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The South African Screen Federation represents the interest of the independent film and television industry organisations of South Africa as a collective federation.

This submission is made by the following industry organizations

12th February 2021

Department of Communications and Digital Technologies
Acting Director-General, Ms. Nomvuyiso Batyi
Block A3, I Parioll Office Park
166 Park Street, Hatfield
Pretoria

BY EMAIL: Acting Director-General:
Ms. Nomvuyiso Batyi <aacs@dtps@gov.za>

Dear Acting Director-General

RE: <u>SOUTH AFRICAN SCREEN FEDERATION (SASFED) COMMENTS ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL CONTENT SERVICES POLICY FRAMEWORK</u>

1. INTRODUCTION

1.1 The Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020 was published on 9 October 2020 as contained in Notice 1081 published in Government Gazette No. 43797 (the Draft White Paper).

1.2 The Independent Production Sector (IPS) welcomes the draft White Paper's focus on local content and support of the domestic audio and audiovisual production and creative industries sector as is evidenced by the fact that these issues are dealt with in some depth in both sections 5 and 6 of the draft White Paper.

1.3 We would like to thank the Department for your engagement with industry bodies on the 3rd of December 2020 and for engaging in the MMA-hosted workshop of 28th January 2021, on the above subject-matter.

1.4 The South African Screen Federation (SASFED), known as "the leading voice and champion of the South African Screen Industry," is the national federation of independent film, television and audio-visual industry organisations in South Africa. Founded in 2006 in response to Government's call for the independent screen industry to speak with a united voice, SASFED represents many guilds, professionals and companies that are operating in an increasingly diverse and growing sector. The membership of these organisations operates in all the provinces of South Africa, making SASFED's membership truly national.

1.5 SASFED represents the audio-visual sector across the value chain. Amongst our members are writers, filmmakers, animators, actors (and their managers), producers and editors. All of our membership, with the exception of the talent managers, are content creators.

1.6 Current SASFED membership includes the Documentary Filmmakers' Association (DFA), The Independent Black Filmmakers Collective (IBFC), Independent Producers' Organisation (IPO), Personal Managers' Association (PMA), Animation South Africa (A.S.A), South African Guild of Actors (SAGA), Sisters Working in Film and Television (SWIFT), South African Guild of Editors (SAGE) and Writers Guild of South Africa (WGSA).

1.7 This submission represents the views and needs of the film and television production sector's representative organisations.

Executive Summary

1.8 As the sector tries to emerge from the tribulations of the pandemic, and as the world moves increasingly towards new ways of shooting to accommodate health and safety protocols and digital content platforms are on the ascent along with a local and global appetite for South African content, it has never been more important than now for the production sector to receive adequate support so that it may not only survive but thrive, to the ultimate benefit of the country and its people.

1.9 This sector has significant potential to contribute to the country's economic recovery and growth. It creates thousands of jobs, from world-class cast and crew to new unskilled entrants to the workplace who can create a sustainable successful career in the industry (playing a meaningful role in the NDP 2030 goals); it attracts billions in foreign direct investment; it rapidly injects capital throughout the economy (67% of production spend flows to other sectors, the bulk of which is spent during the shooting period of the production); throughout the value chain and supplier network it contributes substantial taxes; the immense 'soft' but critical value of promoting our stories, national identity and culture, locally and globally, which only this sector can do; and it promotes brand South Africa. We therefore welcome any initiatives aimed at helping the sector reach its fullest potential.

1.10 The IPS wishes to assure the DCDT that it is looking to work with government, the broadcasters and indeed all stakeholders in the audio-visual (AV) sector to improve the economic and developmental potential for the entire South African cultural sector: radio and television broadcasting; cinema, film and television content production and music production, with the aim of benefiting the entire cultural ecosystem including creatives such as writers, actors, musicians and the like. We are in support of government's aims to develop a national identity through local content production.

1.11 For the purposes of this submission, the IPS is to focus is to be on audiovisual content and services. The IPS is of the respectful view that while many different governmental departments and institutions clearly recognise the vital importance of the IPS to the economy and the country's national identify and sense of self, there has been no clear unified approach which has hamstrung various efforts and left the IPS frustrated and under-resourced. Indeed, this is recognised by the drafters of the draft White Paper in the summary of the key draft policy proposals in respect of independent production on page 134:

> ***There are numerous ministries, departments and national public entities that are involved in the development and funding of the audiovisual content industry, resulting in a confusing mess that creatives and aspirant independent producers have to navigate through to find funding for their projects.***

1.12 In this submission, we are focusing the following critical issues:

1.12.1 the problems with the existing regulatory framework of local content and independent production quotas, including ICASA's lack of capacity to monitor and enforce compliance therewith;

1.12.2 the need to continue with local content and independent production quotas in respect of the amount of local and independently-produced content to be flighted on AV services;

1.12.3 the need for a percentage of income to be spent by all qualifying AV services on original content, most of which must be independently-commissioned;

1.12.4 the need for a special fund for AV content services funded by all who benefit financially from the broadcast, flighting or carriage of content; and

1.12.5 the need to address specific concerns regarding the South African Broadcasting Corporation (SABC), the National Film and Video Foundation (NFVF) and certain other miscellaneous matters.

2. BRIEF INTRODUCTION TO THE SECTOR AND EXISTING FRAMEWORK

2.1 *The Audio-Visual sector*

The South African film and television production industry is not only one of the country's key contributors to GDP (i.e. it was the second biggest contributor being "Audio-visual and Interactive Media" (R38 billion) of the GDP contribution of the creative content industries in 2018 (Masterplan Research, Nelson Mandela University, November 2020), FDI and employment, it also is a major driver of the creative industries that are the future of modern economies and the fourth industrial revolution. It is one of the main guarantors of the country's diversity and creativity, and of the preservation of the cultural and linguistic diversity of our communities.

Against the backdrop of an ever-increasing demand for local quality content the film and television production industry provides incalculable value in shaping our shared South African narrative, reflecting and affirming our people's lived experiences and stories.

