



**SUBMISSION OF NCRF TO AUDIO VISUAL POLICY PROCESS 2020,
FINAL VERSION 4.0
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INTRODUCTION TO NCRF

The National Community Radio Forum (NCRF) is the national membership-based association of CRS's and support service organisations. The NCRF exist to build an enabling environment for community radio establishment. It does so through the following core activities:

- Providing information and advice to the community radio sector and communities through consultation;
- Setting standards for the sector and monitoring implementation;
- Creating structures and systems that encourage community radio initiatives and stations to share experiences, skills, best practice models and resources;
- Coordinating capacity building in the sector;
- Lobbying and advocacy to promote the interests of the sector; and
- Forging strategic alliances and partnerships with key stakeholders to facilitate delivery of services, resources, funding and support to the sector.

1. EXECUTIVE SUMMARY

The **National Community Radio Forum (NCRF)** formally presents its submission to the Audio-Visual AV White paper policy process convened by the Department of Communications and Digital Technologies (**DCDT**). We welcome the process initiative by the minister in this policy development process. We acknowledge the work done by the late Chair Libby Lloyd of the DCDT and her committee for their professionalism in this groundbreaking legislation.

The NCRF has been consistent in engaging national department DCDT, the regulator ICASA as well as other relevant supportive institutions over the years and have always to be proactive and engaging citizens in national policy debates as well as in our sector.

In the recent past, the NCRF has made submissions to the following processes

- a. Digital Broadcasting Discussion document – 2018**
- b. ICASA on Digital Broadcast Radio**
- c. NCRF Position paper for the Community Media summit 2018**

2. INTRODUCTION AND CONTEXT

It is significant that NCRF makes its submission to Governments Audio Visual AV policy on World Radio day.

Proclaimed in 2011 by the Member States of UNESCO, and adopted by the United Nations General Assembly in 2012 as an International Day, February 13 became World Radio Day (WRD).

All around the world, February 13 is dedicated to an all-important medium that existed even before television sets and computers made their way into our lives. World Radio Day is celebrated each year on this day.

On November 3, 2011, UNESCO decided during its 36th conference that a day will be dedicated to the humble radio and its importance in the forever growing world.

If you ask the older generation of our families, they fondly remember being glued to the radio transistors to listen to just about anything. Right from the important news to the gripping sports commentary, radios had their own charm that a lot of us now may not understand today. Unfortunately, with the emergence of smartphones, computers, televisions, etc. people go to the internet to listen to their favorite music stations and podcasts. Hence, the radio is slowly being forgotten.

With this in mind, World Radio Day holds a lot of importance, if not more than what it did earlier.

Here is the history, theme, and significance of the important day.

World Radio Day 2021 History: February 13 was chosen as the day to celebrate the medium because, on this day, the United Nations radio was established back in 1946. The UN General Assembly officially endorses UNESCO's proposal to make this day 'World Radio Day on January 14, 2013.

World Radio Day 2021 Theme: This year, the day's theme is 'New World, New Radio.' This was decided to keep in mind the services the medium provided during COVID-19. The theme is divided into three sub-parts.

- **Evolution:** The world changes, radio evolves. This sub-theme refers to the resilience of the radio, to its sustainability.
- **Innovation:** The world changes, radio adapts and innovates. Radio has had to adapt to new technologies to remain the go-to medium of mobility, accessible everywhere and to everyone.
- **Connection:** The world changes, radio connects. This sub-theme highlights radio's services to our society—natural disasters, socio-economic crises, epidemics, etc.

World Radio Day 2021 Significance

The significance of the day stems from how dynamic and versatile the medium is. At a time, when the internet holds more precedence over the radio, it becomes all the more important to understand why and how its reach across all platforms has a global impact.

Radio is a powerful medium for celebrating humanity in all its diversity and constitutes a platform for democratic discourse. At the global level, radio remains the most widely consumed medium. This unique ability to reach out the widest audience means radio can shape a society's experience of diversity, stand as an arena for all voices to speak out, be represented and heard. Radio stations should serve diverse communities, offering a wide variety of programs, viewpoints and content, and reflect the diversity of audiences in their organizations and operations.

