

**RESEARCH PROJECT IN CONJUNCTION WITH THE INDEPENDENT BLACK FILM-MAKERS'
COLLECTIVE AND THE INDEPENDENT PRODUCERS ORGANISATION FUNDED BY THE
NATIONAL FILM AND VIDEO FOUNDATION:**

MILESTONE TWO REPORT: INDEPENDENT PRODUCTION REQUIREMENTS

The Brief: This report contains an in-depth examination of what the independent production requirements are for television: focusing on public and commercial (free to air and subscription) only. The report considers the statutory requirements and the regulatory requirements. It considers the enforcement by ICASA of compliance with independent production requirements for television across: free to air broadcasters (public and commercial) as well for satellite subscription broadcasters. And it considers the terms of trade of the broadcasters.

Period Reviewed: In 2008, SASFED (the South African Screen Federation) and the Independent Producers' Organisation (the IPO) together with the SABC, commissioned a report into many of the problems facing independent producers. Unfortunately, the report's recommendations were never taken up by the incoming new management at the SABC and so the problems identified therein remain unaddressed. Also, since a 12 year period has elapsed since the production of the report, it was felt to be important to bring the learnings and the recommendations up to date. In these milestone reports however, the focus is on the present, that is, for this report the focus is on the local content requirements as they currently are, both in respect of applicable statutes, regulations and licence conditions.

Methodology: Research was conducted by way of desk top research and interviews. A number of recommendations regarding amendments that are required to be made to the Electronic Communications Act, 2005 (the ECA), the relevant local content regulations prescribed in terms of the ECA, and in relation to ICASA's monitoring and enforcement practices are made. Recommendations as to the appropriate courses of action that can be followed to secure the implementation of the recommendations are also made.

Note on Annexures: This Milestone Two Report is to form part of a comprehensive overall report which will be submitted together all Annexures referred to in this and in other Milestone Reports. Consequently the Annexures are not included in this Report although reference is made to them as placeholders for future use.

1. ICASA INDEPENDENT COMMISSIONING REQUIREMENTS:

1.1. The Requirements of the Electronic Communications Act, 2005 (the ECA) (attached as Annexure A)

1.1.1. Section 61 is titled "Preservation of South African Programming". Broadly this section gives the Independent Communications Authority of South Africa (ICASA) a number of powers with regard to the commissioning of independently-produced local television content.

1.1.2. Section 61(1) empowers (but does not require) ICASA to prescribe regulations applicable to broadcasting services licensees' regarding the commissioning of independently produced South African programming.

1.1.3. Section 61(2)(b) provides a definition of "independent television production" which means "a production of local television content"

(i) By a person not directly or indirectly employed by any broadcasting service licensees; or

(ii) by a person who is not controlled by or is not in control of any broadcasting service licensee".

1.2. Commentary on the Independent Production Provisions in the ECA:

1.2.1. It is noteworthy that the drafting of section 61 of the ECA is poor. It is also unfortunate and problematic that the ECA does not require ICASA to prescribe independent commissioning requirements by way of regulation. Instead, section 61(1) uses the term "may" which is empowering without being peremptory.

1.2.2. Consequently, it is suggested that¹ section 61(1) of the ECA is amended to replace the word "may" with "shall" to ensure that the obligation to regulate independent production requirements is peremptory as opposed to discretionary.

1.3. Local Television Content Regulations – Independent Commissioning Provisions

1.3.1. Notwithstanding the discretionary nature of regulations in terms of section 61(1) of the ECA, ICASA has prescribed local television content regulations in Notice 346, published in Government Gazette No. 39844 dated 23 March 2016 (the TV Content Regs) (attached as Annexure B) which came fully into force (there was a period of staggered implementation) on 24 March 2018. It is important to note the TV Content Regs replaced and repealed the previous (2006) TV Content Regs. The TV Content Regs also deal with independent production requirements.

1.3.2. It is important to note the provisions of section 2 of the TV Content Regs as it sets out the purpose of the regulations. Section 2 provides that "the purpose of these regulations is to develop, protect and promote national and provincial identity, culture and character." Section 2(d) provides that "in achieving this, these regulations will

¹ Although the provisions of section 61(4) are also required to be similarly amended, the required amendments are not dealt with as they pertain to the sound broadcasting sector and not the television sector.

seek to promote programming which... will establish a vibrant, dynamic, creative and economically productive South African film and television industry”.

1.3.3. Section 7(1) of the TV Content Regs provides that all TV licensees “must ensure that 40% of their local television content programming must consist of programmes which are independent television productions” and such productions must be spread evenly between: South African arts, drama, documentary, knowledge-building, children’s and educational programming.

1.3.4. Section 7(2) of the TV Content Regs further requires that 50% of the annual independently produced programmes budget of a public, commercial and subscription television broadcasting licensee is “spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities”. Although the term “previously marginalised” is not defined in the TV Content Regs, it is presumed that this means languages other than English or Afrikaans.

1.3.5. A table of the impacts of these regulations is as follows:

Requirement	Public	Commercial and Public Commercial	Subscription
Local Content Requirements (on which independent commissioning is based)	65%	45%	15% of content or channel acquisition budgets
Independent Commissioning is 40% of the above.	26%	18%	6% of content or channel acquisition budgets
Additional requirements on independent commissioning ie African languages and non-major metro sourcing (provided all commissioning costs were equal) given the drafting anomalies set out above.	13%	9%	3% of content or channel acquisition budgets

1.3.6. Local content and independent commissioning records to be kept by licensees: - s10 of the TV Content Regs.

1.3.7. All television licenses must keep and maintain logs, statistical forms and programme records in a format prescribed by the authority for a period of 36 Months.