It is not just the Film and TV sub-sectors that contribute to the rapid growth trends. VFX and animation (and please note that these are sub-sectors in which South African talent truly excels) make up an appreciable and growing component of the screen industries, with one estimate placing the total value of those sub-sectors at US$158 billion (ZAR 2,400 billion) in 2018 (https://www.researchandmarkets.com/reports/4721808/global-animation-vfx-and-games-industry; including US domestic spend). If those numbers grow at current levels for the wider production industry, global production spends of up to US$300 billion (ZAR 4,520 billion) for animation and VFX are possible in the next five years.

2.2 *Exportable nature of audio-visual products*

It is important to note that audio-visual products cross borders on their way to places where their performances are in the highest demand.

Before lockdown, the South African content production sector was starting to enjoy a seismic shift in international recognition and marketability. On a global level, the last few years have been characterized by the merger of the Film and TV worlds and, fuelled by the multiplication and the growth of giant streaming platforms, the explosion of the demand for scripted content also described as ‘Golden Age TV’.

South Africa benefitted from this phenomenon by attracting massive productions with recurring income, such as *Raised By Wolves*, *Black Sails* and *Warrior*, giving rise to billions of Rand of Foreign Direct Investment, the creation of thousands of local jobs, and global recognition to our world-class studio infrastructure and skilled labour.

Our feature films, documentaries and TV series have been shown and applauded at festivals and received major awards around the world, including Sundance, FESPACO, Durban, Cannes, Tribeca, Berlin, Toronto, the Oscars, the International Emmy Awards, etc.

(i) International servicing

Over the last several years, many international producers have enjoyed sending productions to be made in South Africa – but the country has not seen the level of major growth (typically well into double digits) in its screen sector that has been experienced in many other places around the world. The synergy between local and international producers is a critical factor. International producers do not just look for great crews and locations, they look also for artisans, writers and musicians and (increasingly) for local stories, music and producers (i.e. the production service model employs upwards of 8000 people a year) – and they offer, in return, the experience, mentoring and tutoring skills of people who have worked internationally as well as the major financial investment and multi-year projects that accelerate the expansion of physical infrastructure and the wide-reaching supply chains that are foundational to the support of local productions as well as their own international ones. The inclusion of the production service model means that this sector has become a manufacturing sector that subsumes activity from/creates activity in a very wide variety of other sectors. It is, in fact, the only industry that reflects (and therefore hires and/or commissions services from) ALL other major physical, service, technical and digital sectors as well as from the creative and cultural communities.

(ii) Regional and International Co-productions

Key role players and producers from countries with which South Africa enjoys co-production treaties, studios, platforms and broadcasters also started to discover the importance of letting African and South Africans tell their own stories and making them available to the world: *Queen Sono, Blood and Water, Trackers, The Girl From St. Agnes* - these locally originated series have gone global and dozens more are in the current pipeline.

Often these arrangements have split/shared rights deals and shared revenue in addition to governing law, jurisdiction and guild obligations. The nature of the variety of arrangements available to content owners has not been fully appreciated.

The pandemic has forced a hiatus – with the result of us having lost the above momentum due to many other countries having opened up to full-scale production and are providing significant stimulus measures, including increasingly attractive incentives to draw more international productions to their shores.

The whole aim of the above arrangements is to provide opportunities for audio-visual products in local and overseas markets and for them to enter the global marketplace and the further opportunities that come with such access and exposure.

It is imperative that this sector be *assisted*, however possible, to capitalise on international developments, opportunities and partnerships in order to optimise the potentially significant contribution the sector can make to GDP, FDI, job-creation, transformation and promoting our stories to the widest possible audience. The impact of the implications, and cost, of the draft FPAA Regulations in terms of international servicing arrangements as well as coproduction audio-visual material and how that is marketed and exploited needs to be more thoroughly considered.

(iii) Transformation

Transformation remains a priority for our sector: transforming the industry to a more equitable sector in terms of gender and race by advocating for safe working environments free from sexual harassment and discrimination, equitable representation of women throughout the industry value chain, pay parity and an end to the race and gender pay gap.

(iv) The Presidential Creative Industries Masterplan Process

We re-iterate the point made in our joint submission that the Presidential Creative Industries Masterplan Process being currently lead by the Department of Small Business "must be incorporated into a single national effort spearheaded through this Draft White Paper process."

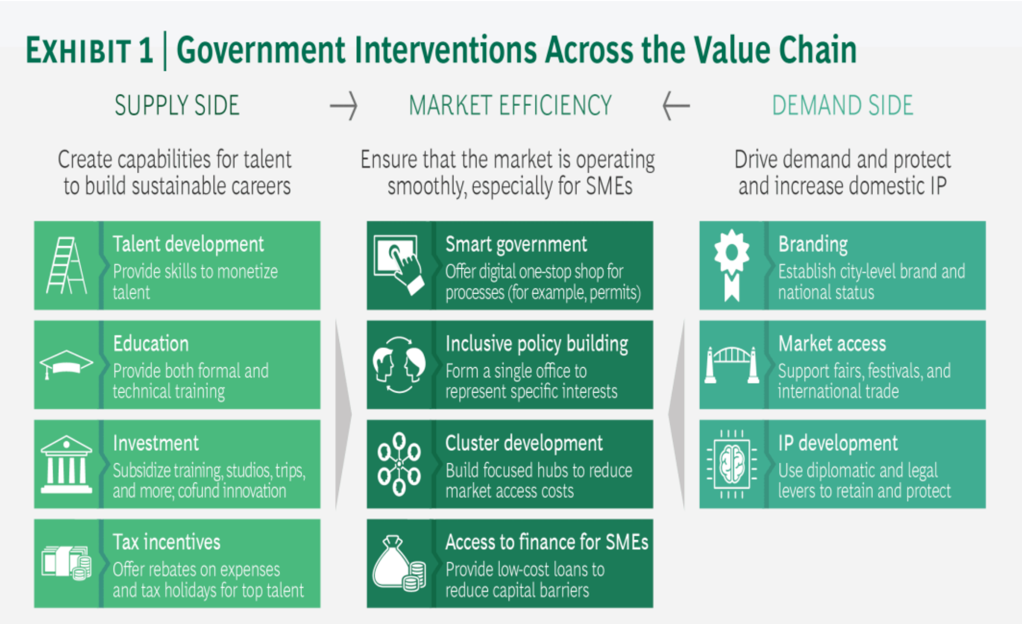
The purpose of Creative Industries Master Plan is to set out key interventions that aim to:

- Support a quick post COVID-19 recovery
- Grow the creative economy in an inclusive manner
- Ensure the creative industries effectively contribute to job creation
- Build on the potential of the creative economy to contribute to innovation in

the shift to digitsation in the 4IR.

