



**NATIONAL FILM AND VIDEO FOUNDATION**

**SUBMISSION TO THE DEPARTMENT OF COMMUNICATIONS**

**ON**

**THE LOCAL AND DIGITAL CONTENT DEVELOPMENT STRATEGY**

**OCTOBER 2009**

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## **1. Background**

The National Film and Video Foundation (NFVF) is a statutory body created in terms of the National Film and Video Foundation Act 73 of 1997 and is mandated to promote and develop the growth of the film and video industry. The NFVF's submission to the Department of Communications (DOC) is informed by the legislative mandate which includes encouraging the development and distribution of local film and video products.<sup>1</sup>

The DOC issued a notice on 04 September 2009 inviting the public to submit comments on its Local and Digital Content Development Strategy (the Strategy).<sup>2</sup> The strategy is said to be formulated 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. NFVF Submission**

The NFVF submission consists of general comments and responses to the following key areas raised in the Strategy Document:

- Market Entry by New Role-players and SMME's
- Shifting from a Commissioning-driven Industry
- Investment in Human Capital and Addressing Skills Shortage
- Establishment of Digital Content Fund
- Using Intellectual Property (IP) protection and Copyrights to create jobs
- Increasing Export Opportunities

### **2.1 General Comments**

In 2003, the Strategy for the Development of the Content Industries (Content Industries Strategy) was approved by Cabinet. The Content Industries Strategy (CIS) articulated the challenges faced by South Africa in order to develop and grow a Sustainable Competitive Advantage in the content and broadcasting industries. The strategy was produced collaboratively by the Department of Arts and Culture (DAC), the NFVF, the Department of Communication (DOC),

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<sup>1</sup> National Film and Video Foundation Act 73 of 1997, section 3(a), 4(1) (k) and (4) (2) (g)

<sup>2</sup> Notice No 1218 of 2009 in Gazette No 32553 of 04 September 2009

Department of Trade and Industry (the DTI) and the South African Revenue Service (SARS). It recommended a minimum of R470 million spread over a three Medium Term Expenditure Framework (MTEF) cycle to enable the sector to reach critical mass.

According to the approved request for funding to implement the Strategy, the R470 million was to be allocated to various government departments and the implementation agencies under those departments. The request for further funding would have seen the DTI allocated an amount of R115 million, as part of the incentive scheme to attract foreign productions and also support co-productions, the DOC was allocated R195 million towards the development of multimedia and animation and R160 million was earmarked for the NFVF, through the DAC.<sup>3</sup>

The NFVF is disappointed by the approach the DOC adopted in the development of the strategy for a number of reasons. Firstly, as mentioned in the introductory paragraph, the DOC was one of the key partners who participated towards the development of the Content Industries Strategy as part of inter-departmental collaboration as guided by Section 41 of the Constitution of the Republic. It has been noted that the strategy makes reference to the Content Industries but this reference does not clearly indicate the status or what the relationship to CIS is. It is a fact that the Film and Television Production Incentive administered by the DTI, which was established in 2004 was one of the key programmes that resulted from CIS.

Secondly, besides rehashing what is already in the public domain, it does not seem like there is any new research done to justify the positions adopted in the strategy, except for a ploy to entrench the already existing criticism of the competitive nature of government departments and the creation of parallel structures to those that already exist and serve to impede the delivery of services to South Africans.

It is the NFVF's belief that the DOC should have had consultations at the least with other government institutions involved in the development of content.

## **2.2. Discussions**

### **2.2.1 Market Entry by New Role-players and SMME's**

The NFVF concurs with the view posed by the strategy that encourages entrance in the industry by new players particularly from the historically disadvantaged groups. The NFVF in this regard is mandated by section 3 (b) of the NFVF Act *"to provide, and encourage the provision of, opportunities for persons especially from disadvantaged communities to get involved in the film and video industry"*.

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<sup>3</sup> NFVF Business Case and Business Plan (2008), pg 11

The strategy does not suggest viable ways of ensuring market entry for new players; it merely states that funding and various developmental support mechanisms should be in place for new entrants.

The question then arises as to where the funding and development support should be sourced from as there are already existing government agencies such as the NFVF that seek to achieve this objective. The issue then is not about establishment of new funding and development support but rather finding ways of enhancing the already existing mechanisms.