The arrival and rapid rise of the Digital Economy and Africa Continental Free Trade Agreement (ACFTA) presents Africa and nations like South Africa with an opportunity to reverse the pervasive, triple scourge of unemployment, inequality and poverty and the Digital Divide. But in order to harness the promised benefits of digitalization, South **Africa must create a policy, public and commercial and regulatory environment designed to extract those benefits and distribute them in a way that ensures inclusive economic growth**, that is *(1) increased and meaningful employment; (2) equality; and (3) shared prosperity.* Unfortunately, for all its promise, the digital economy in developing countries already threatens a new era of global concentration and, with it, the further marginalization of vulnerable countries and businesses.

Therefore, in an age of the power of Big Tech, there is an intentional need for a new '**data economy**' regulation for the **Global South** is required to avoid outcomes that could harm the development of small businesses, creative communities, consumers and ultimately the economic growth so needed in South Africa's developing economy. The need **for intentional regulation has become all the more urgent** with the advent of COVID19 which is set to move more products and services online at a rapid pace.

Challenges:

❖ Social media ad-tech based revenue model and challenges re data dominance

The internet ecosystem as we know it has become the largest industry by market capitalization in the planet. The business models relies to a great extent on advertisement revenues '**Ad Tech**' Facebook and Google, You Tube relied on advertisement for over 98 / 85 percent of their revenues in 2018, respectively. These ad-reliant business models only work if the companies collect personal data of their users and understand their preferences, behaviour and choices (in order to tailor advertisement). This is why social media platforms play a crucial role in this ecosystem: people share personal experiences and traits and reveal private information about themselves which can be used to understand their preferences better and tailor marketing to them. However, in order to obtain this personal data from users and sell advertisement space, the platforms need to make sure that users see the advertisement and reveal personal information, i.e. spend time on their platforms (or other websites which can be tracked by cookies). This, in turn, only works if users see content that is interesting to them and others. Users

need to be attracted to what they see, and they need to be engaged to share content themselves with their friends or in specific groups. Besides cat videos and personal holiday pictures, some users tend to share and be attracted to content which can sometimes be sensational, extreme or harmful (e.g. violence, hatred, false news).

- ❖ **Governance of the internet and regulating platforms is complex** as platforms act at the intersection of different social activities (economic activities, private exchanges and conversations, media & news consumption) and formerly separated areas of regulation. How the distribution of media content needs to be governed in order to make sure violent content is limited (e.g. not accessible to children) while ensuring freedom of expression and speech has rather been the role of media regulation of large social media platforms: the spread of hate speech and associated harms for society, public discourse and democracy; and the dominance of gatekeeper platforms in certain markets.

These two aspects seem to be entangled for two reasons: ***(1) social media platforms strongly rely on advertisement revenues for their business models. Thus, it is essential for them to generate and drive traffic; (2) due to network effects and a closed proprietary environment, digital markets seem to concentrate more easily, leading to the dominance of certain platforms which can sometimes act as gatekeepers.*** This may create hurdles for competitors trying to enter the same market, but the platforms also set the rules for participants/users of the platform. Sometimes, these rules can be set unfairly, leading to privacy/data protection concerns in the terms of use—which users need to accept anyway as the platforms offer them unique access to a network—or unfair terms and conditions for business users.

3. CONCURRENT, RELEVANT LEGISLATION

Policy making in any nation does not occur in a void. South Africa has a complex, multi-faceted Developmental challenges of uneven development and our ICT and Digital development policy landscape and the past year has seen many concurrent, overlapping legislation that has direct bearing on- albeit at different levels on the future of our **ICT -Media -Broadcasting sector**, causing major change/disruption in the digital economy and society.

I. **Presidential 4IR Commission report, October 2020- www.pc4ir.co.za**

On 23 October 2020, the Minister of Communications and Digital Technologies, Ms Stella Ndabeni-Abrahams, published the report of the Presidential Commission on the Fourth Industrial Revolution (PC4IR) in the government gazette. The PC4IR, established and chaired by President Cyril Ramaphosa, was tasked with a set of responsibilities under its terms of reference, including to propose the country’s overarching strategy for the Fourth Industrial Revolution (4IR), as well as to make recommendations regarding the institutional frameworks and roles of various sectors of society within the broad plan.