It focusses on policy levers to grow the creative industries and interventions to facilitation of the removal of immediate constraints to the development of the industry, such as:

- Infrastructure
- Skills
- Finance
- Legislative / regulatory barriers
- Facilitation of industry cooperation / clustering
- Investment and export promotion.



Source: BCG analysis.

EXHIBIT 2 | Five Key Levers to Boost the Film and TV Industry

Source: BCG analysis.

(v) Link to The National Development Plan (NDP)

The objectives of the NDP are listed as:

- Create 11 million new jobs
- Building strong new infrastructure
- Economy using clean, renewable energy
- Planning that includes everyone
- Quality education for all
- Quality healthcare for all
- Fight corruption
- A capable state serving its people
- Unite the nation.

The AV sector can contribute to rapid economic recovery and stimulation in that it is unique in its capacity to deliver the following:

- It can quickly create jobs, technical to unskilled, generates local economic activity, attracts investment including foreign direct investment

- Semi- and unskilled people can learn, acquire skills and develop a career path

- It plays vital role in preserving and telling of our heritage, cultures and local stories

- Promotes tourism locally and internationally

- Creates work for other creatives, music (from composition to performance), visual arts, graphic and other design – and for other small business/individual suppliers e.g. hairdressers, dressmakers, cooks and wait staff, drivers etc.,

and much more.

(vi) Draft Films And Publications Amendment Regulations, 2020 (FPAA Regulations)

Without repeating our submissions made in respect of the FPAA Regulations, we believe that the draft FPAA Regulations are too far-reaching in scope and do not take into account the reality and structure of how the audio-visual sector works. The FPAA Regulations (as is the case with the Films And Publications Amendment Act) are out of sync with the commercial realities of the film and television sector and will create an administrative and cumbersome process to comply with for all parties involved in the ecosystem. The registration, self-classification and accredited foreign or international classification systems are some of the main provisions which are potentially problematic, but there are also additional issues regarding prohibited content and the sanctions for non-compliance, which could be subject to constitutional challenge.

(vii) South Africa’s position in respect of the Africa’s Growth and Opportunity Act (AGOA)

Review by the United States Trade Representative (USTR) of AGOA, South Africa's eligibility to participate in its Generalized System of Preferences (GSP), the largest and oldest American preferential trade scheme to allow duty-free imports from less developed countries and the existing and potential impact on trade in SA in light of the copyright regime has significant implications on the sector. It is noted that the GSP is the largest trade economic programme offered by the US and SA is the largest user in Africa. The intended review follows from the fact that there are certain conditions to be met in order to participate in the GSP programme which are contained in the statute itself. These are factors such as the international recognition of worker rights; market access; public transparency and adequate and effective protection of IP.

Major questions being considered are:

- What would be the impact if GSP would leave? Would it affect exporters? How?
- What are the current levels of protection and enforcement of IP;
- What is the current atmosphere, especially on the enforcement side;
- What is the provision of technological protective measures?

We have engaged with the USTR, made representations and provided an understanding of the negative consequences to the audio-visual industry, pointing out that the review is premature. It is, therefore, important that we have a holistic bird's-eye view of the far-reaching impact and unintended consequences of the draft AV White Paper in light of all the above and to ensure that there is a unified approach amongst government departments pertaining to this sector going forward.

Bearing the above in mind, kindly find our comments on the draft AV White Paper below.

3. SUBMISSIONS ON THE CONTENT OF THE DRAFT AV WHITE PAPER

3.1 ICASA: PROBLEMS WITH MONITORING AND THE ENFORCEMENT OF COMPLIANCE OF LOCAL AND INDEPENDENTLY COMMISSIONED QUOTAS, REGULATIONS AND LICENCE CONDITIONS (I.E. A policy lever to grow AV Industry Public Procurement & Local Procurement and a policy lever to grow the AV Industry Domestic Market Development)

3.1.1 The IPS is of the respectful view that it is essential that the entire local content and independent commissioning classification and verification process must be simplified to guard against platform shopping by AVCS, that is, to create more equitable and implementable regulatory obligations as between qualifying broadcasting and qualifying On-demand AVCS.

3.1.2 ICASA must be required, empowered and funded to be able to conduct monitoring and enforcement of compliance with all local conduct broadcast and local original production quotas, including funding obligations and independent production obligations. These, of course, must include being able to monitor and enforce compliance with terms of trade requirements such as annual inflationary increases on the cost per minute paid.

3.1.3 These are currently extremely complicated and ICASA appears to find it difficult to monitor/report on in a transparent and independently-monitorable way due to the lack of a prescribed reporting form that provides for all regulatory and licence condition local content and independent production variables. Obligations in terms of regulations and licence conditions must be amended and simplified so that they are workable and enforceable and so that monitoring is transparent and able to be checked by the independent production industry too.