### **2.2.2 Shifting from a Commissioning-driven Industry**

The strategy does not provide viable mechanisms that will ensure that the industry shifts from a commissioning-driven industry; it has instead employed a passive approach by merely identifying problems that the commissioning practice encompass and how they continue to constrain the industry's potential. An increase in the demand for local content and increase in volumes of content activities will not necessarily solve the issue at hand as commissioning is dependent on the prescribed quotas for the broadcasters. The NFVF strongly believes that for the industry to move from a commissioning driven industry, the broadcasters' commissioning protocols need to be reviewed and regulated effectively and this requires the intervention of the regulator - ICASA.

### **2.2.3 Investment in Human Capital and Addressing Skills Shortage**

Human Capital investment and skills shortage are not new concepts that have just been identified and that need to be addressed. CIS identified a need for the development of institutional capacity which was aimed at addressing skills shortage. It further identified a number of institutions that would assist in the development of human capital and combating skills shortage. The key institutions identified included NEMISA and the NFVF. It was stated that NEMISA's mandate needed to be expanded to fund and further develop all categories of Digital Content Human Capital. It was suggested that for NEMISA to achieve its expanded mandate, it would have to be corporatised to enable it to access wholesale financial instruments, transact and compete on a global scale.

The NFVF in this regard is mandated by the NFVF Act to use 75% of its budget as grants in support of the film industry,<sup>4</sup> of which the NFVF has granted bursary funding for entry level students and has provided

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<sup>4</sup> Id, section 16 (2) (a)

training programmes such as Sediba Skills Development Programme to ensure that skills shortage is addressed in the industry. This then rebuts the notion proposed by the strategy to the effect that various skills programmes in the country neglect human capital development.

The local and digital content strategy has failed to make mention of the fact that there are already existing institutions other than NEMISA and MAPPPSETA as mentioned in the CIS that have and continue to invest in human capital and address skills shortage. The NFVF is of the opinion that the strategy should have rather addressed the issue of capacity and resources and ways of assisting and speeding the rate at which the existing agencies operate.

#### **2.2.4 Establishment of Digital Content Fund**

The NFVF strongly opposes the idea of establishing a Digital Content Fund (DCF). This is due to numerous reasons that will be discussed below.

The first point of departure relates to objectives of the DCF which are:

- Nurturing talent and skills in the content sector;
- Conduct research relating to Digital Content Industry and;
- Provide subsidies for emerging content creators and content produced in historically disadvantage and marginalized languages.

Looking at these objectives, they are identical and a duplication of the functions and objectives of the NFVF as stipulated in section (3) and (4) of the NFVF Act, which are:

- To develop and promote the film and video industry;
- Support the nurturing and development of and access to the film and video industry;
- In respect of the film and video industry, to address historical imbalances in the infrastructure and distribution of skills and resources and;
- Conduct research into any field of the film and video industry.

Secondly the strategy proposes how the DCF could be funded and this is through:

- Public Service Broadcasting Fund;
- Contribution from government;
- Donations and grants;
- Levies on content production and the;
- Specified minimum percentage of gross revenue on local content programmes by broadcasting licensees in

accordance with section 61 (3) (a) of the Electronic Communications Act, 2005.

The DCF funding is not different from the funding model as provided by the NFVF Act except for suggesting of a Public Service Broadcasting Fund.

Section 16 and 18 of the NFVF Act states that the funds of the Foundation shall consist of 16 (1) (a) Money appropriated by Parliament;

(c) Donations or contributions received from any source;

(f) Income derived under this Act from any other source.

18 (2) (b) Any other money accruing to the Fund in question from any other source. This can be construed to include levies on content production.

The NFVF is of the opinion that the establishment of DCF would be a duplication of its own services and the creation of competing mandate. Had the DOC consulted with the NFVF, it would have been reminded of one of the Resolutions taken at the NFVF Indaba 2005 of which it was part of, which was to expand the mandate of the NFVF to encompass the entire content industries and move beyond technology specific description of film and video. The focus should therefore be on moving images. This Resolution clearly indicates that the NFVF's mandate is not only restricted to film and video but the content industry as a whole.

