



**national film and video foundation**  
SOUTH AFRICA  
an agency of the Department of Sport, Arts and Culture

**ATTENTION: Ms. Nomvuyiso Batyi**

The Acting Director General  
Department of Communications and Digital Technologies  
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**PER E-MAIL:** [csedtps.gov.za](mailto:csedtps.gov.za)

15 February 2021

Dear Madam

**RE: DRAFT WHITE PAPER ON AUDIO AND AUDIO-VISUAL CONTENT SERVICES POLICY FRAMEWORK- A NEW VISION FOR SOUTH AFRICA 2020**

1. The above matter refers.
2. We enclose herein our inputs on the draft White Paper on Audio and Audio-Visual Content Services Policy Framework.
3. Thank you for the opportunity to participate in this process.

Yours Faithfully

Ms. Botse Matlala  
Acting Head of Operations  
**15/02/2021**

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## SUBMISSIONS

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**To** : The Acting- Director General,

Department of Communications and Digital Technologies

**From** : The National Film and Video Foundation

**Subject** : Draft White Paper on Audio and Audio-Visual Content Services Policy  
Framework: A New Vision for South Africa 2020

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### INTRODUCTION

- 1 On 9 October 2020, the Department of Communications and Digital Technologies (“the DCDT”) released a White Paper containing a framework for the provision of audio and audio-visual content services (“the White Paper”).
- 2 The DCDT invited interested parties to comment on the proposals outlined in the White Paper by 15 February 2021.

## **THE NATIONAL FILM AND VIDEO FOUNDATION AND ITS MANDATE**

- 3 The National Film and Video Foundation (“the NFVF”) is an agency of the Department Sport, Arts and Culture (“DSAC”) that was created to ensure the equitable growth of South Africa's film and video industry.
- 4 This is done by providing funding for the development, production, marketing and distribution of films and also the training and development of filmmakers. In addition, the NFVF commissions research and produces industry statistics that provide both the public and stakeholders with valuable insights into the South African film industry. The collaboration with all stakeholders assists to enable the development and promotion of a transformed and thriving audio-visual industry.
- 5 The NFVF is committed to nurturing, promoting and protecting South Africa’s film and television industry and seeks to harness the strength of South Africa’s diversity to transform the sector and deliver a flourishing audio-visual economy for the benefit of all.
- 6 The NFVF’s main objectives are to:
  - 6.1 increase the number of South African films and Previously Disadvantaged Individuals (PDIs) producing them;
  - 6.2 increase audience access to South African films;
  - 6.3 increase the number of people trained in the industry, particularly in areas of scarce skills;
  - 6.4 promote the South African Film Industry locally and internationally;
  - 6.5 promote social cohesion and the expression of the nation's stories through film.

## **CONTEXT TO THE NEW POLICY FRAMEWORK AND THE GENERAL APPROACH PROPOSED**

- 7 The DCDT has indicated that the swift and unique changes occurring both in society and communications have brought a period of volatility, complexity and unprecedented disruptive change. This has resulted in a need to change the current regulatory framework and current broadcasting distribution ecosystem in the way that viewers consume audio and audiovisual content.
- 8 It is against this that the White Paper tries to interrelate the legislative framework pertinent to audio and audio-visual content services with the current and emerging technological advancements and trends; thereby seeking to promote investment in the audio and audio-visual content industries as well as facilitate socio-economic development.
- 9 The White Paper propositions that South Africa espouses a similar approach to that adopted by the European Commission, which included but was not limited to easing the regulation of broadcasting and broadcasting-like services (i.e. non-linear services provided over the Internet), and to level the competitive environment between traditional broadcasting services and non-linear services by introducing a basic set of rules for non-linear services. This technology neutral approach will therefore institute rules and regulations that apply in a technology/platform neutral way; simply put, the rules and regulations will equally apply to all services regardless of the platform used to provide the services. This will ensure regulatory parity and fair competition.

## **THE WHITE PAPER PROPOSALS**

- 10 In the main, the following are some of the more important and significant proposals contained in the White Paper:

- 10.1 Replacing the current narrow definition of "broadcasting services" as it is overly platform-specific<sup>1</sup>, with a broader category of "audio and audio-visual content services" ("AAVCS").<sup>2</sup>
- 10.2 Within the broader category of AAVCS, the following sub-categories will need regulatory attention<sup>3</sup>:
- 10.2.1 broadcasting services;
  - 10.2.2 on-demand content services; and
  - 10.2.3 video sharing platform services.
- 10.3 Although the three tiers of broadcasting, public broadcasting, commercial broadcasting and community broadcasting should remain in place, the definitions of commercial broadcasting and public broadcasting should be amended<sup>4</sup>. As such, there should be an amendment of legislation to differentiate between commercial and public broadcasting. In respect of public broadcasting, the SABC will be the sole broadcaster.<sup>5</sup>
- 10.4 Individual and Class licence thresholds and exempt criteria for AAVCS. The White Paper proposes that thresholds must be applied for licences based on annual turnover to determine what type of licence (Individual or Class) an audio and audio-visual content services provider needs to apply for, this will assist with ensuring regulatory parity<sup>6</sup>.