As noted in the report: “The possibilities and prioritization of pathways presented by the 4IR are given material direction and purpose within the South African National Development Plan (NDP) towards 2030. The NDP, South Africa’s long-term development strategy, contains critical targets for the eradication of poverty and the reduction of unemployment and extreme inequality. Thus, in evaluating the socio-economic impacts and opportunities of the 4IR, there is an opportunity to address the core concerns of the NDP and in so doing, provide a policy-embedded path towards our constitutional objectives in the context of a significantly improved and altered future.” The report makes the following key recommendations:

- Invest in human capital related to 4IR.
- Build infrastructure and own some significant 4IR infrastructure, such as hyperscale data centres, fibre-optic network and undersea cables.
- Create platforms for citizen participation.
- Establish creative artificial intelligence, big data analytics, blockchain and cybersecurity
- Own government strategic data and secure citizens’ data
- Incentivize future industries and applications of 4IR technologies.
- Update regulation.

II. ***SA Parliament’s Public Budget Office PBO paper on Digital Taxation***

South Africa’s Parliament / National Assembly’s Public Budget Office PBO Report acknowledges the current efforts of the Organisation for Economic Co-operation and Development (OECD) in conjunction with the G-20 countries and several others (137 countries - the OECD/Inclusive Framework) to design changes to the existing international tax system to allow countries to impose such digital taxes. A main objective of the new approach is to grant a right to market jurisdictions to tax part of the profits of multinational enterprises (MNEs) with reference to the income generated from customers in that jurisdiction, irrespective of whether the MNE has physical presence in that country, affecting MNE’s such as *Amazon, Netflix, Google, You Tube etc.*

The African Tax Administration Forum (ATAF) has also recently released a report (the ATAF Report) containing a suggested approach for members who are considering whether to introduce new rules for the taxation of highly digitalised businesses. ***The ATAF Report observes that the digitalisation of business often enables MNEs to carry out business in African countries with no or very limited physical presence in those countries.*** This trend has seen some MNEs with

physical presence in a country close their premises and move to online trading. This makes it difficult for countries to establish taxing rights over the profits the MNE is making from those business activities.

III. **Competition Commission CC enquiry on Digital Economy Report 2020**

After a year long research process the Competition Commission CC released its Digital economy report in July 2020. The question is no longer about whether to regulate or not, but rather how to regulate. Competition regulation in the digital economy is now inevitable.

The 'Competition in the Digital Economy' report provides a review of the emerging competition issues in e-commerce, consumer empowerment and guides businesses on the commission's approach. It takes aim at merger controls, cartel conduct and abuse of dominance and vertical restraints, as well as takes a closer look at the leading digital disrupters and their impact on established industries and companies, including Amazon, Netflix, Airbnb and Uber.

In order to harness the promised benefits of digitisation South Africa must create a commercial and regulatory environment designed to extract those benefits and distribute them in a way that ensures inclusive economic growth, i.e. *(1) increased and meaningful employment; (2) equality; and (3) shared prosperity.*

There is already a new era of global concentration leading to further marginalisation of vulnerable countries and businesses. Therefore, intentional regulation is required to avoid harmful outcomes. This paper sets out:

- The intentions of the Commission in enforcing existing competition law.
- What the Commission believes to be the broader regulatory environment required in order to extract maximum benefit from the digital economy.

The digital economy has novel characteristics which distinguish it from traditional markets and suggest the need for a different approach.

- *Rapid and responsive innovation present in digital markets* is also the desired outcome of competition policy. Regulatory interventions, therefore, need to balance the need for inclusivity with the desire to maintain innovation.
- *There is a tendency towards concentration arising from first-mover advantage*, data accumulation and network effects as well as exclusionary conduct. Competition policy must pro-actively identify and prevent entrenchment strategies before they are too difficult to reverse.
- Well-informed consumers can define their preferred benefit with relative speed and accuracy. Competition agencies must balance the *long-term policy goals of economic growth with the more immediate stated preferences of consumers.*

- The rapid pace of change requires regulators to constantly monitor developments and to adapt their approach as circumstances change.

The above pieces of legislation are having a ‘**concurrent legislative -regulatory impact**’ on various sections of the **current Audio Visual AV Policy white paper process**. Hence , as NCRF we are of the view that this a dynamic process and the DCDT and ICASA should view these as an integrated manner so that there is forward planning and effective regulation that will enable the socio economic transformation of the sector and industry as per National Development Plan NDP 2030.

4. Unpacking 2019- 2020 Audio Visual AV /Broadcasting Policy for Community Media Sector:

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.

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.