3.1.4 In this regard, we attach hereto two draft milestone reports commissioned by the Independent Black Film-makers Collective and the IPO which focus, respectively, on current difficulties in monitoring and enforcing compliance with local content quotas imposed by way of regulation and/or licence conditions together with a proposed draft reporting template of the kind that would be required to report transparently and accurately on compliance by each of the licensed television broadcasters with its respective obligations. As you can see – it runs to dozens of pages. As you must be aware, there is no prescribed reporting format for television broadcasters to complete to report on local content and independent commissioning requirements in the Compliance Manual Regulations contained in Notice 902, Government Gazette No 34863 dated 15 December 2011, despite the peremptory obligation on ICASA to prescribe same in terms of section 10(1) of the Local Television Content Regulations contained in Notice 346, Government Gazette No, 39844, dated 23 March 2016. Instead, such reporting is done as per non-public, informally-agreed reporting requirements between the respective broadcasters and ICASA. This has undoubtedly contributed to a lack of reporting by ICASA on compliance by television broadcasters. In this regard, the latest publicly available (that is on ICASA's website or in its library) compliance reports for:

3.1.4.1 SABC, is for 2008;

3.1.4.2 E-tv, is for 2017/18;

3.1.4.3 DStv, is for 2018/19;

3.1.4.4 M-Net, is for 2011/12;

3.1.4.5 Starsat, is for 2018/19; and

3.1.4.6 Deukom, is for 2017/18.

Needless to say we are particularly horrified at the single report on SABC compliance with local content compliance which is from 13 years ago.

3.1.5 The IPS is of the view that it is essential to build in robust transparency in respect of reporting obligations upon qualifying broadcasters and qualifying On-demand AVCS to assist in enabling outside parties, such as government, members of the public, competitor broadcasters and the IPS itself, to ensure that ICASA is carrying out its monitoring and enforcement obligations in accordance with the law.

3.1.6 In addition, we re-iterate the need to relook the format of the prescribed reporting form and that the genres be reviewed to ensure a holistic approach to the production of local content to ensure that genres such as animation and factual content etc., receive a local content quota requirement specifically, or the broadcasters will continue to avoid making any contributions to these genres/mediums.

3.1.7 Consequently, the IPS respectfully submits that all qualifying broadcasting and qualifying on-demand AVCS be required to submit compliance reports to ICASA in a properly prescribed format and that all reports are to be made immediately available on the ICASA website. Thereafter, ICASA's draft annual compliance reports in respect of each service is to be published for public notice and comment to allow for cultural industries and other interested parties to comment on compliance matters. Further ICASA must issue finalised compliance reports on each qualifying service annually. A failure to comply with these transparency obligations on the part of ICASA and/or any qualifying service would of course entitle a member of the public to lay a format complaint before ICASA's Complaints and Compliance Committee.

3.2 LOCAL CONTENT, ORIGINAL PRODUCTION AND INDEPENDENT COMMISSIONING QUOTAS

3.2.1 In broad terms the IPS wants to see both:

3.2.1.1 quotas in respect of the amount of local content to be flighted on various audiovisual platforms; AND

3.2.1.2 we want to see the imposition of financial obligations to "spend" a percentage of turnover revenue on original local production and independently commissioned content. However, we note that in South Africa satellite operators are considered to be broadcasters as opposed to AVCS distributors which is the world-wide practice. The IPS is of the view that this anomaly must be addressed in detail in the next version of the Draft White Paper.

3.2.2 In addition, we wish to note that:

3.2.2.1 there is no consistent, reliable data on what percentages the broadcasters contribute to the creation of local content; and

3.2.2.2 The current complex system of local content and independent production quotas is not being regulated effectively currently by ICASA so it is very difficult to see how local content requirements will be imposed on foreign AAVCS and linear broadcasters.

3.2.3 Without proper regulation of South Africa's AV sector to take account of the disruption brought about by the 4th IR, economic power will be concentrated in this area and the country's cultural identity will be eroded.

3.2.4 Therefore, the IPS, respectfully, proposes that all AVCS meeting the regulatory thresholds (whatever these are ultimately to be and we urge the DCDT to ensure a proper economic modelling on this issue to inform its ultimate policy proposal to be put forward in the next version of the Draft White Paper for public comment) will have obligations to flight local content.

3.2.5 There are two aspects to our proposal on the content and independent production quota issue:

3.2.5.1 Broadcast quota:

3.2.5.1.1 We think it fundamental for all qualifying television broadcasters to be required to flight a certain percentage of the hours of programming flighted on any linear broadcasting service.

3.2.5.1.2 For legacy terrestrial free-to-air television broadcasters, we would suggest that there be no reduction in the overall local content percentage requirements applicable to public, commercial and community services. However, in order to take account of the African Continental Free Trade Agreement (AfCFTA), we would like to see a small percentage (of not more than five percent) to be imposed on top of the local content quota for content from other African Union countries, but only where there are reciprocal, bi-lateral agreements with such other African Union countries that impose a reciprocal quota to encourage the flighting of South African content.

3.2.5.1.3 For new free-to-air terrestrial and satellite television broadcasters, the percentage of programming required to be local is to be 20% initially, with an obligation to climb to the following quotas within five years:

3.2.5.1.3.1 45% for commercial operators;

3.2.5.1.3.2 65% for community operators;

3.2.5.1.3.3 65% for SABC television services.

3.2.5.1.4 For existing subscription television broadcasters, we submit that the percentage of programming required to be local is to be 15%.

3.2.5.1.5 For new subscription television broadcasters, we submit that the percentage of programming required to be local is to be 5% with an obligation to climb to 15% within five years.

3.2.5.2 Local Original Production Quota

3.2.5.2.1 We reiterate that the IPS wants to see both quotas in respect of the amount of local content to be flighted on qualifying broadcasting services AND we want to see the imposition of financial obligations to "spend" a percentage of turnover revenue on original local production for all entities involved in the AV sector, from television broadcasters, AVCS as well as ECS and ECNS licensees, all of whom benefit from, and are dependent on, the content flighted on or over their services/networks for advertising revenues, subscriptions, data income, network/signal distribution fees etc.

3.2.5.2.2 Consequently, we propose the following quotas be included as a matter of policy by the DCDT in the next version of the draft White Paper:

3.2.5.2.2.1 commercial and community terrestrial free to air or subscription television broadcasters, funded through subscription, advertising or a mix of them, should spend a minimum of 20% of their annual turnover on the production or coproduction of original local content;

3.2.5.2.2.2 public terrestrial broadcaster (SABC) should spend a minimum of 25% of its annual turnover on the production or coproduction of original local content.

3.2.5.2.2.3 satellite broadcasters or AVCS distributors should spend a minimum of 10% of their annual turnover on the production or coproduction of original local content;

3.2.5.2.2.4 qualifying on-demand AVCS should spend a minimum of 15% of their annual South African turnover on the production or coproduction of original local content.