- 1.3.8. It is important to note that the Compliance Procedure Manual Regulations contained in Notice 902 published in Government Gazette 34863 dated 15 December 2011 (the Compliance Manual Regs) do not contain any prescribed forms for the format for reporting on local television content independent television programming production compliance.
- 1.3.9. All subscription broadcasters must keep audited records of the amount of their expenditure on local content and independent production.
- 1.3.10. A contravention by a commercial or public television licensee of any of the provisions of the TV Content Regs is punishable by a fine not exceeding R5million or 10% of its annual turnover for every day or part thereof during which the contravention continued, in terms of section 11(1) of the SA Content Regs.
- 1.4. Commentary on the Television Content Regulations – Independent Commissioning Provisions
- 1.4.1. The provisions of section 7(2) problematic because they confuse budgets with actual programming flighted. The requirement of section 7(1) of the TV Content Regs measures the initial 40% independent commissioning requirement as against a percentage of programming broadcast and not as a percentage of programming budget, while the additional measures to promote marginalised languages and commissioning in non-major metropolitan cities is stipulated in terms of budget spend and not programming flighted; making monitoring and enforcement compliance difficult.
- 1.4.2. The First Milestone Report deals with the format factors for SA TV Content. However, these are also relevant for independent commissioning. Besides repeats and general genre formats, the format factors relevant to marginalised languages and geographic areas as well as regarding production companies controlled by historically disadvantaged production companies provided for in:
- 1.4.2.1. section 9(2) of the TV Content Regs deal with format factors for African Language Drama (that is, official languages other than English and Afrikaans) – format factor is 4;
- 1.4.2.2. section 9(6) of the TV Content Regs deal with format factors for African languages (that is, official languages other than English and Afrikaans) in other genres (ie non-Drama), namely: documentary, children's and arts programming – format factor is 3

- 1.4.2.3. section 9(5) of the TV Content Regs deals with format factors for independent commissioning diversity. In this regard the format factor for programming produced by an independent production company:
- (a) based in Mpumalanga, the Northern Province, the North West, the Northern Cape, the Free State and the Eastern Cape, is 3;
 - (b) based in Kwazulu-Natal, is 2; and
 - (c) which is controlled by historically disadvantaged persons, is 3.
- 1.4.3. Note that these commissioning format factors provided for in section 9(2), (5) and (6) often do not correlate well to the provisions of section 7(2) with regard to independent television productions. For example:
- 1.4.3.1. a BBBEE company producing English language programming in Johannesburg still obtains a Format Factor of 3 under section 9(5)(c) but does not qualify in terms of the criteria for diversity of commissioning in terms of section 7(2);
 - 1.4.3.2. a production company based in Durban, still obtains a Format Factor of 2 (for being in Kwazulu-Natal) under section 9(5)(b) but does not qualify in terms of the criteria for diversity of commissioning in terms of section 7(2);
 - 1.4.3.3. a production company based in George qualifies in terms of the criteria for diversity of commissioning set out in section 7(2) (being outside of the Cape Town Metropolitan city) but does not qualify for a Format Factor of 3 in terms of section 9(5)(a) as it is still in the Western Cape;
 - 1.4.3.4. a production company based in Tshwane qualifies in terms of the criteria for diversity of commissioning set out in section 7(2) (being outside of the Johannesburg Metropolitan city) but does not qualify for a Format Factor of 3 in terms of section 9(5)(a) as it is still in Gauteng; and
 - 1.4.3.5. an English or Afrikaans production produced in Johannesburg or Cape Town can still obtain a diversity factor of 3 (in terms of s9(5)(c)) provided the production company is controlled (note this does not necessarily mean owned) by historically disadvantaged persons. Note

that the definition of historically disadvantage persons includes black persons, women and people with disabilities. Consequently, production companies controlled by white women are able to benefit from this diversity factor too.

1.4.4. Finally, the most significant drafting problem, with regard to independent commissioning, is that despite the peremptory provisions of regulation 10(1) of the TV Content Regs, ICASA has not in fact prescribed formats for the keeping and maintenance by all television licensees of the required logs, statistical forms and programme records. In this regard:

1.4.4.1. It is important to note that the Compliance Procedure Manual Regulations contained in Notice 902 published in Government Gazette 34863 dated 15 December 2011 (the Compliance Manual Regs) do not contain any prescribed forms for the format for reporting on independent commissioning.

1.4.4.2. In interviews with ICASA staffers, it was clear that ICASA has declined to prescribe such formats because of a perceived difficulty of creating standard reporting formats given the differing licence conditions pertaining to different licensees². However, it is not lawful for ICASA to prescribe in a regulation that it is under a peremptory obligation to prescribe reporting formats (that is to put these formats into a regulation) and then fail to do so.

1.4.4.3. The failure to prescribe local content reporting formats is a violation of the Promotion of Administrative Justice Act, 2000 (PAJA) in a number of important respects but, most basically, of section 6(2)(b) of PAJA. Section 6(2)(b) of PAJA entitles a court or tribunal to judicially review administrative action if “a mandatory and material procedure or condition prescribed by an empowering provision was not complied with”. The word “prescribed” is clearly defined both in the ECA and in the ICASA Act as meaning prescribed in regulations. (emphasis added). The effect of this is that sub-regulation 10(1) of the TV Content Regs requires, as a matter of law, that ICASA prescribe regulations to setting out the formats for the logs, statistical forms and programme records which television licensees are required to keep in relation to independent commissioning. Its failure to do so is reviewable under PAJA.

1.4.4.4. Besides the clear unlawfulness of ICASA’s failure to prescribe reporting formats, the fact that there are no prescribed forms for reporting on the commissioning of independently-produced SA TV content means that the public, and interested

² The meeting took place with key figures of the Monitoring and Compliance Department on Thursday 27 February 2019.

parties such as the producers themselves, have not had the opportunity of commenting on the draft prescribed forms, a process that is required in terms of section 4(4) of the ECA. This deprivation means that the public, including television viewers and members of the independent production sector, have been unable to comment on the current situation and are entirely voiceless, and even ignorant, in respect of ICASA's methodology for independent commissioning reporting by public and commercial television licensees.

1.4.4.5. The overall effect of ICASA's unlawful administrative action in failing to prescribe reporting formats in regulations has been to:

1.4.4.5.1. deprive the public of the ability to participate, through a public notice and comment procedure, on crafting reporting formats that materially and adversely affect them which is itself a violation of the provisions of section 4(1) of PAJA too; and

1.4.4.5.2. allow for, essentially, secretive reporting formats to be required of different television licenses despite the peremptory requirement that these be contained in regulations.

1.5. Independent Commissioning Regulations

1.5.1. ICASA has prescribed Independent Commissioning regulations in Notice 1596, published in Government Gazette No. 32767 dated 1 December 2009 (the Commissioning Regs) (Attached as Annexure C). Note that these regulations have not been amended or updated in 11 years.

