

**INDEPENDENT PRODUCERS' ORGANISATION OF SOUTH AFRICA
SUBMISSION TO THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA (ICASA)
ON THE ELECTRONIC COMMUNICATIONS ACT (36/2005):
DRAFT BROADCASTING DIGITAL MIGRATION FRAMEWORK
REGULATIONS (AS PUBLISHED IN GOVERNMENT GAZETTE, 3
OCTOBER, NOTICE 1240 OF 2008)**

1. INTRODUCTION

- 1.1 The Independent Producers' Organisation (IPO) of South Africa is the longest standing and largest organization representing producers of television and films in South Africa.
- 1.2 IPO members are the major suppliers of local content programming (with the exclusion of news and sports programming) to the South African Public Broadcaster (SABC) as well as to the commercial broadcasters (eTV and MNET). Our Producers are responsible for drama, actuality, documentary, children, youth, variety, entertainment and educational programmes screened by the South African broadcasters.
- 1.3 At the oral hearings held on 1 December 2008, ICASA gave interested parties an opportunity to submit additional comments on the Draft Regulations by 23 January 2009. The IPO acknowledges ICASA's invitation with thanks. Our response is set out below.

2. PREAMBLE

- 2.1 The IPO advocates broadcasting in the public interest and is respectful of the expectation of high quality content by South

2.2 As the IPO, we believe that all South Africans stand to benefit from fair competition in the broadcast arena. In this context, the IPO is concerned with:

- Public value and industry development
- Incentive channels and the SABC's capacity to provide incentive channels
- The regulation of content
- Competition
- Processes for licensing new channels

2.3 The IPO supports the digital migration process; additional choice; and additional services. However, we are concerned that under the Draft Regulations:

- too few new incentive channels of sufficient quality may materialise
- local content regulation could be undermined
- there may be a lack of competition, choice and convergence
- there may be a lack of transparency

2.4 The IPO's concerns are fuelled by the SABC's failure to launch Channels 4 and 5 to date. This failure is of concern to the independent production sector since it impacts on the growth of the sector. Of specific concern in the Draft Regulations is the fact that licences may be granted regardless of whether or not they are used.

2.5 No timeframes have been set within which a licence that has been granted is required to be active and operational, and there is no provision for an unused licence to be revoked and made

available to other existing or prospective broadcasters if not used within a certain time period. Such a provision would ensure growth and prevent a situation whereby licenses remain dormant and unused simply to prevent competition entering the market.

2.6 To our knowledge, there is also currently no requirement that applicants indicate whether or not they have the necessary financial resources required to launch new channels. This is of particular concern given SABC's admission at the hearings that, in fact, the SABC does not have the resources to launch the channels for which it is requesting licences.

2.7 We are also concerned about the SABC's proposal for scheduling which we believe could result in new channels offering the same content that is already available (albeit repeated more frequently). In addition this content would most likely be at no cost to the SABC as it will largely be repeats or packaging of existing material and due to the onerous contracts they have with the independent production sector no benefit will be derived for the sector outside of the SABC. This includes issues such as actors appearing in new channels and then being labeled as overexposed with little or no compensation, etc.

3. THE REGULATIONS ON ALLOCATION OF REMAINING CHANNELS

3.1 Channels that are currently in existence are subject to local content regulation. The Draft Regulations do not preserve this status quo in this regard. We believe that the Regulations should ensure that the new digital channels have local content obligations and that the existing local content requirements are

not undermined by the conversion to digital. The IPO is of the opinion that if local content regulations are not entrenched, jobs in the independent sector will be under threat and the industry as a whole will be undermined. We strongly urge the ICASA Council to ensure that existing local content regulations are applied to all new digital channels.

4. COMPETITION, CHOICE AND CONVERGENCE

- 4.1 The IPO believes that digital migration can only be considered successful if it is able to offer South African audiences sufficient new services, meaningful additional choice and high quality content. We are concerned that the Draft Regulations are currently not geared to achieve this.
- 4.2 The IPO is in favour of regulated transition to a growing multi-channel environment that can best meet the needs of audiences and of developing the production industry thereby creating jobs and stimulating its economy.
- 4.3 We believe that years of uncertainty with regard to digital migration and the failure of pay TV licence processes must be addressed through a public process, through which the way forward will be determined. The Draft Regulations allow for hearings on applications to be held by ICASA, but they do not commit ICASA to hold such hearings.
- 4.4 The IPO is of the opinion that these matters are of vital public interest and consequently the public should be consulted.

5. THE IPO'S RECOMMENDATIONS

The IPO recommends that:

- Existing licensees should be required to submit applications within a fixed period (e.g. within six months)
- Public hearings should be held for applications for additional channels on both multiplexes 5 and 6
- Local content minimums aimed at stimulating the local industry should be required for all migrated and all new channels (Sections 5 and 6)
- A time frame should be determined by ICASA within which licence applications for the remaining channels (clause 4(4)) must take place.
- If an existing licensee fails to submit proposals that meet the standards set by the Regulations and the ECA, then the Regulations should commit the Authority to initiate a process whereby channels are offered to new licensees within a fixed (and short) period.

**Independent Producers Organisation
Friday, 23 January 2009**