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<sup>1</sup> 3.1.8 of the White Paper, page 49.

<sup>2</sup> 3.1.9 of the White Paper, page 49.

<sup>3</sup> 3.1.12 of the White Paper, pages 50 – 51.

<sup>4</sup> 3.2.2 of the White Paper, page 52.

<sup>5</sup> 3.2.3 of the White Paper, pages 52 - 53.

<sup>6</sup> 3.3.8 of the White Paper, page 59.

- 10.4.1 The initial threshold proposed for an Individual licence for broadcasting services and on-demand content service will be set at R100 million annual turnover of in the previous financial year<sup>7</sup>;
- 10.4.2 The entry threshold requirement to hold a Class licence should be to be set at an annual turnover of R50 million in the previous financial year<sup>8</sup>;
- 10.4.3 On-demand content services below the entry level threshold should be considered SMMEs will be exempted from the requirement of applying for a licence<sup>9</sup>; and
- 10.4.4 The introduction of digital radio and the facilitation of the licensing for digital audio broadcasting<sup>10</sup>.
- 10.5 The regulator must complete the transition period between the existing licensing framework to the new licensing framework with 24 months.<sup>11</sup>
- 10.6 There must be promotion of South African content and language. Pursuant to this, the proposal is that quotas should be measured across the total bouquet of channels offered by a broadcasting service licensee, and where it is not possible to meet the South African content quota due to the nature of the service the licensee be offered the opportunity to pay a specified sum of money or minimum percentage of gross revenue into a fund that supports the creation of audio and audio-visual South African content<sup>12</sup>.

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<sup>7</sup> 3.3.11 of the White Paper, page 60.

<sup>8</sup> 3.3.14 of the White Paper, page 60.

<sup>9</sup> 3.3.14 of the White Paper, page 60.

<sup>10</sup> 3.5.17 of the White Paper, pages 76 – 77.

<sup>11</sup> 3.6.2 of the White Paper, page 77.

<sup>12</sup> 5.2.8.8 of the White Paper, page 105.

- 10.7 The protection of children and consumers must be a guiding principle and commensurate with this legislation should be amended to provide for a code of conduct for on-demand content<sup>13</sup>.
- 10.8 Legislative and regulatory mechanisms to strengthen protection against signal piracy must be introduced in the Electronic Communications and Transactions Act, 2002, to avert persons engaging in the piracy of audio and audio-visual content<sup>14</sup>.
- 10.9 In line with international best practice, where there has been a relaxation of ownership limitations, the White Paper proposes:
- 10.9.1 the removal of all limitations on the ownership and control of commercial sound and television broadcasting licensees<sup>15</sup>;
  - 10.9.2 that as print media companies are no longer the largest media companies, the removal of the cross-media ownership limitations<sup>16</sup>;
  - 10.9.3 the Competition Commission continue to exercise concurrent jurisdiction with ICASA to address concerns of market concentration and media plurality<sup>17</sup>;
  - 10.9.4 the retention of foreign ownership of linear individual audio-visual content services (broadcasting services) subject to increasing to a maximum of 49% to stimulate investment<sup>18</sup>;

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<sup>13</sup> 5.3.5 of the White Paper, page 115.

<sup>14</sup> 5.6.9 of the White Paper, pages 123 – 124.

<sup>15</sup> 7.1.8.1 of the White Paper, page 139.

<sup>16</sup> 7.1.8.2 of the White Paper, page 139.

<sup>17</sup> 7.1.8.3 of the White Paper, page 140.

<sup>18</sup> 7.2.3 of the White Paper, page 141.

10.9.5 foreigners from AU member countries 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 relevant AU country<sup>19</sup>.