1.5.2. Section 3 of the Commissioning Regs requires all commercial and public television licensees to compile and maintain a commissioning protocol for independently-produced local television programming which is required to be submitted to ICASA for approval (including amendments thereto). These are required to be on the website of the licensee. Note that StarSat's and Deukom's websites do not contain their commissioning protocols in contravention of the Commissioning Regulations.

1.5.3. The protocols are required to contain, as a minimum, the details specified in Annexure A to the Commissioning Regs. These include:

1.5.3.1. Terms of trade (s1) which are required to be fair, transparent, non-discriminatory and should be structured to achieve a number of objectives including:

- relationship improving (licensees and independent producers)
- promoting innovation and creativity

- raise quality
 - advance competition
 - promote diversity in broadcasting and production sectors
 - promote skills development and creation of a sustainable production sector
 - advance transformation.
- 1.5.3.2. Commissioning Processes (s2) which are simple and transparent and which deal with the following:
- Objectives
 - Processes
 - Names and contact details of commissioning personnel
 - Clear process for unsolicited program proposals
 - Timetables that the licensee will follow
- 1.5.3.3. Editorial Standards (s3) which deal with the following:
- Technical and editorial standards required for specific types of programmes
 - Process to be followed where a producer seeks to deviate from the standards and guidelines
 - Guidelines on the delivery of programming for viewing before broadcast.
- 1.5.3.4. Programme Fees (s4): these are to stipulate factors to be taken into account when determining programme prices, including:
- Retail prices index
 - Changes in technology or production techniques
- 1.5.3.5. Distribution Arrangements, Archival Usage and Rights (s5): the licensee is to provide a clear and transparent framework for the distribution and payment for commissioned programming including taking into account standard industry distribution practices and stipulating processes and terms for:
- Re-runs
 - On-selling to other licensees
 - Exploitation of secondary rights through other platforms eg DVDs, merchandising
 - Research rights
 - Broadcast archival material.

- Contracting options for intellectual property rights re: types of programming to be procured (trade in intellectual property rights to be based on mutual agreement in accordance with the Copyright Act, 1978).

1.5.3.6. Ethical Standards (s6): licensee to adhere to the highest ethical standards in the conduct of its business through clear codes of conduct and anti-corruption policies and is to include its procurement policies in its protocol.

1.5.3.7. Complaints-handling mechanism (s7): for independent producers to complain about commissioning practices and providing name and contact details of personnel who deal with such complaints.

1.5.4. Further, Licensees must submit an annual report on independent commissioning to ICASA (s4) which is to include:

1.5.4.1. A List of names of independent producers used;

1.5.4.2. Number of programmes and episodes commissioned;

1.5.4.3. Number of programmes commissioned from historically-disadvantaged individuals and from Small and Medium producers;

1.5.4.4. Total amount spent by the licensee on independently-produced local television content; and

1.5.4.5. Details of any disputes that occurred.

1.5.5. The penalty for non-compliance with regulation 3 (Protocols) and 4 (reporting) is R1million with an additional R1million for repeated contravention of the Commissioning Regs.

1.6. Commentary on the Independent Commissioning Regulations

1.6.1. The Annexure to the Independent Commissioning Regs requires terms of trade to stipulate the factors that are taken into account when determining their programme prices and they include examples such as movements in the retail prices index. This is a term of art that is used primarily in the United Kingdom and is a form of measurement of inflation. In South Africa we do not use a retail prices index, we use the Consumer Price Index (CPIX). In this regard:

- 1.6.1.1. The IPO has long been concerned about the lack of inflation-based increases in cost per minute allowances for independently commissioned television content, particularly in respect of the public broadcaster the SABC.
 - 1.6.1.2. It seems to us that this ought to be peremptory provision in a licensee's terms of trade given that it is specifically mentioned in the Independent Commissioning Regulations. However, one of the broadcasters, e-tv, mentions "inflation" in its Commissioning Protocol (Annexure XX) while none of the SABC's, StarSat's nor DStv/M-Net's Commissioning Protocols (Annexures XX and XX) mentions CPIX or the retail prices index³.
 - 1.6.2. It is important to note that Deukom does not commission local content and instead pays over an amount to the National Film and Video Foundation (NFVF) in terms of an agreement with ICASA (Annexure XX) and that StarSat also does not commission local content as is clear from its 2020 ICASA Compliance Report (Annexure XX) and instead buys local content ready-made. Note that this is despite having an Independent Commissioning Protocol (Annexure XX) although it is not published on its website as required in terms of the Commissioning Regs.
 - 1.6.3. It is noteworthy that the Commissioning Regs do not appear to require any reporting on the geographic area in which the independent producer is based or the language of the programme commissioned despite these being required to determine whether or not the 50% of the amounts require to be spent on independently-commission production in line with section 7(2) of the TV Content Regs.

1.7. Enforcement of Compliance with the Independent Commissioning Requirements of the TV Content Regs and the Commissioning Regs

1.7.1. SABC:

- 1.7.1.1. Shockingly, we have been able to find only one compliance report for the SABC (Annexure XX) and that is from 2009 and reflects back on a period of monitoring in 2008, some 12 years ago.

³ However, it is important to note that DStv/M-Net's Commissioning Protocol has a gap between clauses 35.5 and 35.8 of its Commissioning Protocol that is on its website and which sets out factors they take into account when determining programming prices.

1.7.1.2. The assessments in that that report are of little value today as they relate to the 2006 TV Content Regs that have since been repealed and replaced and the report pre-dates the Commissioning Regs.

1.7.2. E-tv:

1.7.2.1. ICASA's latest compliance report for e-tv is for the 2017/2018 period. It reflects that e-tv is complying with TV Content Regs but only deals with percentages of local content and genres broadcast and provides no indication as to whether or not e-tv is complying with the requirements of section 7(2) regarding language and geographic diversity of independently commissioned content.

1.7.2.2. ICASA's compliance report failed to even mention its Commissioning Regs much less investigate or report on whether or not e-tv complies therewith.

1.7.3. DStv:

1.7.3.1. In the 2020 compliance report on DStv for the period 2018/2019 (Annexure XX), ICASA refers to the incorrect regulations for the STV Content Regs (referring to the 2006 ones instead of the 2016 ones).

1.7.3.2. It found that DStv was compliant because DStv spent 15% of its channel acquisition budget on channels with local content that are compiled and uplinked in South Africa (which is the minimum requirement of the 2016 regulations in any event).