For community broadcasting to flourish, there is a need for fair, transparent and appropriate licensing systems to be in place. It is not enough to expect community broadcasters to compete in open licensing processes with commercial broadcasters because they do not have the resources – whether in terms of expertise or funding – to do so. Instead, special procedures for licensing community broadcasters should be established. These procedures need to ensure,

however, that community broadcasters also benefit from the general protections that are afforded to all broadcasters.

There is a specific need to *reserve frequency spectrum for community broadcasters*, in recognition of the fact that they are less able to compete openly for it with commercial broadcasters, let alone telecommunications services providers.

5. Key issues for Community Media (i.e. Community Radio and TV)

The NCRF proposes that South Africa adopt a similar approach to that taken by the European Commission. In 2005, the European Commission resolved to, amongst other things, relax the regulation of broadcasting and broadcasting-like services (i.e. non-linear services provided over the Internet), and to level the competitive landscape between traditional broadcasting services (which were subject to a particular regulatory environment) and non-linear services by introducing a basic set of rules for non-linear services.

The Audio-Visual AV White Paper proposes the following:

The new audio and audio-visual content services licence: Replacing the current licence category of "broadcasting services" (which is deemed to be overly narrow and very platform specific), with a broader category of "audio and audio-visual content services".

NCRF Recommendation

NCRF has concerns that this approach is complicated and has the effect of entrenching powerful national media players as well as Global Big tech. The EU has increased its level of regulation to ensure fair competition and consumer trust regulation in an age when Big Tech corporations are billion dollar enterprises , whose social-, political and economic power are so huge that they can affect directly and influence smaller nations.

- a. **NCRF is of the view that this is in line with global cases, but that the 3 tier category of public , commercial and community should be retained**
- b. **That Public service broadcasting is a unique national cultural institutions and be governed by specific legislation and funding model – similar to the BBC in UK and ABC in Australia;**
- c. **That Community media be also contained in specific license category to allow for range of subsidy interventions and programs in line with media diversity and accessibility**

- a. **Categories of audio and audio-visual content services licence.** Within the above broader category of an "audio and audio-visual content services" licence, there will be three sub-categories: **(i) broadcasting services; (ii) on-demand content services; and (iii) video sharing platform services**. Whereas broadcasting services and on-demand content services will require licensing, video sharing platform services will be exempt from licensing, although not exempt from regulation.
- B. NCRF is of the view that the DCDT could propose clear rules on the responsibilities & obligations of large platforms focusing on media content and news. At the same time, smaller platforms should not be hindered in their development, so regulation needs to be adapted to different sizes and impacts as well as potential harm**
- **Transitional framework to convert licences.** A transition period of 24 months, for the conversion of existing licences to the new audio and audio-visual content services licensing framework.
- C. NCRF is of the view that ICASA needs to be capacitated in this regard to ensure that the sector is well consulted, briefed;**
- D. That ICASA conducts a series of capacity building and consultation workshops be designed and delivered so that board members /management of Community radio stations are fully appraised of the impact of the new licensing framework on their business models.**
- **Amend legislation to clarify that SABC is the sole public broadcaster.** Although the three tiers of broadcasting, namely public broadcasting, commercial broadcasting (free-to-air and subscription) and community broadcasting should remain in place, the definitions of commercial broadcasting and public broadcasting should be amended. In relation to the latter, the White Paper proposes amending the Electronic Communications Act, 2005 and the Broadcasting Act, 1999 to clarify that the South African Broadcasting Corporation is the only public broadcaster.

NCRF Recommendation

- E. NCRF is of the view that there needs to be a Policy review and evaluation of the EC Act of 2005 evaluation and effectiveness;**

- 6. Individual and Class license thresholds.** Applying thresholds based on annual turnover to determine what type of licence (i.e. Individual or Class) an audio and

audio-visual content services provider needs to apply for. The Individual or Class licence will be issued for a defined period irrespective of fluctuations below the annual turnover threshold during the licence period.

- a. *Individual licence threshold* - The initial threshold proposed for an Individual licence for broadcasting services and on-demand content service is an annual turnover of R100 million in the previous financial year;
- b. *Class licence threshold* - The proposed entry level threshold requirement to hold a Class licence is proposed to be set at an annual turnover of R50 million in the previous financial year and those on-demand content services below this entry level threshold will be exempt from applying for a licence; and
- c. in order to assist the regulator to properly monitor the above-mentioned thresholds and the size of the audience, audio and audio-visual content services, providers must provide the regulator with their annual audited financial records and their user / subscriber / audience numbers.