#### **WHAT IS THE 4TH INDUSTRIAL REVOLUTION (4IR)?**

- 11 An Industrial Revolution is just what its name suggests, the process of change to one dominated by industry and machine manufacturing.
- 12 The world has undergone various Industrial Revolutions and the predominant features involved in the Industrial Revolution were technological, socioeconomic and cultural.
- 13 The First Industrial Revolution took place in the late 1700s/early 1800s and it introduced advances in textile manufacturing and the innovation of the steam train.
- 14 The Second Industrial Revolution followed at the end of the 18th century and it brought with it steel production, the automobile and electricity.
- 15 The Third Industrial Revolution saw the pioneering of automation, digital technology and computing. This profoundly changed the world in that information was readily available and communication that was instantaneous.
- 16 The term “Fourth Industrial Revolution” (“4IR”) was first introduced by Karl Schwabb, a German engineer and economist, who was also the founder and executive chairman of the World Economic Forum. He wrote that “*we are at the beginning of a revolution that is fundamentally changing the way we live, our work and relate to one another. In its*

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<sup>19</sup> 7.3.2 of the White Paper, page 141.

*scale, scope and complexity, what I consider to be the fourth industrial revolution is unlike anything humankind has experienced before.”<sup>20</sup>*

- 17 4IR is about ‘intelligence’ defined as the current and developing environment in which disruptive technologies and trends such as the Internet of Things (IoT), robotics, virtual reality (VR) and artificial intelligence (AI) are changing the way we live and work and becoming a technologically advanced society.
- 18 It is trite that the creation, distribution and production of motion pictures, as well as all audiovisual content is inextricably linked to technology. It also includes new technologies of storytelling – so called the hybrid content, where the traditional audiovisual essences are combined with software-based solutions as the applications.

#### **NFVF COMMENT ON THE WHITE PAPER AND ITS PROPOSALS**

- 19 The NFVF welcomes the White Paper.
- 20 We draw on our experience, along with relevant and contemporary research on the AAVCS and film and video nexus, to offer our input on the White Paper. We appreciate the opportunity to offer our contribution to this important document. In our submissions, we only deal with issues pertinent to our mandate and are in line with the NFVF’s body of work in the sector.
- 21 Submissions are therefore made under the headings below and are in line with views expressed and recommended at the South African Film Summit in February 2019 under the auspices of the DSAC.

The local broadcasting licensing framework, and how this will change with the switch to digital and 4IR and its effect on films and videos<sup>21</sup>

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<sup>20</sup> The Fourth Industrial Revolution, 2016.

<sup>21</sup> Section 3 of the White Paper

- 22 The proposed new broadcast system seeks to align South Africa's policy, legislative and regulatory framework with the 4IR, new trends and promote investment in the audio and audio-visual content industries.
- 23 We would like to consider this against films and videos as this directly impacts on our work and that of our stakeholders.
- 24 It is a very exciting time in which we live, we are on the cusp of a technological revolution that will profoundly change the way we live, work, and interact with each other. 4IR is exemplified by a blend of technologies that is clouding the lines between the physical, digital, and biological domains.
- 25 In the film and video space, making these available online locally is a practical way to supplement traditional and conventional showings. It is trite that online streaming platforms allow viewers to maintain their viewing preferences and offer convenient access to local and international films and videos, however algorithm complacency has to be addressed and circumvented. This will ensure that viewing content is not limited based on recommendations by the streaming platform.

*Our submissions*

- 26 The proposals contained in the White Paper are not sufficient on their own. We suggest that the following submissions be carefully considered.

27 Empowerment

- 27.1 The NFVF is of the view that workshops, seminars and conferences must be held to empower local SMMEs in the film and video industry with:

- 27.1.1 information on how they can advance themselves through digital technology such as creative robotics, 4K digital cameras and virtual reality film making; and

27.1.2 access to market opportunities in respect of distribution of film and videos.

27.2 There should be a focus on broadcasting, audio-visual, digital age, video-on demand concepts, streaming of technology and alternative ways of film/video sales, licensing and distribution.

## 28 Local access

28.1 It is imperative that we brand and style South African audio-visual products, both locally and globally.

28.2 Local producers make films and videos that focus mostly with stories of people from underprivileged environments such as townships and rural areas. Apart from SABC, there are no cinemas or other ways to gain access to films and videos in those areas.

28.3 An inducement or enticement programme for experienced and accomplished sales and distribution companies for South African audio-visual products must be developed.

28.4 A disruptive innovation is an innovation that creates a new market and value network and eventually disrupts an existing market and value network, displacing established market-leading firms, products, and alliances<sup>22</sup>. Practically, this means that disruptive technologies, like the Internet, has the ability to make great headway in the South African market if people can be assisted with gaining access to these technologies. This can only be achieved through digital access to the internet and devices in all parts of South Africa.