1.7.3.3. However, it made no findings at all on DStv's compliance with regulation 7 of the TV Content Regs, that is on ensuring that 40% of the spend is independently commissioned and that 50% of that figure is spend in marginalised areas or on marginalised languages.

1.7.3.4. ICASA's compliance report also failed to even mention its Commissioning Regs much less investigate or report on whether or not DStv complies therewith.

1.7.4. M-Net

1.7.4.1. Although there is a document listed as M-Net under ICASA's compliance reports for 2015/2016 on its website, the document is in fact M-Net's power point presentation on ICASA's Draft DDT Regulations and is consequently not relevant.

- 1.7.4.2. The last compliance report on M-Net undertaken by ICASA appears to be the one for the period 2011/2012.
- 1.7.4.3. In that compliance report, ICASA undertakes an excellent and comprehensive analysis of M-Net's compliance with the Commissioning Regulations, including reporting on the availability of M-Net's Commissioning Protocols as well as containing a table reflecting M-Net's reporting on:
 - 1.7.4.3.1. the names of the independent producers from whom programming is commissioned;
 - 1.7.4.3.2. The number of programmes and episodes commissioned;
 - 1.7.4.3.3. The number of programmes commissioned from historically disadvantaged individuals and small and medium independent productions; and
 - 1.7.4.3.4. the total amount spent by the Licensee on independent produced South African programming (note that the figures were not provided in the table due to confidentiality requests by the licensee).
- 1.7.4.4. While ICASA also found that M-Net was complying with the then in force TV Content Regs (the 2006 ones), it did not report on the compliance in respect of the 40% requirement of independently-commissioned content provided for in section 6 of the 2006 TV Content Regs.

1.7.5. StarSat:

- 1.7.5.1. ICASA's latest compliance report for StarSat is for the 2018/2019 period. It reflects the Licensee as saying that "it does not produce or commission the production of local... Content, content is acquired in a completed broadcast ready form and is scheduled accordingly.
- 1.7.5.2. While ICASA found that StarSat was not compliant with regulation 5(1) of the TV Content Regs (in that it underspent on local content by 1% of its local content budget), it simply does not mention the requirements of section 7(2) of the SA Content Regs in relation to independent commissioning of marginalised languages or geographic areas.

1.7.5.3. The compliance report does not mention the Commissioning Regs themselves.

1.7.6. Deukom:

1.7.6.1. ICASA's latest compliance report for StarSat is for the 2017/2018 period, that is, before the current TV Content Regs were in force. Consequently ICASA found that the payment by Deukom in the amount of 10% of its channel acquisition budget in respect of SA subscribers to the NFVF met the requirements then in place.

1.7.6.2. Interestingly, ICASA did find that Deukom was not complying with the Commissioning Regs even although the Deukom licence specifically exempts Deukom from commissioning or even flighting local content!

1.8. Television Licence Conditions regarding Independent Commissioning and Commentary Thereon:

ICASA has imposed licensee-specific conditions in each of the public and commercial television licensees' individual broadcasting service licences. Some licences do deal with independent commissioning of television content and some do not. Each television broadcasting licence is dealt with below:

1.8.1. **SABC 1:**

The only requirement that impacts particularly on independent commissioning are the provisions of clause 3 of the schedule to the licence because they deal with languages other than English and also with marginalised languages (note these are defined in the licence as: isiNdebele, siSwati, Xitsonga and Tshivenda) which is important given the commissioning requirements and or format factors regarding supporting marginalised languages as provided for in section 7(2), 9(2), 9(5) and 9(6) of the TV Content Regulations and the reporting obligations thereon. The clauses of its licence that deals with these issues are set out in tabular form below:

Clause No.	Nature of Condition	Requirement
3	Language	<ul style="list-style-type: none"> • 16 hours, 24 minutes of official languages other than English and Marginalised Languages (isiNdebele, siSwati, XiTsonga and TshiVenda) in prime time per week • 1 hour, 48 minutes of Marginalised Languages

		(isiNdebele, siSwati, XiTsonga and TshiVenda) in prime time per week <ul style="list-style-type: none"> • 18 hours, 12 minutes of official languages other than English in prime time per week • 41 hours of official languages other than English in the performance period per week.
5	Reporting Requirements	Quarterly reports on: <ul style="list-style-type: none"> • Use of each languages as per above but also broken down per genre.
6.1.2.	Regional Representation	Licensee to take reasonable steps to provide programming that reflects...all of its...regions to audiences.

1.8.2. **SABC 2:**

There are a number of licence conditions that impact on independent commissioning, namely clause 3 of the schedule to the licence because they deal with languages other than English and also with marginalised languages (note these are defined in the licence as: isiNdebele, siSwati, XiTsonga and TshiVenda) and clause 6 which deals with reflecting the regions to audiences. These are important given the commissioning requirements and/or format factors regarding supporting marginalised languages and geographic areas as provided for in section 7(2), 9(2), 9(5) and 9(6) of the TV Content Regulations as well as certain reporting obligations regarding language use in clause 5. The clauses of its licence that deals with these issues are set out in tabular form below:

Clause No.	Nature of Condition	Requirement
3	Language	<ul style="list-style-type: none"> • 18 hours, 6 minutes of official languages other than English (excluding) Languages (isiNdebele, siSwati, XiTsonga and TshiVenda) in prime time per week • 1 hour, 54 minutes of Marginalised Languages (isiNdebele, siSwati, XiTsonga and TshiVenda) in prime time per week • 19 hours, 36 minutes of official languages other than English in prime time per week • 41 hours of official languages other than English in the performance period per week.
5	Reporting	Quarterly reports on:

	Requirements	<ul style="list-style-type: none"> • Use of each official language broadcast distinguishing between genres and what is broadcast in prime time and during the SA TV broadcast period and expressed as an aggregate in minutes and as a percentage of the total of all such programming material.
6.1.2.(b)	Regional Representation	Licensee to take reasonable steps to provide programming that reflects...all of its...regions to audiences.

1.8.3. ***Commentary on Television Licence Conditions Pertaining to Independent Commissioning: SABC 1 and 2:***

1.8.3.1. The licence conditions of clause 5 of SABC 1 and 2's conditions require quarterly reports on different genres broadcast and on each of the languages used (also broken down per genre). However the licence is silent as to how to report on the licence condition obligation to ensure that programming reflects all of South Africa's regions to his audiences. In this regard, there are clear measurability issues regarding what kind of "reflection" in terms of regional programming representation is required.