NCRF Recommendation

- F. **NCRF is of the view that the Community broadcast license category should remain as it's a special category designed to strengthen democracy and diversity;**
 - G. **That Community Service Obligations CSO's obligations be developed – in consultation with ICASA and the community media sector of new categories of licenses**
7. **Relaxation of ownership (including foreign ownership) restrictions.** The White Paper notes that in various jurisdictions, regulatory authorities have started to relax ownership restrictions, and in some cases, have abolished them altogether. The White Paper makes the following proposals in relation to the ownership limitations in the audio and audio-visual content services market:
- a. the removal of all limitations on the ownership and control of commercial sound and television broadcasting licensees;
 - b. the removal of the cross-media ownership limitations - the White Paper notes that print media companies are no longer, by default, the largest media companies;
 - c. in order to increase foreign direct investment in the ICT sector, limitations in respect of foreign ownership of linear individual audio-visual content services (broadcasting services) will be retained, but

will be adjusted from 20% to 49% i.e. a foreigner (other than a foreigner from an African Union [AU] country - see below) cannot directly or indirectly have a financial interest or an interest in voting shares or paid-up capital in a commercial broadcasting licence which exceeds 49%; and

- d. a foreigner from an AU country can directly or indirectly exercise control over a commercial broadcasting licensee or have a financial interest or an interest in either voting shares or paid up capital in a commercial broadcasting licence which exceeds 49%, provided that this must be subject to a reciprocal agreement between South Africa and the AU country.

NCRF Recommendation

- **NCRF is of the firm view that control of ownerships by foreign entities should be less than 50%**
- **That all foreign owned media and platforms be subjected to the BEE Act and its regulations**

Framework for digital radio: The White Paper proposes the progression of technical standards for digital radio and a licensing framework for digital audio broadcasting in South Africa.

NCRF Recommendation

- **NCRF is of the firm view that the debate on Digital Radio standards must be ongoing and inclusive and not a fait accompli.**
- **That Digital Radio and standards is the lifeblood of our sector and we have the right to explore and experiment with various standards ranging from DSB, DAB, DRM, DSM and ITDBS models.**
- **To this end ICASA and DCDT should embark on pilots involving stakeholders like the NCRF, on all 3 standards and then evaluate their various quality, effectiveness, relevance, accessibility, and options.**

South African content quotas. These quotas should be measured across the total bouquet of channels offered by a broadcasting service licensee, and if such licensee cannot meet the South African content quota due to the nature of the service, the licensee should be offered the opportunity to pay an amount of money or a minimum percentage of gross revenue into a fund

that supports the creation of audio and audio-visual South African content (this measurement will also apply to the public broadcaster's bouquets).

NCRF Recommendation

- Content – The NCRF is of the view that big companies like Netflix must pay a levy to support creation of local content. The levy must benefit community broadcasters. The Universal Services and Access Fund (USAF) levy sourced from broadcasters must be paid to the MDDA to support community broadcasters. Currently broadcasters contribute 0.2% of their annual turnover in line with section 89 of the Electronic Communications Act, which allows broadcasting services licensees to contribute to the Media Development and Diversity Agency (MDDA).
- We think all contributing broadcasters make their entire Universal Services and Access Fund (USAF) contributions to the MDDA to boost the promotion of the media development and diversity agenda. It must not be optional for broadcasters to pay to MDDA or to ICASA. Although this is raised under content this could be located under signal distribution because the USAF contributions are intended to deal with the objective of universal services and access in broadcasting, which in our view it relates to signal distribution in community broadcasting.
- **NCRF is of the firm view that there needs to be local content production quotas of up to 30% local content. This is in line with Global best practice in nations such as Canada, EU, Brasil etc.**
- **That contributions from AV services and On line video platform Multinationals must contribute to local film funds and mechanisms to support local content, culture and skills development.**
- **That local artists be protected and promoted in their own country and that the royalty system serves artists and creatives and not large platform-content sytem;**
- **That 0.5% of the Turnover of licensees be contributed to these funds**
- **Enhanced protection of children and consumers.** Legislation should be amended to provide for a code of conduct for on-demand content services in order to ensure greater regulation to protect children and consumers.
- **Regulation of advertising.** The legislative framework for advertising standards should apply to all audio and audio-visual content services, as the White Paper notes that there is currently a regulatory imbalance between the regulation of advertising on broadcasting platforms and online advertising.