The regulation of the above needs to be balanced with:

(i) not reduce consumer choice and stifle internet-based innovation to the detriment of consumers; and

(ii) ensure that we can find good quality SA content whatever the %;

(iii) the need to not only support independent content producers to not only produce but to also access different markets – how do we open distribution channels to assist content makers to look at both domestic and international market simultaneously. Distribution of creative industries content is a major challenge for independent and small content producers and distribution channels favour major players and close out independent content producers. In addition, there are unfair distribution contracts and requirements that push risks to the independent producers so we need more alternative distribution channels for independent producers (or fairer terms and/or models) and to establish more and multiple platforms through which AV products can be marketed.

3.2.5.2.2.5 Marketing assistance required for independent film and television production; and

3.2.5.2.2.6 further, 65% of all amounts referred to in paragraphs 3.2.5.2.2.1 to 3.2.5.2.2.4 above must be spent on independently-commissioned productions.

4. ADDITIONAL FUNDING SUPPORT FOR THE AVCS SECTOR AND THE NEED FOR A CONSOLIDATED POLICY-FORMULATION PROCESS

4.1 In addition to the local and original local content and independent commissioning obligations set out in paragraph 3 above, we think that it is critical there be a properly resourced fund (we suggest that it be named Creative Audiovisual Production Industry Fund) to support the production of local content. The contributions ought to be made for all entities that benefit from content-driven income, including: television broadcasters, AVCS as well as ECS and ECNS licensees, all of whom benefit from, and are dependent on, the content flighted on or over their services/networks for advertising revenues, subscriptions, data income, network/signal distribution fees etc.

4.2 In our view, all Electronic Communications Network Services (ECNS), Electronic Communications Services (ECS) and qualifying AV operators (whether broadcasters or on-demand AVCS) must contribute to a local audiovisual content fund to support the production of local content and the South African independent creative production industry as a whole (details to be clarified in through the Masterplan process but which need to be embedded in the next version of the Draft White Paper). In this regard:

4.2.1 all beneficiaries of the AV content distribution chain who benefit from the distribution of audiovisual content ought to contribute to such an audio-visual content fund which fund supports the production of independent original South African audiovisual content;

4.2.2 we propose that this be done on the basis of an annual levy based on a percentage of turnover generated in South Africa to be paid into the fund and we suggest that such percentages be as follows:

4.2.2.1 3% on annual turnover of qualifying AVCS whether broadcasters or on-demand or AVCS; and cinema operators

4.2.2.2 1% of annual turnover of all ECNS and ECS.

4.3 It remains to be determined as to where this fund should sit. Ought it to be an extension of the National Film and Video Foundation Fund or an amalgamation therewith, or an entirely separate, stand-alone fund? Careful consideration must be given to this, ideally in consultation with recognised industry organisations, as to where this fund should reside and by whom it should be administered, to ensure it delivers optimal benefit to the industry while remaining cost effective. Whereas the NFVF has a developmental mandate, we believe this fund should have a commercial mandate which seeks to rapidly grow the sector.

4.4 Further, the Masterplan must be incorporated into a single national effort spearheaded through this Draft White Paper process, precisely to avoid the existing "confusing mess" so characterised by the DCDT and as quoted above. This requires a break with the different reviews/policy development processes being undertaken by, among others, ICASA's Digital Terrestrial Content Action Group, the Department of Science, Arts and Culture's Reference Group's efforts and the Small Business Department's Masterplan.

4.5 Finally, an overarching review is, of course, required to be undertaken, as the DCDT correctly sets out on page 134 of the Draft White Paper. Such a review must be undertaken (jointly by the DTIC, DSAC, SARS, Treasury, NFVF and, importantly, the main industry organisations) of all current funding mechanisms and instruments for the sector, including with regard to:

4.5.1 Assessing the current production rebate system in the context of incentive systems such as tax credits that exist in other jurisdictions, and are administered by the revenue services of those countries, to determine if one or the other, or a mix, is more optimal for South Africa.

4.5.2 Whether tax credits, rebates or tax incentives, the administration of these must be reliable in the manner of VAT refunds so that they can be financed by regular banks,

4.5.3 the considerations of other tax benefits such as Section 12O (an incentive to stimulate the production of films within the country; an exemption from normal tax, specifically income derived from the exploitation rights of a film) and 12J (incentivises South African taxpayers to invest in local companies and to receive a tax deduction of up to 100%) of the Income Tax Act 58 of 1962 (as amended) in regard to their current usefulness so that they better fulfill their purpose of encouraging more private investment in the sector; and

4.6 Finally, direct public funding, that is, via the national government, provincial governments, local governments, and any other public service funding based on state obligations to particular groupings, including Broad-based Black Economic Empowerment, language usage, youth, women, disabled people, regional representation and the like, is another key area of support that is required to be dealt with in the overarching review.

5. INSTITUTIONAL REVIEW

Weaknesses in institutional support structures constrain the sector.

It is important to note that, in the immediate post Covid world, the following is predicted:

(i) Mass unemployment

- The workplace changes and more people work remotely
- Fewer people move to cities as remote work is possible

(ii) Less income and less disposable income

- Retail, hospitality, tourism & creative industries decline significantly
- Exports decline as countries around the world focus on food security
- International aid declines as all countries save themselves first

(iii) Renewed focus on community

- Doing things for yourself and for others
- Volunteerism and philanthropy grow
- Human engagement & wellbeing becomes a priority
- Business brands and sponsorship will follow this trend

It is certain that this troubling situation will ease and end at some relatively near term point – and that, if we are all prepared, a strong South African Screen sector can be a significant contributor to the country's recovery, directly and also via its typical "spill-over" impact on associated sectors (construction, tourism, hospitality etc.). The Screen sector, when encouraged and supported by both Government and private investors, generates significant amounts of inward investment, large volumes of sustainable jobs and has an impact into adjacent sectors (e.g. tourism and construction, etc.). It is the synergy between inward investment production projects, the infrastructure that they command and the local direct and supply chain resources, creators and artists that delivers a stronger local industry as well as a significant boost to export numbers and to national and local economies. So we are absolutely certain that a focus now on encouraging and supporting inward investors to arrive with their productions as soon as current circumstances ease sufficiently to accommodate them is definitely a sound strategy for South Africa.