1.8.3.2. Overall, there is no indication of precisely how general licence condition and regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

1.8.3.2.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs' requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;

1.8.3.2.2. there is no indication of how licensees are to report on compliance with the TV Content Regs' requirements regarding:

1.8.3.2.2.1. the overall requirement that 40% of local content broadcast is to be commissioned from independent producers (independent commissioning requirements – s7(1));

1.8.3.2.2.2. commissioning from marginalised provinces (format factor requirements - s9(5));

1.8.3.2.2.3. commissioning from marginalised metro areas (commissioning requirements - section 7(2)); and

1.8.3.2.2.4. commissioning of content from historically disadvantaged individuals (format factor requirements - s9(5)).

1.8.4.SABC 3:

The only requirements that impact particularly on independent commissioning are the provisions of clause 3 because they deal with languages other than English which is important given the commissioning requirements and/or format factors regarding supporting marginalised languages as provided for in section 7(2), 9(2) and 9(6) of the TV Content Regulations. The clauses of its licence that deal with languages other than English (although note that this includes Afrikaans whereas section 7(2) in my view excludes Afrikaans) and reporting requirements are set out in tabular form below:

Clause No.	Nature of Condition	Requirement
3	Language	10% of its weekly programme material in languages other than English
5	Reporting Requirements	Quarterly reports on: <ul style="list-style-type: none">• Use of each official language - distinguishing between genres and providing the relevant details in relation to prime time and the SA Broadcast Period and expressing these as an aggregate in minutes and as a percentage of the total of all programming material.

1.8.5. *Commentary on Television Licence Conditions Pertaining to Independent Commissioning - SABC 3:*

Overall, there is no indication of precisely how general licence condition and regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

1.8.5.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs' requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;

1.8.5.2. there is no indication of how licensees are to report on compliance with the TV Content Regs' requirements regarding:

- 1.8.5.2.1. the overall requirement that 40% of local content broadcast is to be commissioned from independent producers (independent commissioning requirements – s7(1));
- 1.8.5.2.2. commissioning from marginalised provinces (format factor requirements - s9(5));
- 1.8.5.2.3. commissioning from marginalised metro areas (commissioning requirements - section 7(2)); and
- 1.8.5.2.4. commissioning of content from historically disadvantaged individuals (format factor requirements - s9(5)).

1.8.6.E-tv:

There are a number of requirements that impact particularly on independent commissioning including requirements regarding provincial commissioning as well as those dealing with languages other than English which are important given the commissioning requirements and/or format factors regarding supporting marginalised languages as provided for in section 7(2), 9(2) 9(5) and 9(6) of the TV Content Regulations. The clauses of its licence that deal with languages other than English (although note that this includes Afrikaans whereas section 7(2) in my view excludes Afrikaans) and reporting requirements are set out in tabular form below:

Clause No. of Schedule 2	Nature of Condition	Requirement
2(2)	Language	Two hours of news and information programming per week in a wide range of official languages other than English.
2(3)	Language	Four hours of programming other than news and information in a wide range of official languages other than English.
2(4)(a)	Language	10% of performance period to be SA drama in a wide range of official languages other than English.
2(4)(b)	Language	20% of broadcasting period must be SA children's programming in a wide range of official languages other than English.

3(1)	Provincial requirements: independent commissioning	In procuring programming produced in South Africa, the licensee shall commission programming from the different provinces. Such programming shall reflect provincial diversity, cultures and characters.
3(5)	Local Content Report	Quarterly logs of local television content to be submitted.

1.8.7. Commentary on Television Licence Conditions Pertaining to Independent Commissioning – e-tv:

1.8.7.1. The licence condition contained in clause 3(5) of e-tv’s licence requires quarterly reports on “local television content broadcast by the licensee”. However the licence is silent as to how to report on the obligations contained in section 3(1) of its licence that it shall “commission programming from the different provinces and that such programming “shall reflect provincial diversity”. In this regard, there are clear measurability issues regarding what kind of “reflection” in terms of provincial diversity is required and how much programming from the different provinces is required to be commissioned but it is clear that this is meant to be an obligation in addition to the requirements of section 7(2) of the TV Regs otherwise that obligation could be met by simply ensuring that 50% of all independently commissioned local content programming is in marginalised languages.

1.8.7.2. Overall, there is no indication of precisely how general licence condition and regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

1.8.7.2.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs’ requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;

1.8.7.2.2. there is no indication of how licensees are to report on compliance with the TV Content Regs’ requirements regarding:

- 1.8.7.2.2.1. the overall requirement that 40% of local content broadcast is to be commissioned is to be commissioned from independent producers (independent commissioning requirements – s7(1));
- 1.8.7.2.2.2. commissioning from marginalised provinces (format factor requirements - s9(5));
- 1.8.7.2.2.3. commissioning from marginalised metro areas (commissioning requirements - section 7(2)); and
- 1.8.7.2.2.4. commissioning of content from historically disadvantaged individuals (format factor requirements - s9(5)).

1.8.8.M-Net:

Has no language or independent commissioning-related licence conditions.

1.8.9. *Commentary on Television Licence Conditions Pertaining to Independent Commissioning – M-Net:*

Overall, there is no indication of precisely how regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

- 1.8.9.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs' requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;
- 1.8.9.2. there is no indication of how licensees are to report on compliance with the TV Content Regs' requirements regarding:
 - 1.8.9.2.1. the overall requirement that 40% of local content broadcast is to be commissioned from independent producers (independent commissioning requirements – s7(1)); and
 - 1.8.9.2.2. commissioning from marginalised metro areas and/or in marginalised languages (commissioning requirements - section 7(2)).

1.8.10. DStv:

Has no language or independent commissioning-related licence conditions.

1.8.11. ***Commentary on Television Licence Conditions Pertaining to Independent Commissioning – DStv:***

Overall, there is no indication of precisely how regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

1.8.11.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs' requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;

1.8.11.2. there is no indication of how licensees are to report on compliance with the TV Content Regs' requirements regarding:

1.8.11.2.1. the overall requirement that 40% of local content broadcast is to be commissioned from independent producers (independent commissioning requirements – s7(1)); and

1.8.11.2.2. commissioning from marginalised metro areas and/or in marginalised languages (commissioning requirements - section 7(2)).

