognisant of vast amounts of information/content which is uploaded onto the internet each day across the globe through various networks.
- ❑ For South Africa massive resources would be required for such volumes of content to be screened and classified and for training to be provided to organisations and individuals
- ❑ It is also noted that the Bill provides for compliance officers (section 15) and the Penalty Committee (section 6) to adjudicate online content disputes related to the FPB classification system
- ❑ However, we are concerned about the challenge it will pose to the capacity of the FPB to monitor and enforce the regulation across individual members of the public and online service providers

Content streaming over the internet

- ❑ Section 17 (9) of the Bill makes a provision for application for exemption for traditional broadcasting platforms however discriminates against the broadcasters' services streamed on the internet.
- ❑ The SABC wishes to point out that its 18 Radio Services have audio streaming services and their programming has already been subjected to the existing regulation, i.e. BCCSA Code, SABC Editorial Policies, Broadcasting Act and the Electronic Communication Act
- ❑ The same measure of regulatory scrutiny is also applicable to TV Services, the SABC has TV programmes that have been broadcast on the traditional broadcasting platforms and are also distributed online.
- ❑ If such content is subjected to the FPB, it will result in double-jeopardy for broadcasters

Tariff Costs

- ❑ It has been noted that the FPB will be reviewing its tariff structure, which is also linked to the FPB legislation, it is recommended that the Bill should have a provision which speak to the tariff structure.
- ❑ Such a provision should oblige the FPB to adopt a reasonable tariff structure which does not serve as barrier to entry for service providers
- ❑ The SABC is also of the view that the review of the tariff structure should be preceded by an all-inclusive public consultation, more so because the FPB seeks to regulate individual conduct of citizens on the internet

Dispute Resolution

- ❑ It is noted that , in terms of the Bill , the disputes related to the FPB classification regulations will be adjudicated by the FPB Penalty Committee (PC)
- ❑ It is implied that other online content disputes which are non-related to the FPB classification system will not be handled by the FPB.
- ❑ These technicalities will create uncertainty amongst consumers; thus, it is recommended that the FPB establish a one-stop shop portal with which complainants could be directed to relevant adjudication Authorities

ICASA's Independence

- ❑ Section 192 of the Constitution provides for the regulation of broadcasting by an independent authority
- ❑ Section 17(7) of the Bill obliges ICASA not to issue or renew any broadcasting licence to any licence.
- ❑ This provision encroaches on ICASA's independence as prescribed in sections 3(3) and section 4(3)(d) (e) of the ICASA Act of 2000 and thus should be deleted from legislation.
- ❑ ICASA's independence was also re-emphasised in 2007 by the Kader Asmal Report (Review of the chapter 9 Institutions). In this report it was stated that existence of an independent regulator (ICASA) for the broadcasting sector was necessary for the protection of free speech, as well as for the creation of a stable industrial and investment environment for the development of this strategic sector in the information age



Recommendations

- ❑ The SABC is of the view that a practical and a well-balanced approach to online content regulation is required
- ❑ The proposed regulation and legislation must not hinder the goal of the National Development Plan which seeks to move towards full employment by 2030. Instead the Bill must strive to stimulate the economy and promote SMMEs
- ❑ ICASA and FPB should engage and find ways of avoiding regulation overlaps
- ❑ The ICT Policy Review as instituted by the DTPS/DoC also looked into online regulation; thus there could be double dipping of regulation for broadcasters



Recommendations, continues

- ❑ Broadcasters' online content that has not been broadcast on TV or Radio platform should be exempted as well, as it would have passed the scrutiny of the current regulatory framework
- ❑ With regards to content that has already been broadcast on the traditional broadcasting platform should be exempted as well as it would have passed the scrutiny of the current regulatory framework
- ❑ Tied to compliance costs, the SABC proposes that the FPB tariff structure for online content classification should be reasonable, affordable and subjected to public consultation process in order to enable the SABC to still deliver on its mandate.
- ❑ It is recommended that this provision be included in the Bill.
- ❑ On dispute resolution, a one-stop shop that serves as an initial portal for all complaints is recommended. The portal could be administrative in nature and be used to direct complaints to relevant authorities. It is recommended that this portal should be administered and funded by the FPB



Thank You.



