



national film and video foundation
SOUTH AFRICA

an agency of the
Department of Arts and Culture

**SUPPLEMENTARY WRITTEN REPRESENTATIONS BY THE NFVF:
NATIONAL FILM AND VIDEO FOUNDATION ON THE ICASA POSITION
PAPER: REVIEW OF REGULATION ON SOUTH AFRICAN LOCAL CONTENT:
RADIO AND TELEVISION; ICASA DRAFT SOUTH AFRICAN MUSIC
CONTENT REGULATIONS AND ICASA DRAFT SOUTH AFRICAN
TELEVISION CONTENT REGULATIONS
PUBLISHED 18 JUNE 2015**

1. Purpose

The National Film and Video Foundation (NFVF) attended the ICASA Local Content Committee public hearings held on 01 and 02 October 2015. The NFVF has been afforded the opportunity to supplement its submissions, with a request to focus on the following main issues raised at the hearings:

1. **Repeats:** Number of repeats for current and incentive channels and how repeats should be calculated. How many years should repeats count. How many points should be allocated to those repeats?
2. **Proposal in terms of 7.2 of draft Local Content Television regulations** – rephrase the provision to ensure that productions from marginalised languages and/or marginalised metros is broadcast.
3. **Audited financial reports** – proposals for an easier way of monitoring Compliance using this method.

4. **Evidence of the local music** available in the different formats, especially adult contemporary and classic.

The NFVF has elected to restrict its supplementary submissions to the issues related to repeated content and independent content sourced in marginalised languages and outside of the traditional metros.

2. Introduction

2.1. Local content is to be developed and created in anticipation of the multichannel environment presented by broadcasting migration to stimulate content development in South Africa and to further job creation. In anticipation of the above developments the strategy discusses key interventions that will eradicate factors currently inhibiting growth of the content industry in South Africa. These include amongst others, funding and infrastructure investment so as to address developmental goals relating to the imbalances of the past, building social cohesion, ensuring competition in the content industry and fostering regional integration.

2.2. The Regulation is meant to provide the public, government entities and private companies with an opportunity to play an active role in the shaping of South Africa's policy on the development and broadcasting of local content.

2.3. The Position Paper provides a snapshot of the responses of the stakeholders of the broadcasting sectors and establishes the position of the local authority, ICASA across various aspects of the Regulations.

3. The position, recommendations and comments of the NFVF

The NFVF

3.1. The National Film and Video Foundation (NFVF) is an agency of the Department of Arts and Culture that was created to ensure the equitable growth of South Africa's audiovisual sector. We do this by providing funding for the development, production, marketing and distribution of films and also the training and development of filmmakers. In addition, the NFVF

commissions research and produces industry statistics that provide both the public and stakeholders with valuable insights into the South African film industry.

3.1.1. Our main objectives:

3.1.1.1. Increase the number of South African films and Previously Disadvantaged Individuals (PDIs) producing them

3.1.1.2. Increase audience access to South African films

3.1.1.3. Increase the number of people trained in the industry, particularly in areas of scarce skills

3.1.1.4. Promote the South African Film Industry locally and internationally

3.1.1.5. Promote social cohesion and the expression of the nation's stories through film

3.2. The NFVF supports the underlying principle that broadcasting, the provision and showcasing of local content should be regulated in the public's interest. The dual aim of content regulation – that a space for distributing local content is carved out, and that independently produced and owned local content is developed provides a suitable foundation for the regulation. The NFVF emphasises that in particular, regard to the stimulation of independently produced and owned content, and harmonization with the intellectual property regime concurrently under review, is of paramount importance.

Repeats

3.3. The NFVF re-iterates the view of independent content producers, that the number of repeats should be closely monitored. Broadcasters have in the past exhausted the intellectual property value of independent content through excessive repeats. Thereafter, the content is rendered worthless or less likely to have value for other channels, platforms or distribution streams.

The NFVF supports the current regulation which does not limit repeats but limits the number of repeats which would count toward compliance, thus discouraging excessive repeat broadcasting of content.

The NFVF in addition proposes an exception for children programming. It is agreed that in particular reference with educational children's programming, children benefit from repeated content. Educational children's programming should not be unlimited, so as to encourage the continuous creation of new content, however a higher number of repeats should contribute to compliance in relation to educational children's programming. Children's programming that is not educational should however draw a lower number of repeats for compliance purposes.

The NFVF submits that a maximum of 5 (five) repeats should count towards compliance on a sliding scale. For education children programming, a maximum of 15 (fifteen) repeats and for non-educational children's programming a maximum of 10 (ten) repeats, both on a sliding scale. This will ensure that the best interests of children are balanced against the need to monitor and protect the value of intellectual property associated with local content, particularly independent content and the need to encourage the development of new local content.

Marginalised Languages

A public, commercial and subscription television broadcasting licensee must ensure that fifty percent (50%) in the case of a public television broadcasting licensee and thirty percent (30%) in the case of a commercial and subscription television broadcasting licensee, of annual independently produced programmes budget is spent on previously marginalised local African languages and /or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities.

The NFVF strongly emphasizes that the role of the public television broadcaster is different from that of subscription and commercial television broadcasters. The mandate of the public broadcaster includes a higher burden to promote and develop diversity, which necessarily includes the development of content

in the marginalized languages¹. It is with this view in mind that the NFVF proposes that the proposal as it relates to the public television broadcaster is retained at the 50 percent (50%) margin.

Language plays a central role in various cultural activities such as, literature, performing arts, visual arts, architecture, crafts, the cinema and broadcasting which are all part of South Africa's cultural diversity.

The various cultural activities require a variety of appropriate ways of communicating to people. The development of an effective local content regime requires diverse ways of language practices, profound language skills (general as well as advanced/analytical) and language development.

The proposal in terms of 7.2 of draft Local Content Television regulations recognizes that South Africa is a multilingual and multicultural country, both regionally and provincially.

The NFVF is of the view that multilingualism is sought and promoted within the context of all South Africa's official languages. Measures must be developed for phasing in and developing all those languages that have been historically marginalized and underdeveloped.

Multilingualism is pursued and promoted within the larger context of a commitment to a non-racial, non-sexist, multicultural and multilingual film industry.

¹ Any official language that is traditionally excluded from official use or of which use is discouraged in formal settings (e.g. education, health care). "Marginalized" usually implies the low status of the language and possibly the speakers. For example, Xitsonga, Tshivenda, isiNdebele and siSwati are regarded as marginalized languages in South Africa.

This implies that within the language policy and language practice provided for in this proposal are key elements in recognizing, appreciating, managing and harmonizing diversity in a balanced way.

The mandate of subscription and commercial television broadcaster is however informed by demand and in that respect, the NFVF proposes a reduction from fifty percent (50%) as proposed in the Position Paper to thirty percent (30%) for subscription and commercial television broadcasters. While the NFVF welcomes the incentive to source local content in marginalized languages and from outside of the Durban, Cape Town and Johannesburg Metropolitan cities, it is also a matter of concern that the fifty percent (50%) margin may adversely affect the sourcing of content from these traditional metros.

A careful balance must be struck by the regulator in addressing the imbalances of the past. This provision will further encourage investment in infrastructure outside of the traditional metros. However it must also be borne in mind that while a growth and appreciation for content creation has begun developing outside of the traditional metros, the growth remains slow and significant and a gradual process needs to be envisioned.