Therefore, the institutions listed below should be about supporting and developing in a sustainable manner the foundation of South Africa's amazing AV sector to bolster and expose the "soft" as well as the "hard" economy.

Furthermore, there needs to be better synergy between government agencies and industry bodies such as the DTIC, IDC, NFVF, DACST and film commissions and with industry representation in various state forums is needed. In addition to better understanding of practical value chain and business needed from policymakers there is a need for an oversight role to ensure that regulatory, legislative and policy interventions do not clash/affect one another in unintended ways.

Therefore, the important thing to note under this heading is the *strengthening of existing structures*. We caution that we need to identify the correct aspect that is currently not working (i.e. administration of the DTIC incentives and/or the increase of NFVF Funding) and not just overhaul structures because they are not currently working optimally.

5.1 ICASA

ICASA'S current capacity and extension of mandate by the White Paper is a grave concern and the role of ICASA must be re-examined.

(i) Capacity

ICASA needs institutional capacity to manage its own local content regulatory environment. We have already pointed out that there is, currently, "a lack of reporting by ICASA on compliance by television broadcasters."

The draft White Paper repeatedly proposes that ICASA holds public inquiries/commissions etc. on matters it has already researched in the past. What then becomes of the work done as it seems the regulator keeps repeatedly attending to the same tasks with not much moving forward, or acting on the output of those inquiries/commissions and research; and

Yet the draft White Paper seems to extend ICASA's mandate, which we do not believe is practical. Expanding ICASA's mandate is concerning as it is already struggling to deliver on its current mandate.

(ii) Lack of Independence

Industry has seen ICASA's lack of independence at this critical time during the pandemic and when the industry is in a desperate situation in ICASA bowing to a unilateral decision by broadcasters requesting the regulator to release them from their obligations and in fact drastically reduce their local content on air, is deeply alarming. ICASA, without consultation with the sector, issued an exemption in favour of the broadcasters on local content quotas. At a time when our industry was (and continues to be) already in dire straits, a further reduction in local content would be devastating for the independent production sector,

ICASA defended its lack of engagement with the local audio-visual sector in arriving at the decision, the lack of regard for the potentially devastating and long-term impact on the sector and the reason for retaining these relaxed quotas until long after the State of National Emergency is lifted. This unilateral and far-reaching move sets a dangerous precedent.

In addition, the DCTD has made it clear that what is coming (although this is NOT stated in the White Paper) is a merger of ICASA, FPB and the ZADNA. Danger: reduced level of independence for this merged body

5.2 SABC-SPECIFIC SUBMISSIONS

5.2.1 As the public broadcaster with, currently, three free-to-air television services, the SABC has a particularly important role to play in the creative industries sector.

5.2.2 However, the IPS has found it extremely frustrating to deal with the SABC for a number of reasons articulated below:

5.2.2.1 First, the provisions of the Public Finance Management Act, 1999, together with certain relevant and certain Treasury requirements, make it impossible for the SABC to react with any agility to coproduction opportunities including with regards to intellectual property in respect of commissioned content. This results in significant international content sales opportunities being lost for commissioned content. We think it is imperative that this is addressed as part of the White Paper finalisation process. We propose that the National Treasury be approached to delegate a certain level of authority to the SABC itself enabling it to make decisions in respect of the commercial licensing of commissioned content with requiring all necessary PFMA permissions.

5.2.2.2 Second, assuming SABC is successful in lobbying for its “must pay” position in respect of its free to air channels being hosted on subscription broadcasters, independent producers and other creatives must benefit from such income generation. An equitable model must be identified to quantify revenue split to individual productions as it is most likely that the broadcaster will negotiate large multichannel deals.

5.2.2.3 Third, the SABC's Terms of Trade are moribund.

(i) For example, despite the provisions of the Annexure of the Commissioning Regulations which require Terms of Trade to set out price determinants such as inflation, no inflationary adjustments have been made by the SABC for at least the past decade and so commissioning fees are effectively 40% of what they were a decade ago in terms of pricing parity. The White Paper must stipulate an annual, for example, inflation/CPIX-based Terms of Trade review, negotiated with the recognised producing bodies and as facilitated and approved by ICASA. The White Paper must deal with this issue in detail as ICASA has failed to act to safeguard independent commissioning to the extent required by the regulator of these issues.

(ii) Removal of the existing Must Carry Regulations

Whatever the Must Carry regime, it will certainly have an effect on the production of SA content. If commercial broadcasters do not have to carry PBS content, what does this mean for the independent production industry? We would need clarity in this regard.

- How is the public broadcaster to receive any value on its existing content? It has an existing catalogue of work which may not necessarily be commercially viable. What happens to the existing library of work? Exploitation and distribution is already not what it should be. If the must carry is done away with, what interest will there be in SABC content?

- What effect will this have on production budgets?

- If the SABC is going to sell its works commercially, then it will, as stated in this document, need to surely relook its IP and revenue sharing with the production industry (see further below).

- What does ensuring the 'findability' of public interest content mean? Draft WP proposals on findability are confusing in light of proposal that must carry be abandoned.

5.2.3 The IPS trusts that the DCDT will take these concerns regarding the SABC and its relationship to the IPS seriously.

6. INSTITUTIONAL REVIEW

6.1 NFVF-SPECIFIC SUBMISSIONS

6.1.1 The IPS also has specific concerns regarding the operations of the National Film and Video Foundation (NFVF), the Department of Trade, Industry and Competition (DTIC) and the Industrial Development Corporation (IDC) all of which are supposed to play a critical role in the sustainability of the local production sector.