- **Intellectual property protection.** Legislative and regulatory mechanisms to protect against signal piracy must be introduced into the Electronic Communications and Transactions Act, 2002, to prevent persons engaging in the piracy of audio and audio-visual content services.

NCRF Recommendation

- **NCRF is of the view that to ensure advertising model in an age of Convergence (Satellite, Online, AV and mobile platforms) be studied more carefully with a view to quantify which firms (Big Tech etc) and license categories are making most profits and how and what mechanisms are required to regulation in the public interest.**
- **That Government and ICASA host annual meetings with the advertising industry and bodies (AAA, DMA, IAB etc) to develop regulation for advertising and industry obligations move from self regulation to co-regulation**
- **DCDT and MDDA be tasked with supporting a research program in conjunction with Media faculties at South African universities (Wits, Rhodes etc) to conduct impartial and academic research**

The European Commission stated that a more technology neutral approach needs to be taken to the regulation of what has traditionally been referred to as broadcasting services and introduced a set of rules that apply in a technology/platform neutral way - so that is, rules that apply to all services regardless of the platform used to provide the services.

The White Paper adopts a similar technological neutral approach of treating services in the same way so as to ensure regulatory parity and fair competition.

- The Digital Radio Standards, the NCRF has participated to a great extent in the process and last week we participated in the oral presentations of the DSB. The NCRF suggests

that our submission on the AV should support the position we have already put forward. A copy of our submission is attached.

SECTION C:

1. Convergence regulation in the Internet age- Digital Radio

The 1998 White Paper on Broadcasting recognized developments in digital radio (Digital Audio Broadcasting or DAB and Digital Radio Mondial or DRM rather than audio services on the DTT platform) and recommended that a Digital Advisory Council report on this. 37 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.

NCRF Recommendation

- **NCRF is of the firm view that the debate on Digital Radio standards must be ongoing and inclusive and not a fait accompli.**
- **That Digital Radio and standards is the lifeblood of our sector and we have the right to explore and experiment with various standards ranging from DSB, DAB, DRM, DSM and ITDBS models**
- **To this end ICASA and DCDT should embark on pilots involving stakeholders like the NCRF, on all 3 standards and then evaluate their various quality, effectiveness, relevance, accessibility, and options.**
- **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.**

Questions:

- **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?**

2. Content and Copyright and Income streams

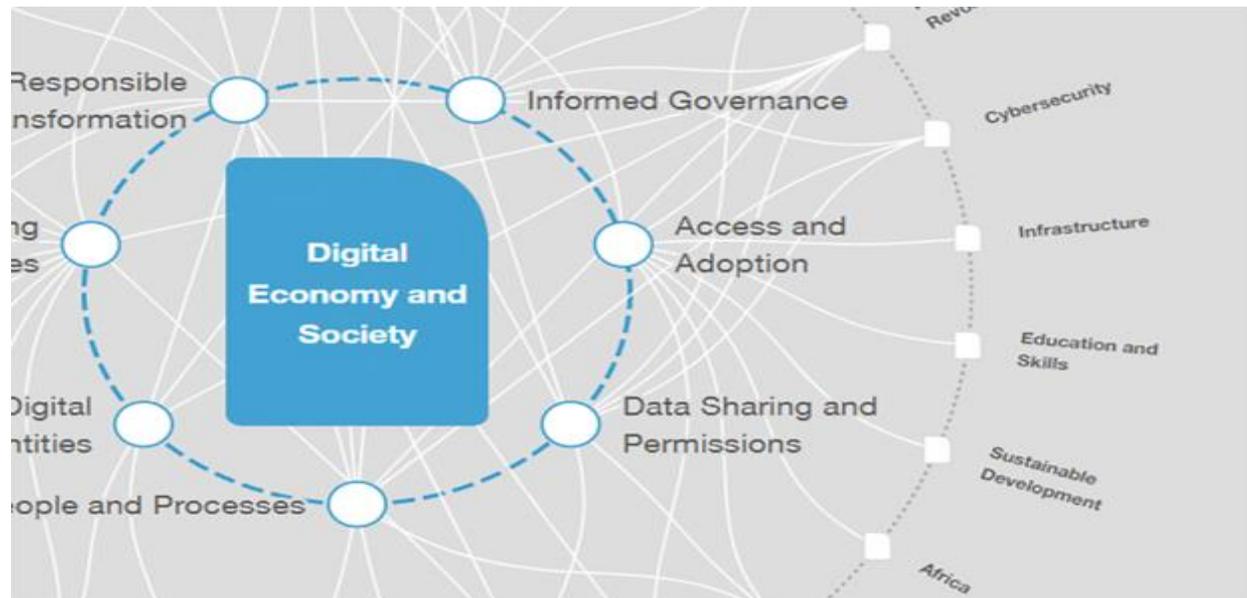
In relation to *ensuring community content across a range of platforms*, our government should facilitate the development of digital content hubs as proposed in the Digital Migration Policy to promote content development by a range of producers across the country.