1.8.12. Top-TV:
Has no language or independent commissioning-related licence conditions.

1.8.13. ***Commentary on Television Licence Conditions Pertaining to Independent Commissioning – Top-TV:***

Overall, there is no indication of precisely how regulatory compliance with regard to independent commissioning is to be reported on to ICASA in order to facilitate open, transparent and appropriate compliance oversight. In particular:

1.8.13.1. there is no indication of how licensees are to report on compliance with the Commissioning Regs' requirements around terms of trade, including expected cost per minute price increases paid for commissioned local content;

1.8.13.2. there is no indication of how licensees are to report on compliance with the TV Content Regs' requirements regarding:

1.8.13.2.1. the overall requirement that 40% of local content broadcast is to be commissioned from independent producers (independent commissioning requirements – s7(1));

1.8.13.2.2. commissioning from marginalised metro areas and/or in marginalised areas (commissioning requirements - section 7(2)).

1.8.14. **Deukom:**

Section 4 of its licence provides that its principal language is German. As this is not an official language is not relevant to the local content commissioning or format factors provided for in the TV Content Regulations. However, clause 9 of its Commercial licence requires Deukom to expend monies in lieu of local content requirements:

Clause No.	Nature of Condition	Requirement
9(1)	Beneficiary payments	5% of channel acquisition budget in respect of South African subscribers to be paid to beneficiaries nominated by ICASA.
9(4)	Beneficiary payments	5% of channel acquisition budget in respect of South African subscribers to be paid to train or sponsor SA black citizens resident in SA nominated by Deukom in TV production or TV content production.

1.8.15. ***Commentary on Television Licence Conditions Pertaining to Independent Commissioning – Deukom:***

1.8.15.1. ICASA has already made it clear that, as Deukom is not required to have any spend on local content, the Commissioning Regs and the TV Content Regs do not directly apply.

1.8.15.2. However, it is noteworthy that the licence conditions regarding the amounts payable to the NFVF in lieu of compliance with such regulations are in fact now ultra vires the provisions of the commissioning provisions of the TV Content Regs because the licence conditions require a total spend of only 10% of the content acquisition budget whereas the TV Content Regs require a total spend of 15%.

1.8.15.3. We are of the view that ICASA ought to amend Deukom's licence in terms of section 10(1)(a) read with section 10(1)(b) and 10(1)(f) of the ECA to consistency and fairness as between licensees and to ensure the achievement of the objectives of the ECA with regard to local content and the development of the local production industry.

1.8.15.4. The amendment ought to increase the total contribution by Deukom to the NFVF to 15% of its channel acquisition budget in respect of South African subscribers.

1.9. ICASA's Role in Monitoring, Enforcement of Compliance with Local Content:

1.9.1. We were fortunate to be able to have a frank interaction with a number of ICASA staffers at a meeting called to discuss, among other things, independent commissioning monitoring and enforcement specifically. Where matters were discussed that relate specifically to legal issues, these have been dealt with in detail elsewhere in the report and are not included/repeated here. The key issues discussed in regard to monitoring and enforcement are set out below. In respect of each item, the issue, ICASA's response and the commentary thereon is set out.

1.9.2. The first issue discussed was the lack of a prescribed format for independent commissioning compliance reporting. ICASA reported that it was not possible to have a uniform format as the obligations of all broadcasters are different, as a result of the categorisation of television services in respect of the TV Content Regs. Hence ICASA said they had developed a particular reporting format for each licensee. The commentary on this clarification is the following:

1.9.2.1. it is not legally permissible for ICASA to neglect or decline to perform a peremptory regulatory function such as to prescribe reporting and record keeping formats when these are required in binding regulations such as the TV Content Regs as is clear from section 6(2)(b) of PAJA;

1.9.2.2. given the importance of local content compliance for the development of the country's cultural industries, it is problematic that formats for compliance reporting are essentially secret and non-transparent and that the public had not had any opportunity to be heard on the nature of such formats, which is a violation of section 4 of PAJA.

1.9.3. ICASA has prescribed requirements for its annual reporting on independent commissioning compliance by way of regulation as is done in section 4 of the Commissioning Regulations. However, this is insufficiently comprehensive because,

for example, it omits an obligation to report on issues that are critical to the financial viability of the independent production sector such as: Cost per minute price increases over time in line with inflation as measured by CPIX or the term actually used in section 4 of the Annexure to the Commissioning Regulations, “movements in the retail prices index”. We think that it is vital that the Commissioning Regulations be amended to require on-going reporting of fees charged, that is, cost-per-minute rates payable by a broadcaster for independently commissioned content so that the regulator is in a position to ascertain whether or not broadcasters are paying inflation-adjusted rates for content. When this issue was raised directly with ICASA’s monitoring and compliance staff, they agreed that they had no idea if broadcasters were making inflation-adjusted increases in cost-per-minute fees payable to the independent producers despite this being a requirement in the actual Commissioning Regulations.

1.9.4. Further, ICASA has failed to prescribe a format or formats for independent commissioning compliance reporting by way of regulation as required in the TV Content Regs such that the public has a notice and comment opportunity as required in terms of section 4 of PAJA, in particular, there is no format for reporting on:

1.9.4.1. the overall requirement that 40% of local content broadcast (or of the 15% of channel acquisition budget for local programming for subscription broadcasters) is to be commissioned from independent producers (independent commissioning requirements – s7(1));

1.9.4.2. the overall requirement that 50% of the annual independent produced programmes budget is spent on programming commissioned from marginalised metro areas and/or in previously marginalised local African languages (commissioning requirements - section 7(2)); and

1.9.4.3. in respect of Free-to-Air broadcasters only, the commissioning of content:

1.9.4.3.1.1. from marginalised provinces (format factor requirements - s9(5));

1.9.4.3.1.2. in marginalised languages (commissioning requirements - section 9(2) and 9(6)); and

1.9.4.3.1.3. from historically disadvantaged individuals (format factor requirements - s9(5)).