6.1.2 The specific concerns are set out below and the IPS requests the DCDT to ensure that these matters are raised and dealt with as part of the sectoral review/Masterplan/White Paper policy formulation process. The areas of concern are:

6.1.2.1 NFVF/DTIC rebates must count towards the Independent Producer's share of the project;

6.1.2.2 There must be more transparency in respect of the NFVF's income and funding. For example, its audited accounts should be publicly available so that independent assessments can be made as to whether or not the NFVF is complying with the statutory obligation of ensuring that 75% of treasury funding is paid out 'as grants' in compliance with the ACT and are not used internally for marketing or other expenses';

6.1.2.3 any funds received by the NFVF, for example from Deukom in lieu of investing in local content, must be added to the 75% and not absorbed into the NFVF's operational budget;

6.1.2.4 the NFVF must assist, where requested, in administrating a project that requires liaison with other funding bodies such as the DTIC and the IDC etc. to obtain/justify tax credits, loans, guarantees and the like;

6.1.2.5 the NFVF must be staffed by people with specialist cultural industry expertise with a particular focus on film;

6.1.2.6 the NFVF Act (National Film and Video Foundation Act 73 of 1997) must be amended to make provision for the following:

6.1.2.6.1 The mandate of the NFVF (the mandate is currently interpreted in a very narrow manner by the institution and clearer wording in the Act may assist. The organisation currently primarily provides project funding (consequently only supporting writers and producers and leaving out the rest of the value chain; its skills development programmes also currently focus on storytelling, leaving out other skills such as professional services (the lack thereof has repeatedly been identified by the annual reports of both the NFVF and the NAC alike; no provision of scarce and digital literacy and other skills, etc. For example, poor managerial and business skills can constrain the ability of firms to become profitable and grow their enterprises);

6.1.2.6.2 The 75%/25% split in the NFVF Act contained in section 16 (2) of the NFVF Act; and

6.1.2.6.3 To provide for industry seats on the NFVF Council.

Industry are the representative bodies of the majority of industry practitioners and their representatives are duly elected and mandated. As we represent the primary beneficiaries of the NFVF Act and are primary service users of the NFVF, we would like to meaningfully contribute to the NFVF Council.

We wish to request that industry – comprised of representatives from some member bodies of SASFED – could be provided a slot to present to the new Council during its induction programme. Historically, it is our view that former NFVF Councils may not necessarily have had an adequate understanding of the sector to make well-informed decisions about the sector's funding needs and priorities, and that the relationship between the industry and the Council has not been as engaged and constructive as we would like it to be. We believe that such a structured engagement through an ongoing advisory council who are also able to be part of the induction of incoming councillors would prove highly mutually beneficial.

6.1.2.6.4 Additionally, it is strongly recommended that an Industry Advisory Body, comprising senior members of the industry and its recognised organisations, be mandated to meet with the NFVF (and its Council) at least quarterly to discuss issues of mutual concern and to meet quarterly with the South African Audiovisual Forum (SAAVF).

6.1.2.6.5 NFVF funding should be increased from R 140 million to R 250 – R 300 million to support the development of commercially viable content with universal market appeal and investment recoupment potential as low-budget productions will not be able to be saleable internationally. Similarly, NFVF Development and Production grant allocations to be increased from R 150 000, 00 for script development to R 350 000, 00, and production funding should be increased from R 1.8 million to R 3.8 million as this will attract investment from other investment agencies such as the IDC, the National Empowerment Fund, private equity investors and also secure interest from international distributors/ sales agents and broadcasters.

6.1.2.7 With additional funding, the NFVF will also be better capacitated to provide additional services such as liaising with e.g. DTIC, IDC etc., to obtain/justify tax credits, loans, guarantees etc.

6.2 DTIC

The DTIC incentive programme needs further consultation and exploration (e.g. guideline interpretation discrepancies, payment and transformation issues). These are policy levers to grow the sector's export development. Similar to legislative changes – improvements and changes should not have unintended consequences:

6.2.1 The uncertain future of the incentives needs to be resolved as this has a bearing on both the domestic and foreign investment into our sector;

6.2.2 incentive segment functionality needs to be improved;

6.2.3 There needs to be better reach of incentives nationally;

6.2.4 Exclusion of permanent residents from QSAPE (and other government support, such as relief funding), needs to be resolved in accordance with existing law. There is no legal basis for the DTIC's application of this rule. It should include all "South Africans" – references (and the impact of) to citizens/residents should be thoroughly re-examined;

6.2.5 There is no film desk at the DTIC despite the fact that this sector is to be regarded as a manufacturing sector, with exportable products and represents "Brand SA";

6.2.6 There should be transparency in the DTIC's dealings with industry and a sharing of information, without industry having to make PAIA applications to obtain it and/or the guidelines applied in an inconsistent manner or approval letters that are not considered final by the DTIC;

6.2.7 There is uncertainty, on the part of the DTIC, of whether the screen sector falls within the current Industrial Policy Action Plan (IPAP); and

6.2.8 Withdrawal/uncertainty over the application of Sector Specific Assistance Scheme (SSAS) scheme. We need consistency in the what incentives/schemes exist to instil confidence in investors.

6.3 IDC

The IPS respectfully submits that the financing criteria of the IDC's Film Finance Division needs to be realigned from the current investment principle of "last in, first out" to "first in, last out" as this would ensure the capacity to carry Return on Investment (ROI) for longer periods. This in accordance with the need to resuscitate the industry, also to attract other private equity investors, including distributors.

6.4 FILM COMMISSIONS

Film Commissions are needed in every province. Currently, there is a film commission only in the provinces of Gauteng and KZN.

The IPS looks forward to working with the DCDT and others to develop firm policies in regard to the above.

7. DIGITAL LITERACY SKILLS

We see this as a lever to grow the Creative Industries Domestic Market Development and we propose that this section does not belong in a policy document. However, work is needed with the NFVF and the SETAs and Accreditation Authorities to address key skills shortages, map career paths, and fast-track transformation.