Competition amongst government agencies is undesirable as it may give rise to possible conflict of co-operative governance principle which is based on the notion of good inter-governmental relations. The NFVF is of the view that the DOC strategy should have promoted or advocated for an approach that seeks to inject finance into already existing agencies that fund and promote the needs of the content industry, so as to expedite service delivery.

The NFVF welcomes the thinking around the levy on all broadcasting services in order to develop local content. The NFVF further proposes a levy on the box office (cinema tickets) and DVD sales and rentals in order to enhance the development of local content.

### **2.2.5 Using Intellectual Property (IP) protection and Copyright to create jobs**

The local and digital content development strategy cites the benefits of content development as its 'potential to create wealth through the exploitation of intellectual property'.

The NFVF would like to draw the attention of the DOC to the submissions made by the NFVF and industry representative bodies on the Independent Communications Authority of South Africa (ICASA)'s Discussion Document and Draft Regulations Notice 1388 Gazette No 315580 of 07 November 2008 on Independently Produced South African Programming in relations to copyright.<sup>5</sup> The NFVF shared the same view as the industry in that copyright was not regulated effectively as the current commissioning procedure allows the broadcasters to retain all rights of the commissioned works. This practice does not allow producers to exploit copyright of their work, and neither do broadcasters exploit any other rights except the television broadcast of such programmes.

The strategy discussed does not create dialogue to address the above issue, instead it focuses on the administration of copyright which is currently not a pertinent issue facing the industry. The NFVF is not convinced that protection of intellectual property and copyright can result in job creation. Before any rights can be protected, producers must first produce productions where they own some rights in the product. The NFVF is of the view that policy and legislation that governs copyright need to be reviewed so as to lure new entrants in the industry and thereby create jobs.

### **2.2.6 Increasing Export Opportunities**

The strategy notes that there is a need to increase export opportunities of local content and has made suggestions including others "hosting of local content festivals to show case and facilitate trading in local content in the country, development of strategic relationships between overseas markets and the local content digital industry and to establish mechanisms for timely market intelligence to facilitate the building of a continuing presence in overseas markets".

As much as the above suggestions are plausible, the strategy has failed to map out a working relationship with agencies such as the NFVF, who currently fund national festivals. The festivals are aimed at audience development in areas where there are no cinemas and to expose South Africans to local products. Film festivals also serve as a first distribution platform for many South African films. A change to the status quo where local films have low commercial value and appeal to local and

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<sup>5</sup> Discussion Document on Independently Commissioned South African Television Programming – Notice No 1388 in Gazette No 31580 of 07 November 2008

international markets requires an integrated approach by all agencies involved.

The DTI administers programmes that offer support to the export of local products, such as the Export Marketing and Investment Assistance (EMIA) which is aimed at providing financial assistance to exporters with cost incurred in respect of their efforts to develop export markets for South African products and services and as well as to recruit new foreign investment into South Africa.<sup>6</sup>

The programme includes amongst other things financial assistance in relations to travel and accommodation, exhibition assistance at national pavilions, individual participation at international exhibitions and inward/outward buying/selling/investment trade missions.<sup>7</sup>

### **3. Conclusion**

The NFVF proposes that the local and digital content development strategy for South Africa be reviewed so to as to cater for the above mentioned concerns. In reviewing the strategy, the Department of Communications must bear in mind that the content industries are a concurrent competency of the following national departments:

- the Department of Arts and Culture, in relation to cultural industries and issues of social cohesion and identity,
- the Department of Trade and Industry, in relation to industrial development
- the Department of Communications, in relation to convergence of the ICT's
- the Department of Higher Education, in relation to Higher Education Policy (National Film School) and skills development (MAPPP Seta)

The department is therefore requested to take cognizance of already existing policies and programmes in place that impact on digital content and it should not be seen to be proposing parallel structures that would further fragment the already fragmented sector.

It is the NFVF's submission that the NFVF Value Charter adopted by the sector at the Indaba 2005 should be the basis for discussion on the development of content industries.

The NFVF is willing to avail itself for oral submissions in addition to the written submission should the process so demand.

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<sup>6</sup> <http://www.dectra.co.za/emia.htm>

<sup>7</sup> Id