



Ms. Meera Lalla

Email: MLalla@icasa.org.za

17 January 2022

Dear Ms. Lalla

**PRIMEDIA'S SUBMISSIONS ON THE DRAFT AMENDMENTS TO THE CCC REGULATIONS**

1. INTRODUCTION

1.1 We act on behalf of Primedia (Pty) Ltd, a commercial sound broadcasting service licensee in respect of four commercial sound services, namely:

1.1.1 702;

1.1.2 947;

1.1.3 Kfm 94.5; and

1.1.4 Cape Talk.

1.2 In Notice 689, published in Government Gazette No. 45553, dated 26 November 2021 (the Notice), ICASA invited written submissions on its proposed amendments to the Regulations Governing Aspects of the Procedures of its Complaints and Compliance Committee (the CCC Regulations). The date for submissions was extended to 20 January 2022 in Notice 729, published in Government Gazette No. 45651, dated 15 December November 2021.

1.3 Primedia thanks ICASA for the opportunity of making these written submissions on the proposed amendments to the CCC Regulations and requests the opportunity to make oral submissions at any hearings to be held thereon.

1.4 In making these submissions, Primedia does not address every aspect of the proposed amendments but instead confines its submissions to those aspects that are of concern.

2. Ad Section 2(f) of the Schedule to the Notice

- 2.1 It is important to recognise that the CCC Regulations came into effect in 2010, before the significant amendments to the ICASA Act brought about by the ICASA Amendment Act of 2014, came into force. This means that certain terminology used in the CCC Regulations is outdated, limiting and no longer appropriate.
- 2.2 Primedia submits it is important that the proposed amendments do not compound the above problem by cementing the use of inappropriate, outdated terminology.
- 2.3 The proposed amendment set out in this subsection of the Notice is such an example. The wording used presupposes that only complaints against a licensee can be made to the CCC. This is, as of 2014, no longer the case.
- 2.4 There is another problem with the proposed amendment. It aims to introduce the words “/or” into the definition. Primedia has two distinct issues with this.
- 2.4.1 First, the rest of the definition in the Draft proposed does not make sense because it presupposes that a vexatious complaint is one made by a person who has persistently done so by referring to previous complaints; and
- 2.4.2 Second, even if a person is a “persistent” complainer – if such complaints have a reasonable basis, then persistency itself cannot be a cause for concern and so the use of the word “or” is problematic as it entitles the CCC to declare a complaint made on reasonable grounds by a persistent complainer to be vexatious. This cannot be lawful.
- 2.5 Consequently, Primedia submits that the proposed amendment ought to read as follows:
- ““vexatious complaint or dispute” is a complaint or dispute filed with the CCC or the Authority which has no reasonable basis”.**

3. Ad Section 3 of the Schedule to the Notice

- 3.1 The provisions of proposed sections 2(1) and 2(2) are internally incoherent and contradictory.
- 3.2 Proposed section 2(1) makes it clear that it is not necessary for a complaint to be made by way of an affidavit (see the use of the words “may be supported by an affidavit” – our emphasis) and that this is left to the discretion of the complainant.
- 3.3 However proposed section 2(2) states “A dispute... shall be filed in the form of an affidavit”. This is directly in contradiction of section 2(1) as it is clearly cast as a peremptory requirement.
- 3.4 Primedia is of the view that a complainant must have the option of not filing a complaint by way of an affidavit as to require otherwise means that ordinary people, without access to

lawyers, are effectively prevented from simply writing to the CCC with their complaints. Primedia submits that mandating the use of affidavits before a complaint will be considered is an anti-poor requirement that surely wasn't intended by ICASA. We are also of the view that this is at odds with section 34 of the Constitution in terms of which everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum (our emphasis). The Constitution itself recognises that different forums (with different administrative requirements) are entirely appropriate for resolving/adjudicating disputes.

#### 4. Ad Section 5 of the Schedule to the Notice

- 4.1 The proposed amendments to section 4 of the CCC are retrogressive because they appear to distinguish between a complaint or dispute. This is not supported by the provisions of the ICASA Act. Further, they confusingly appear to distinguish, procedurally, between so-called complaints and disputes.
- 4.2 As is clear from the provisions of the ICASA Act itself – see, *inter alia*, sections 17B, 17C(1)(a), 17C(1)(b)(ii) – which, as a result of the 2014 ICASA Amendment Act, the CCC has the explicit authority to entertain complaints against any person (our emphasis) who does not comply with the Act or underlying statutes and not only a licensee.
- 4.3 The impact of the proposed changes would be to make the CCC Regulations unlawful for being ultra-vires the provisions of the ICASA Act which require that complaints can be made against persons other than licensees too.
- 4.4 However, Primedia does recognise that the existing wording of section 4 of the CCC Regulations is confusing and therefore it recommends that section 4 be substituted by the following:

#### **4.Complaint/Dispute Documents**

- (1) The Co-ordinator must provide the person against whom a complaint or dispute has been lodged (the Respondent) with a copy of the complaint within five (5) days of receipt of the complaint by the CCC and must notify the Respondent in writing that it has fifteen (15) days within which to deliver a response thereto.**
- (2) A Complainant has ten (10) days from the date of receipt of a response from the Respondent in which to deliver its Reply.**
- (3) If a Complaint is supported by an affidavit, the Response thereto and any Reply are also required to be made by way of an affidavit.**

5. Ad Section 12 of the Schedule to the Notice

Primedia is of the view that there are certain grammatical errors in the proposed amendments to the Schedule to the CCC Regulations and submits that:

- 5.1 Paragraph (a) of Section 12 of the Notice ought to read: “by the substitution in paragraph (a) for the word “take” of the word “address”; and
- 5.2 Paragraph (b) of Section 12 of the Notice ought to read: “by the substitution of sub-paragraphs (ii) and (vi) of paragraph (d) by the following sub-paragraphs:

(ii) “handling additional documents that have not been filed;”

(vi) “any other relevant matters; and”.

6. Again, Primedia thanks ICASA for the opportunity of making the submissions and looks forward to participating in any of hearings that it may conduct in this regard.

We trust that you find the above to be in order. Please do not hesitate to contact us should you have any queries or require any further information.

**Yours sincerely,**

A handwritten signature in black ink, appearing to read 'Justine Limpitlaw', written in a cursive style.

**Justine Limpitlaw**