1.9.5. The second issue discussed was why the public does not have access to the formats for compliance reports and to the reports actually submitted by television

broadcasters. In this regard it is important to differentiate between the fact that broadcasters appear to be submitting their required programming information and the fact that the reports were not made available to the writers by ICASA. ICASA stated that broadcasters claimed confidentiality in respect of the reports submitted, citing section 4D of the ICASA Act which empowers a person submitting information to ICASA to request that it be treated as confidential. ICASA is under a peremptory obligation to keep, *inter alia*, the following kinds of information confidential in terms of section 4D(4) of the ICASA Act, namely: financial and commercial information, the disclosure of which is likely to cause harm to the commercial or financial interests of such person; information that could put the person at a disadvantage in contractual negotiations or to prejudice the person in commercial competition. The writer's commentary on this clarification is as follows:

- 1.9.5.1. The writer disagrees that the formats (our emphasis) of the individual licensees' independent commissioning compliance reports could be covered by section 4D of the ICASA Act as no broadcaster information at all is contained therein; and
- 1.9.5.2. Second, the writer disagrees that the reporting certain details on content commissioned from the independent production industry and flighted (including names and geographic locations of production companies, languages used, etc) could constitute commercially-sensitive information as this is, by its nature, in the public domain as such information has already been broadcast, including by way of film credits, to the public, although we accept that itemised fees paid for particular content would of course be able to be confidential as was done in the Compliance Report
- 1.9.5.3. The third issue is the issue of ICASA's monitoring capabilities. It is vitally important that a peremptory requirement prescribed by the TV Content or Commissioning Regs is capable of being independently verified in order to be able to hold ICASA and any errant licensee to account for any non-compliance with any independent commissioning requirement. In this regard, no third person is in a position, due, in the main, to the lack of transparency and openness displayed by ICASA and by the broadcasters, to assess the reliability and/or accuracy of ICASA's monitoring efforts. In the meeting held with ICASA representatives, ICASA made reference to electronic monitoring equipment procured in 2014 and also mentioned that it has only eight full time monitors for hundreds of radio stations as well as for the licensed television stations although it is able to employ temporary monitors as well. ICASA stated that it is able to assess independent commissioning compliance but obviously it was difficult to verify if that was indeed the case. Further, it is noted that in the

recent case of Extriserve (Pty) Ltd t/a LM Radio v Gauteng Media Development Project NPC t/a Hot 91.9 FM4, ICASA's own Complaints and Compliance Committee (CCC) held⁵ that an Annual Compliance Report emanating from a division of ICASA "remains hearsay, even if...it has been confirmed by the Complainant as being a true copy". The CCC held that what was required was "confirmation by the relevant Division of ICASA". The recommendation in this regard is that any Annual Compliance Report published by, and obtained from, ICASA itself must be able to be relied upon as evidence of ICASA's own findings with regard to, inter alia, local content compliance.

1.9.5.4. The fourth issue is that it is clear that ICASA is not, in fact, able to conduct Compliance Reports for television broadcasters annually. ICASA's compliance reports are published on its website here: <https://www.icasa.org.za/pages/compliance-reports>. A review of all reports at the time of writing reflects that the most up to date Compliance Reports for the various commercial and public broadcasters are as follows:

1.9.5.4.1. SABC 1, 2 and 3: Compliance report of 2009, covering a period in 2008;

1.9.5.4.2. E-tv: Compliance report of 2019 covering the 2017/18 period;

1.9.5.4.3. M-Net: Compliance report of 2013, covering the 2011/12 period;

1.9.5.4.4. DStv: Compliance report of 2020, covering the 2018/19 period;

1.9.5.4.5. Starsat: Compliance report of 2020, covering the 2018/19 period; and

1.9.5.4.6. Deukom: Compliance report of 2019, covering the 2017/18 period.

1.9.5.5. The last issue that the writer is concerned that there is no public notice and comment procedure regarding ICASA's own monitoring and enforcement compliance mechanisms. Consequently, the recommendation is that a draft Annual Compliance Report for each licensee ought to be published for public notice and comment given the importance of independent commissioning compliance for the country's cultural industries. This would allow the public to comment on any aspect of concern or to raise any queries which may highlight issues that ICASA may have been blind to. Such transparency would not only assist ICASA in monitoring and compliance enforcement it would also assist in

⁴ Available at: <https://www.icasa.org.za/complaints-and-compliance-committee/extriserve-vs-hot-91-9-fm-27-feb-2019-313-2018>.

⁵ At paragraph 5(a).

making ICASA more accountable to the public in respect of its monitoring efforts.

1.10. RECOMMENDATIONS REGARDING HOW TO IMPROVE THE SOUTH AFRICAN LEGAL, AND REGULATORY REGIME REGARDING INDEPENDENT COMMISSIONING REQUIREMENTS

The commentary on the existing weaknesses and defects in the statutes, regulations and licence conditions pertaining to independent commissioning is set out above. For ease of actioning remedial measures, a summary of the suggestions for amendments and/or other actions, is set out below. Note that where suggestions for amendments have already been made in the Milestone One Report, these are not repeated here.

1.10.1. Amendments to the ECA:

- 1.10.1.1. It is suggested that section 61(1) is amended to replace the word “may” with “must” to make the promulgation of regulations regarding independent commissioning a peremptory, as opposed to a discretionary, obligation of ICASA.
- 1.10.1.2. ICASA should be engaged with on the above proposed amendment and should it agree therewith, it should make recommendations to the Minister on this amendment as it is empowered to do in terms of section 4(3)(a) of the ICASA Act. Further it should ensure that the proposed amendment suggestions are captured in its Annual Report to ensure that Parliament is made aware of the suggested legislative amendment as the Annual Report is required to be placed before Parliament by the Minister in terms of section 16(3) of the ICASA Act.

1.10.2. Amendments to the TV Content Regulations:

It is suggested that ICASA amends its TV Content Regs in the following respects:

- 1.10.2.1. ICASA ought to amend the wording of section 7 of the TV Content Regs to ensure that it speaks specifically to subscription broadcasters which are not required to flight a certain percentage of local content but only to spend a certain percentage of their annual content acquisition budgets thereon. The current wording is tailored to meet the requirements and obligations of free to air broadcasters although the obligation to comply therewith is expressly imposed upon subscription broadcasters too.
- 1.10.2.2. ICASA ought to consider the lack of consistency in as between its treatment of marginalised provinces (section 9(5)) vs marginalised metro areas

(section 7(2)) and standardise the areas which receive recognition as “marginalised” to avoid the kinds of problems identified in paragraph 1.4.3 above.