Included should be:

- Support to work remotely and geographic work flexibility using cloud-based office systems. This is particularly suited to aspects of film and TV post-production, if there is a fast internet connection and a centralised server. It is also a way to include anyone with mobility impairment that can still make a vital and creative contribution to the creative economy;
- Professional Services support is needed for the industry
- Skills transfer between local and international companies for product development and also the use of new technology
- This will assist with access to markets – especially from international producers and service companies to access international funding as well as finding our talent.
- Establish a sector body, with a view to monitor sector development, skills grading, policy coherence and to coordinate all government support to the sector.
- Support programmes are often fragmented and difficult to access, esp. for rural, SMMEs.

8. OTHER CONCERNS AND/OR ADDITIONAL SUPPORT NEEDED

8.1 Definitions

The definitions contained in the draft AV White Paper need to be re-examined (i.e. There is no definition of Programmes, "Independent production" is not defined) and there needs to be alignment with other legislation and/or policies, the FPB Draft Regulations and the
DTIC incentive guidelines etc.

8.2 Intellectual Property

8.2.1 Intellectual Property/exploitation rights must be negotiated within the Term of Trade negotiations with broadcasters and on-Demand AVCS to ensure producers retain rights in the medium to long term bases and to secure and future income from their work.

8.2.2 The Presidency has referred the Copyright Amendment Bill and the Performers Protection Bill in their current forms back to Parliament in June 2020 citing constitutionality concerns. The IPS therefore urges that any further amendments are informed by a series of consultations with all relevant government departments and all affected stakeholders, facilitated by experts in this field and taking into account international best practice, to ensure a copyright and royalties regime that will stimulate rather than stifle the sector. We need a legislative framework that:

(i) supports the ownership and exploitation rights of creative professionals and

(ii) incentivises and encourages investment in the AV industry output; and

8.3 Intermediary liability - How does the state intend to police the "interwebs" and go after publishers and content providers who make content available in SA without a license?

8.4 Transformation

8.4.1 Enforcement of policies

Proper monitoring and evaluation of reporting on recipients of government funding is needed. While policies are in place EE or preferential procurement not much transformation due to lack of monitoring and enforcement. Penalties to be imposed on non-compliance and fronting. Policies are in place but not complied with. how to ensure industry is being transformed? How to monitor improvements and growth?

8.4.2 30% BBBEE

How does the state propose this will work with the Netflix, Google, Amazon, etc.? The Chinese style responses contained in the draft to block signals etc. are not desirable and likely not constitutional.

8.5 Pandemic Insurance

Pandemic Insurance is critical to secure completion bonds and other financing. We have engaged the NFVF, the DSAC, the DCDT and the insurance industry to try to find a solution with government as the insurer of last resort, such as many other countries around the world have done. Without this cover, financing deals cannot be concluded and most productions cannot commence. We propose that government sets aside a pool of funds, into which producers pay premiums and excesses should they claim. The government funds would only be dipped into should the pot of money from premiums be depleted, however it would be being constantly replenished with monthly premiums. Conceivably, the government funds might never need to be utilised or might even grow. When the UK introduced its pandemic fund in July 2020, its production sector got back to 75% capacity within only two months. (As at November 2020, South Africa had R4bn in production value of which R2,4bn was FDI and over 7000 jobs on hold due to the lack of pandemic cover. Resolving this would be a speedy way of kick-starting the industry and its contribution to the economy.)

8.6 Research: Lack of clear data to developing the Screen sector in the country

The sector's ability to develop a business case which demonstrates its value to government and the ROI on government funding, has been hampered by a lack of current data. While various industry research projects are currently underway, we propose that a centralised database be established which captures ongoing industry data, which is made available to the sector.

8.7 Develop ways to support industry associations

8.7.1 It is important to note the role that industry organisations play. From the inception of lockdown industry organisations have played an invaluable role in informing and assisting their members to navigate this crisis, from developing health and safety protocols to hosting webinars on key industry issues, lobbying government and other stakeholders for relief funding and much more.

8.7.2 This pandemic has, more than ever, shown the importance of these industry bodies for the survival of these industries and their members.

8.7.3 They create value for members and their respective industries in the following ways:

- Industry organisations/associations and bodies create opportunities to better understand issues affecting our industry and contribute to the development of effective and efficient policy, regulation and industry standards (e.g. SAGE has hosted three Facebook Live events with expert input on Remote Working for post-production; the DFA has driven a Covid-19 short film grant that has been awarded to six documentary filmmakers; SWIFT is currently working on the establishment of Safety Contact Officer programme);
- Create professional development and training opportunities (e.g. the WGSA has been continuing its training and seminars online; DFA, SAGA, PMA and the IPO have been holding Covid-related seminars for the benefit of their respective member-ships);
- Facilitate the sharing of global and industry best practice and insights (e.g. the IPO has been engaged in research with a foreign research partner which has greatly contributed to the industry navigating this difficult period);
- Assist us to better understand the diverse views held on important issues affecting industry (e.g. SASFED has been working very closely with the IBFC through this difficult transition period, thereby ensuring that diverse views and issues of transformation remain top of mind in all submissions and lobbying efforts, etc.);
- Their contributions to effective public policy development and the setting of industry regulations and standards (SASFED, primarily driven by its IPO member, has had to make submissions to government ensuring the industry

gets back into the work place as soon as possible and has provided health and safety protocols to ensure that such work place is as safe as possible. We have had to lobby on other matters such as lack of insurance and local content quota exemptions);

- Industry organisations are drivers of strategic management of innovation in industry;
- We also provide the opportunity to exchange views and experiences with other members, including those who may hold views different to ours. SASFED is one of the few federations in the world representing both 'employee' and 'employer'. That diversity of thought is something we see as a positive; an opportunity for different attitudes and positions to contribute to open debate, discussion and hopefully consensus on complex issues.
- All of the above are things that ultimately benefit our industry, the economy, and society as a whole.
- None of the above Institutions support sector organisations and we propose that a percentage of the budgets of funding institutions should be ring-fenced and allocated for such support.

In conclusion, the IPS thanks the DCDT for the opportunity to make this submission and raise these issues. We look forward to working with you in undertaking the overall institutional review in order to develop national policy on practical, workable and sustainable measures to ensure that the creative cultural industries' economic and developmental potential is realised while promoting ting South Africa's national identity.

Sincerely

UNATHI MALUNGA
EXCUTIVE OFFICER