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<sup>22</sup> Ab Rahman, Airini; et al. (2017). "Emerging Technologies with Disruptive Effects: A Review". PERINTIS eJournal. 7 (2).

28.5 Digital content can be transferred quickly from producer to consumer through the Internet without having to go through middlemen. The most popular example of this is YouTube.

28.6 In theory this sounds very easy to achieve, the challenge is the practicalities around this. Government must ensure that there is better access to internet and cheaper data costs in South Africa to allow people to stream and/or watch the content online. There should be a focus on restricting anti-competitive practices by effectively regulating the high cost of data. The major telecommunications companies in South Africa have a huge role to play in this, there must be a concerted effort to dramatically decrease data costs to allow content to be streamed and/or watched online.

## 29 Funding

29.1 The proposals set out in the White Paper pertaining to this area will not be made possible without suitable funding.

29.2 We are of the opinion that the funding models that are in place do not adequately meet the requirements of the local market. Against this, we propose that an Innovation Fund be set up to promote the establishment of original works. This fund will have to be carefully drafted to deal with the various categories. Thought must be given to who will administer, have oversight over and be accountable for the Fund.

29.3 All funding processes must be simplified, reorganised and integrated to include interdepartmental cooperation so that it is more tactical, efficient and available to filmmakers, producers and distributors.

29.4 Critically, there must be better responsibility and openness as to how funding is allocated and awarded. Delays in allocating and awarding funding hampers

the AAVCS work and is damaging to the industry specifically and the economy at large.

- 30 There must be a concerted effort to fast track digital terrestrial television (DTT), this will allow platforms and content markets for producers.
- 31 In line with the proposals, there has to be transformation in the way AAVCS are commissioned. The multiple screens approach must be used and kept
- 32 in mind to target a younger audience.
- 33 Broadcasters should promote non-exclusive license or commissioning deals so that content can be used on new distribution platforms.

#### Content Regulation of AAVCS and the promotion of South African content and language<sup>23</sup>

- 34 In a rainbow nation like South Africa, how do we define stories?
- 35 Stories are about people, but it is influenced by personal convictions, belief, culture and experience.
- 36 This means that story is subjective and informed by who a person is. A critical component of AAVCS is knowing and understanding the audience before telling a story as this will definitely inform and instruct the shape and composition of that story.
- 37 Therefore, it is essential for broadcasters to research and determine the content that the audience wants to watch.

#### *Our submissions*

- 38 Funding

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<sup>23</sup> Section 5 of the White Paper.

38.1 We welcome the payment of monies or percentage of gross revenue where South Africa content quotas are not met. Pertinent questions such as who will administer, have oversight over and be accountable for these monies have not been answered; further what guarantees are in place to ensure that it will be used to support South African content. But this is simply not enough. Private copying levies and taxation of international broadcasters must be investigated to direct funding towards a local content development fund.

38.2 Strict measures must be put in place to fund the development, marketing and distribution of South African content.

38.3 There should at least 3 tiers, with each tier being ring fenced:

38.3.1 a transformation fund to develop new entrants (Tier 3);

38.3.2 a fund for filmmakers with limited experience but who have developed and produced one or two theatrical feature films, television fiction, documentaries, short films and/or commercials (Tier 2); and

38.3.3 a fund for experienced producers (Tier 1).

### 39 Access to events

39.1 The White Paper does not deal with access to events of national interest at all.

39.2 We raise this because The South African Film and Television Awards (“the SAFTAs”) fall within our mandate.

39.3 By way of background, the SAFTAs honour, celebrate and promote the creativity, quality and excellence of South African Film and Television talent

and productions, and serve to encourage entrepreneurship and the development of new talent within the industry.

39.4 To date, there have been 14 annual SAFTAs. For the first thirteen annual SAFTAs, the SABC was the official live broadcast partner and sponsor. The 14<sup>th</sup> annual SAFTA was held on 29 April 2020, and was hosted on social media platforms, across Twitter, Facebook and YouTube.

39.5 This meant that the SAFTAs had a far greater reach than merely being broadcast on the SABC.

39.6 Currently, the SAFTAs do not fall within the exclusive domain of the SABC and we submit that this should remain so. This will ensure that there is no abuse of dominance issue. The NFVF will be allowed to decide the platform that it wishes to utilise for the SATFAs.

#### Copyright and Intellectual Property<sup>24</sup>

40 Coupled with copyright and intellectual property, is the important issue of piracy.

41 The impact of piracy on the films and video industry is considerable, from the intellectual property owner who loses revenue and on the distributors and users of pirated materials.