Funding of community audio and audio-visual services was also raised in several submissions. The roles and responsibilities of existing funding agencies, including the MDDA and NFVF etc should be reviewed and its mandate be upgraded in the new era. 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”*.

NCRF Recommendation

- ***NCRF is of the view that South African artists and musicians are under compensated and are living on the breadline due to the exploitative Copyright system model in South Africa***
- ***That DCDT, ICASA, DSAC and MDDA engage SAMRO in terms of developing a transparent and equitable Copyright distribution system in South Africa***

Enforcement of provisions that no provider can “broadcast” without a licence could be difficult when content is streamed from elsewhere in the world. It is here that the robust debate re OTT and Netflix are relevant for the sector. 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 authorized 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.



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**

3. Community Radio and TV in era of DTT

The new AV 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:

Submission of Recommendations to the Audio-Visual AV Policy – Department of Communications and Digital Technology (DCDT)

By the National Community Radio Forum NCRF, www.ncrfonline.co.za , February 2021 pg. 17

Graduated approach to linear and non-linear services:

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*”.

4. Diversity of Content and news

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. Diversity regarding 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 digitization 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.

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.

NCRF Recommendation

- **All major multinational corporations MNC’s should comply with the Broad-based Black Economic Empowerments Act 2015 (amended 2019)**

In terms of ownership and control, the NCRF is of the view that the issue of Trusts and NPO’s and Cooperatives must be reconsidered to allow for total community ownership. Trusts are usually owned by families. If the research supports the NCRF view, then possible suggestions could include having to convert current Trusts to NPO or NPC and a time frame of 2 years must be applicable.

6. 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.

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.

NCRF Recommendation

- **Funding – The MDDA must continue to fund community broadcasters for establishment and strengthening. The MDDA budget must be improved through collection of levies. Government must legislate the current directive that atleast 30% of government advertising must go towards community media. Stations must be assisted with compliance to be able to benefit from available support. A possible amnesty from institutions like SARS could be helpful.**

7. OPTIONS: DIGITAL RADIO and Options

The status quo currently 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.

NCRF Recommendation

Competition related issues

A number of concerns relating to fair competition is key. 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 digitization 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*”.

The following areas are dealt with under this section:

- **Competition between FTA and pay TV**
- **Competition within the free to air market**
- **Premium Content and payment into a local production fund**
- **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.

8. Competition: Premium Content – Will community media get left behind?

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, 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.⁵ 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. 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. Suggestions 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.

NCRF Recommendation

- **NCRF is of the view that premium content and ‘walled gardens’ creates division in society ;**
- **Developmental orientated programs such as National Geographic and Planet Earth etc should be made available on Public Broadcast service and SABC**

9. 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

NCRF Recommendation

- **A detailed study be conducted by identified university faculties of Media and Journalism on the impact of big tech on local advertising and sustainability of South African media and diversity.**
- **This study should commence in April 2021 and the DCDT and MDDA contribute to the study.**
- **An annual conference and seminar be held on the Impact of Big tech and Digital platforms on local media, culture, and diversity.**
- **That the DCDT to supports this**

10. 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.

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”*.

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.

NCRF Recommendation

- **All sport events of national importance be broadcasted Live on SABC and community media and this be included in the legislation.**

12. INCENTIVES, FUNDS AND PAY-OR-PLAY PROVISIONS

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.

- ☐ **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.

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.

13. 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.

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 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.

NCRF Recommendations:

- **NCRF is of the view that the current system is flawed despite carry over obligations, there is little sports that is broadcasted live and South Africans – especially poor households are missing out on national sporting codes especially cricket, soccer, netball, swimming, and rugby. For Black South Africans to get excited about these sports they need to see them live to engender an interest**

14. Universal Access: Accessibility and inclusion

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 license 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.