

The Acting Director -General,
Department of Communications and Digital Technologies
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By email: aacs@dtps.gov.za

15 February 2021

This submission is written on behalf of the South African Guild of Actors in response to the call for comment on the white paper in terms of Government Gazette No. 43938 Notice Number 1267 of 26 November 2020.

SAGA is a non-profit organisation (NPO number 119-128 NPO) constituted on 23 July 2009.

SAGA's mandate is to represent and protect the legal and economic rights of professional actors in the film, television, stage, commercial and corporate sectors. SAGA was elected as a member of the International Actors Federation ("FIA") in 2012, alongside Actors' Guilds and Unions from 68 countries around the world including Screen Actors Guild - American Federation of Television and Radio Artists ("SAG-AFTRA") in the United States of America, Canada's Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA") and Equity which is the UK trade union for creative practitioners.

SAGA has been a member of South African Screen Federation ("SASFED") since 2009, where collaboration of the Independent Production sector, which includes Producers, Writers, Editors, Agents, Animators and Actors' organisations, ensures that the sector remains professional and retains standards.

Of particular concern to SAGA is the mechanism of compliance within the broadcasting regulators especially regarding:

The monitoring and compliance of Commissioned works by licensees; and

The quotas of domestic content the licenses will be expected to produce.

SAGA EXECUTIVE COMMITTEE MEMBERS

Jack Devnarain (Chairman) Adrian Galley (Vice Chair CT) Carlynn de Waal-Smit (Secretary/Treasurer) Daniel Janks (Legal) Motlatji Mjamba (Vice Secretary CT) Nambitha Mpumlwana (Media JHB) Ashley Dowds (Workshops) Shadi Chauke (Membership and Governance)
Londiwe Shange Vice Secretary Durban

NPO Registration Number 119-128 NPO (NPC Registration Number 2012/073405/08

PBO No: 930041853

The main regulator of broadcast licensees in South Africa is ICASA. ICASA has been mandated to issue broadcasting licenses to broadcasters both in radio and audio-visual transmissions.

The Independent Communications Authority of South Africa (“ICASA”) was established by the Independent Communication Authority of South Africa Act, 2 of 2014. ICASA is mandated to manage and control communications services within South Africa. This extends to broadcasting companies and the productions and programmes they produce. ICASA also has the responsibility to ensure consumer protection within the sector and provide for recourse when entities, that supply communication services, do not meet ICASA's regulations.

ICASA dictates that strict ethical standards be maintained by its members and their licensees. ICASA has regulations for the commissioning of independently produced South African programming (when these programmes are made through licensees); these producers are obligated to submit to protocols that licensees create and ICASA approves. The onus is on ICASA to uphold or monitor such procedures. However, there is no evidence that ICASA has any mechanisms in place to ensure that licensees are compliant with this. The recent prosecution of the ex-chairperson of ICASA, for money laundering, further increases the disappointment in this authority’s capability to uphold ethical standards.

The Electronic Communications Act, 3 of 2005, sections 4 and 61, and the ICASA Act, require that licensees submit yearly data on certain criteria created to improve the content standards and improve the independent production sector. The criteria being that the licensees must give ICASA programme prices which may provide financial information needed for good faith collective bargaining between the producers and the licensees.

Commissioning protocols must meet the following criteria:

- A licensee must set out detailed terms of trade.
- The terms must be fair, transparent, non-discriminatory and achieve the outcomes below.
- Improving the licensee and producers’ relationship.

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- Promote innovation and creativity in programming.
- Advance competition in procuring independent SA programming.
- Promote diversity in broadcasting sector and production sector.
- Promote skills development.
- Create a sustainable independent production sector.
- Advance transformation of the production sector.

These criteria influence the conditions the actor works under, in terms of supporting competition law and potential skills development as well as diversity. They should, in theory, also protect actors by ensuring fair and transparent production processes.

The reports submitted by Multichoice and SABC (two of the most prominent broadcasters in South Africa) prove that ICASA has no teeth when ensuring compliance of licensees. In the past no penalties were issued for SABC's gross failure to maintain the standards and protocols set by ICASA.

Broadcasting licensees agree to ICASA's requirements in order to receive their licences; actors should be able to expect that productions be conducted in accordance with requirements. However, if the production is made by overseas investors for overseas broadcasting, ICASA has no mandate to regulate these commissioning protocols and people employed by these companies are not accountable to ICASA.

As the monitoring of these licence conditions is seemingly not properly conducted, there appears to be little recourse for actors when such conditions are not followed. If there were adequate oversights over the reporting and compliance standards then this would be a useful resource for actors who are not adequately treated by producers, production companies and broadcasters. A solution to this may be to request ICASA produce evidence of its monitoring and then to take further action if such evidence does not exist. This needs to be implemented prior to the expansion of the scope and duties of ICASA.

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Of additional concern is that the Department and ICASA have found it within its discretion to suspend the domestic content quota for local broadcast licensees during the state of national disaster. This is of concern because it threatens the livelihood of workers in the audio- and audio-visual industry and the stability of the sector as a whole. It sets a precedent that could suspend the quota for other reasons, including the conditions imposed by streaming services. This quota ought to be safeguarded at all costs to promote the talent and character of Uniquely South African content as well as, most importantly, to keep the industry viable.

The quota system also does not seem to have any monitoring or enforcement measures in place in ICASA. There is no available information on how ICASA has ensured that licensees comply with the quota measure which is a condition of the licence agreement.



SAGA Chairman : Jack Devnarain

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