- 1.10.2.3. sub-regulation 10(1) is defective in respect of reporting requirements in respect of independent productions in a number of respects:
- 1.10.2.3.1. it simply does not require reporting on the percentage of SA content broadcast that is independently commissioned (required to be 40% of local content broadcast for free to air broadcasters and 40% of the amount to be spent on local programming for subscription broadcasters – section 7(1));
 - 1.10.2.3.2. it does not require reporting on the percentage of independently commissioned works which are required to be commissioned from marginalised metro areas or in marginalised local African languages (required to be 50% of the independent commissioning requirements - section 7(2));
 - 1.10.2.3.3. further, it does not deal specifically with reporting on commissioning diversity in respect of marginalised provinces and people from historically disadvantaged groups – section 9(5); and
 - 1.10.2.3.4. mostly significantly, despite the peremptory requirements therefore in sub-regulation 10(1), ICASA has not in fact prescribed formats for the keeping and maintenance by all television licensees of the required logs, statistical forms and programme records which are required for the recording of full particulars of all independently commissioned content broadcast in each week.
 - 1.10.2.3.5. Consequently, it is suggested that the Compliance Procedure Manual Regulations contained in Notice 902 published in Government Gazette 34863 dated 15 December 2011 (the Compliance Manual Regs) be amended to include the prescribed forms for the format for reporting on independent commissioning compliance. To this end we have attached a draft licensee compliance report format as Annexure L hereto. This format is for each television broadcaster and includes the requirements of local content and independent commissioning compliance both in respect of the TV Content and Commissioning Regs but also in respect of each broadcaster’s licence condition requirements regarding local content and/or independent commissioning.

1.10.3. Amendments to ICASA's Commissioning Regs:

It is suggested that ICASA amends its Commissioning Regs in the following respects:

1.10.3.1. First, while a number of reporting requirements are set out in section 4 of the Commissioning Regs, one of the most important, from an independent production sector viability point of view, is neglected, namely the obligation upon broadcasters to adjust programme fees payable based on various factors, including inflation (see section 4 of the Annexure to the Commissioning Regs).

1.10.3.2. We recognise that the actual rates payable for particular programming is confidential information and can be exempt from public disclosure, ICASA itself has to have a mechanism to assess whether or not broadcasters are taking factors such as inflation into account when determining programming prices payable. If this is not done, ICASA will not be able to assess whether or not the independent production sector is being compensated in a manner that is fair over time.

1.10.3.3. We think it important that the independent commissioning reporting formats be standardised across both the TV Content and Commissioning Regs as well as taking licence conditions into account. Consequently we suggest that the Compliance Procedure Manual Regulations contained in Notice 902 published in Government Gazette 34863 dated 15 December 2011 (the Compliance Manual Regs) be amended to include the prescribed forms for the format for reporting on independent commissioning compliance. To this end we have attached a draft licensee compliance report format as Annexure L hereto. This format is for each television broadcaster and includes the requirements of local content and independent commissioning compliance in respect of the TV Content Regs but also in respect of each broadcaster's licence condition requirements regarding local content and/or independent commissioning.

1.10.4. Amendments to Licence Conditions:

The report has set out in detail, the writer's comments with respect to local content-related licence conditions pertaining to each of the public, public

commercial, commercial free to air and commercial subscription television licensees. In particular the following key problems are noted:

- 1.10.4.1. there is a lack of correlation between the licence conditions and the TV Content Regs which means that it is not clear which takes precedence when the provisions are contradictory or conflicting, including with regard to the percentage of annual spend by a subscription broadcaster (Deukom) on local content obligations;
- 1.10.4.2. there are a number of licence conditions where the obligations are not sufficiently measurable, making compliance enforcement difficult or impossible;
- 1.10.4.3. we reiterate the suggestion (made in respect of amendments to the ECA) that the licence conditions be used to create supplemental/additional independent commissioning-related obligations specific to that licensee which are over and above those imposed upon that category of broadcaster in terms of the TV Content Regs and/or the Commissioning Regs; and
- 1.10.4.4. that reporting obligations contained in licence conditions be deleted as these ought to be incorporated into the overall reporting formats to be prescribed as set out in paragraph 1.10.3.3 above.

1.1. Other Recommended Actions To Be Taken:

- 1.1.1. Reporting of the percentage of independently-produced local content flighted should not be considered confidential information in terms of section 4D of the ICASA Act as this is, by its very nature, in the public domain as it has, ostensibly, already been broadcast to the public.
- 1.1.2. Reporting percentage of annual content budgets spent on independently-produced local content should not be considered confidential information in terms of section 4D of the ICASA Act as this is simply a percentage figure and, if not specifically broken down by payment per show or per producer will not result in any information being communicated that could harm the commercial interests of a broadcaster. An excellent example of a reflection of some of the independent production reporting requirements is contained in M-Net's Compliance Report of 2011/12. Similar reporting is sadly lacking in respect of all other television broadcasters.

- 1.1.3. Annual Compliance Reports published by ICASA itself must be able to be relied upon as evidence of ICASA's own findings with regard to, *inter alia*, independent commissioning compliance.
- 1.1.4. ICASA's Draft Annual Compliance Report for each licensee ought to be published for public notice and comment given the importance of independent commissioning compliance for the country's cultural industries.

1.2. Proposed Way Forward To Secure Implementation Of The Recommendations

- 1.2.1. No organ of state appears hostile to the concept of enforcing local content requirements. This is a useful starting point. It is proposed that ICASA be engaged on all of the above recommendations as it is the organ of state most involved in determining same and in securing the correct operations of local content regulation, including, target setting, monitoring and enforcement.
- 1.2.2. Independent producer representatives should engage ICASA personnel with regard to all of the accepted recommendations (subject to any amendments/comments that may be given/proposed by the NFVF, or by the IPO, the IBFC etc).
- 1.2.3. If ICASA personnel are amenable to the changes, it is proposed to work with them to assist in any way possible, including suggested regulatory/process and procedure changes.
- 1.2.4. If ICASA personnel are not amendable to implementing all or any of the regulations, then more adversarial options must be explored although these ought to be avoided as far as possible.
- 1.2.5. As a last resort, there is the option of taking ICASA on review before the High Court to in relation to a number of legal issues but this is unlikely to be necessary.



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