42 Piracy has flourished by fulfilling the public's demands for fast, cheap, and accessible films and videos. The force of piracy is realized by its resistance to the incessant promotions against it.

#### *Our submissions*

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<sup>24</sup> Section 5 of the White Paper.

- 43 A regulatory impact assessment needs to be made on the whole Copyright Amendment Bill by an independent organisation to measure the impact on the cultural and creative industries. These findings must be made public.
- 44 An Inter-ministerial Committee driven by social cohesion objectives must be set up to focus on copyright and local content development and the preservation of our audio-visual product.
- 45 We suggest that with respect to the piracy issue, there must be concrete efforts to eliminate the enticement for the people to search for pirated content. This can be done by providing good content and a good user experience in exchange for a reasonable fee.
- 46 New watermarking methods should be developed by government and industry to track and trace the source of illegal distribution. Internet service providers could be encouraged to keep tabs on the downloading activity of accounts on their bandwidth.
- 47 Programmes must be run to educate people about piracy and the effect on the industry and the economy.

#### Local Content Funding<sup>25</sup>

- 48 A critical question that must be addressed is how do we improve the funding and financing of and investment in the South African audio-visual Industry?
- 49 We agree that a clearly defined institutional framework for the coordination and management of the funding audio-visual content is required.

#### *Our submissions*

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<sup>25</sup> Section 6 of the White Paper.

- 50 There needs to be better cooperation between government departments and the national public entities that are involved in the development and funding of the audio-visual content industry.
- 51 The NFVF needs to be adequately funded so that it can meet its statutory mandate. Further, funding should be re-adjusted towards development, production, research and training.
- 52 Current funding models do not wholly meet the demands of the local market and there has to be adjustments made to the existing funding models. This entails regular review of funding models to meet the ever-evolving market demands.
- 53 Funding must be easily accessible for the youth who struggle to comply with onerous funding requirements. Against this, we propose the establishment of a Youth and Gender Film Fund within the NFVF.

#### Skills development and Digital literacy<sup>26</sup>

- 54 4IR presents new market opportunities for South Africa but before we can enjoy the fruits of this, we need to develop the skills to deal with the disruptive effects of new technologies in the AAVCS space.

#### *Our submissions*

##### 55 Adequate and specific training

55.1 It is trite that there must be proper and specific training for the industry.

55.2 At a school level, the curriculum must be modernised to include subjects such as history of technology, modern technology and code writing or coding. There are already private and independent schools that offer coding as part of the

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<sup>26</sup> Section 8 of the White Paper

curriculum and public schools must follow suit or their students will be left behind.

55.3 As a tertiary level, TVET colleges could be used for training purposes.

55.4 CATHSSETA funding could be utilized to develop industry readiness of all newcomers by creating onsite learning and internships.

## 56 Creating an inclusive industry

56.1 We recommend that government assists and funds existing organisations with effective systems in place when dealing with the issues of gender, race, youth, disability and rural communities.

56.2 There must be ample assistance and funding, including but not limited to:

56.2.1 The design and establishment of a local, provincial and national database that is easily accessible indicating which organisations are funded and supported by government in the relevant areas;

56.2.2 An effort to develop content that shows influential and powerful disabled individuals and reflect their reality.

## 57 Ownership and equity for women

57.1 There is a great disparity with respect to the gender and race gap that is the reality for black women in South Africa.

57.2 Priority must be given to teaching the business aspect of film and television, and demonstrating how to raise capital, fund ventures, create film and videos, the importance of production and the means of distribution.

## 58 Ensuring industry working conditions are safe and inclusive for all

- 58.1 The first step is the creation and adoption of a Code of Conduct and addendum speaking to Harassment, Sexual Harassment and Discrimination be included in every contract as a requirement for funding.
- 58.2 Next every workplace or set must have a Safety Officer to ensure that the Code of Conduct and workplace safety is being implemented. This also must be a requirement for funding.
- 58.3 All workplaces or sets must ensure that they are accessible, safely equipped for and cater to the needs of disabled persons so that they can also enjoy a productive and risk-free working environment.

## **CONCLUSION**

- 59 As a nation, South Africa must totally accept and join in 4IR but we are not yet prepared for it.
- 60 Our success depends largely on, on one hand, the education and funding of people to offer AAVCS and, on the other, the socio-economic conditions of people to stream and watch this content. In the context of unemployment and poverty, it is imperative that Government has appropriate funding, training, support, plans and policies in place to ensure that all South Africans are able to enjoy the benefits of 4IR.

**END.**