



SUMMARY

SABC MAKES POLICY SUBMISSIONS ON DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL CONTENT SERVICES

The SABC has made a detailed submission to the Department of Communications and Digital Technologies (DCDT) on the draft White Paper on Audio Audiovisual Content Services. The draft White Paper proposes the most fundamental review of our broadcasting policy framework in over two decades. SABC appreciates the opportunity to contribute to the policy and fully agrees with the DCDT that the current legislative and regulatory framework is outdated. The current framework has also failed to meet the statutory requirement for “protecting the integrity and viability of public broadcasting services”.

The SABC has welcomed the new licensing framework and its core principles of technology neutrality, regulatory parity and fair competition. Comprehensive legislative and regulatory change is needed for free-to-air broadcasters to be able to fairly compete with other audio and audiovisual content service providers with light touch regulatory obligations (such as subscription broadcasters) and on demand content services which have no regulatory obligations whatsoever. As such, the SABC supports the new definitions of audio and audiovisual content services, including that ‘broadcasting’ will be a subset of these services. The SABC has recommended that online news services that are subject to the jurisdiction of the Press Code (but may fall under new licensing framework) should be exempted from any licensing under the new legislative framework.

In its submission to the DCDT, the SABC primarily dealt with elements of the policy framework that impact directly on the SABC, its funding model and future sustainability.

In summary the SABC submitted proposals on the following:

1. The SABC's entire submission is based on the accepted principle that the sustainability of the public broadcaster - through the financing of public mandate programming - is vital to our constitutional democracy. The SABC supports the Government's draft policy to strengthen existing governance structures in an amended SABC Act, based on the principles set out in recent case law and noting the consequential amendment to the SABC's MOI to provide for the Board's independent appointment of Executive Directors.
 - (a) The current TV licence fee system should be scrapped and replaced with a device-independent, tech-neutral **household levy** for public broadcasting, which would levy all households, with exemption for the indigent and discounts for pensioners. The household levy is founded on the fact that every single South African household has the realistic ability to access public broadcasting content, whether via analogue free-to-air TV and radio platforms or via DTT, DTH, the internet and streaming services through several mobile apps. Therefore, the levy is linked to the public's ability to access public broadcasting content rather than on the consumption of that content. A similar household levy system was upheld as constitutional by the German Constitutional Court in 2018 as it was "specifically for the financing of public service programming that is fundamental to democracy." The German court also found that even if a household does not use public broadcasting, they have a "realistic ability to use it". **It should be noted that, despite reports to the contrary, the SABC is not in favour of licensing or charging any devices or technology in lieu of a public broadcasting levy.**
2. As a pro-competitive measure, the dominant subscription broadcaster (and any future dominant On Demand Content services as defined) should be required to collect the public broadcasting household levy from its subscribers. This proposal must be seen in the current market context after decades of prejudicial legislation and regulation against the SABC including: the Must Carry regulations which have obliged the SABC to provide its three free-to-air channels to subscription broadcasters for free (since 2008); Sports Broadcasting Regulations which failed to protect the public broadcaster from anti-competitive bundling

of rights and unfair sublicensing criteria (since 2004); and the failure by the regulator to implement any limitations on advertising on subscription broadcasters as intended by the Electronic Communications Act (ECA) in 2005. As a first order effect, these measures and omissions have had a massively negative impact on the SABC's finances. As a second order effect, the SABC's freely-provided channels and programming have been used by a competitor to build part of its subscription base. However the requirement to collect the public broadcasting levy will not only fall upon the dominant subscription broadcaster. The SABC will be responsible for collecting the public broadcasting levy from the balance of households. The SABC will – in addition to current collection methods - utilise a more efficient digital collection system, using the SABC's digital broadcasting, online channels and OTT streaming platform (to be launched in 2021). The SABC's proposed move away from the primarily TV retailer collection model to a public broadcasting household levy is conditional on the dominant subscription broadcaster being required by law to collect this levy from its subscribers.

3. The SABC has also made key proposals on funding the public mandate and has defined public mandate programming as:

“all programming that the SABC is required to broadcast in terms of legislation, ICASA regulations, licence conditions and/or the SABC's Editorial Policies: Provided that programming that is carried by the SABC's public commercial television and sound broadcasting services (as currently licensed) shall not be counted towards the cost of the public mandate unless such programming:

- Is national sports programming as well as developmental and minority sports programming as required by the Broadcasting Act and/or listed in ICASA's Sports Broadcasting Regulations as a national sporting event;
- any form of educational programming; and
- are events of National Importance as defined in the SABC's 2020 Editorial policies as including “the opening of Parliament, the budget speech, state occasions such as visits by foreign dignitaries and category-designated funerals; major commemorative occasions, and the proceedings of commissions of inquiry, major

Parliamentary debates, the opening of provincial legislatures, and significant conferences of the major political parties”.

Rather than requesting an annual sum from National Treasury for public mandate programming, the relevant governmental departments should allocate and ring-fence a line-item in their budgets for the relevant public service content. Such funding shall be provided for programming relevant to the national development mandate of a particular department, **without compromising SABC’s editorial independence**. These departments would include Departments of Health; Basic Education; Higher Education and Training; Sports, Arts and Culture, GCIS and the DCDT.

Notwithstanding the absence of funding for the public mandate, the SABC is still committed to breaking even and turning the organisation around. However, it will become more difficult to properly meet the public mandate in all respects without additional funding, over and above the public broadcasting household levy.

4. The SABC supports the White Paper proposal to scrap the Must Carry law requiring the public broadcaster to offer its channels to subscription broadcasters who “must carry” these channels. This will give the SABC an opportunity to commercially exploit its content through carriage agreements, whilst achieving universal service and access to its services at the same time. It is the SABC’s view that the carriage agreements or *transmission consents* will contribute significantly to the public broadcaster’s revenues. As submitted to ICASA during the current regulatory review of Must Carry regulations, the public broadcaster has been prejudiced by Must Carry regulations which have required the SABC to offer its expensively-procured channels and programmes for free to well-resourced subscription broadcasters.
5. The SABC opposes the proposal to create a protected monopoly for Sentech as this is in conflict with the definition and role of the common carrier set out in the Electronic Communications Act, 2005. While Sentech is required to carry public broadcasting services, no requirement exists for the SABC to exclusively utilise Sentech for signal distribution where competitive options exist. The SABC must retain the freedom to choose the best

platforms for the SABC, noting that the SABC Board and management are required to act in the best interests of the SABC. Sentech currently has a *de facto* monopoly of the following three forms of distribution and transmission: a) analogue terrestrial radio transmission b) analogue terrestrial television transmission and c) DTT transmission. The tariffs in these categories must be regulated in line with the ECA and failure by the regulator to do so has exposed the public broadcaster to monopoly pricing.

6. The SABC has made submissions on the prohibitively high cost of Sentech's DTT network which currently reaches only 3.5% of TV households. While the SABC remains committed to DTT, the current DTT signal distribution cost is unsustainable and the SABC has recommended tariff regulation on this network and other monopoly networks run by Sentech. The DTT network achieves 87% population coverage at an extremely high transmitter and signal distribution cost, whereas the DTH satellite network achieves 100% population coverage at a very optimised cost. As more and more households migrate to the DTH platform, the cost per viewer of the DTT network becomes increasingly expensive as the network serves fewer viewers. The SABC supports the proposed principle of technology neutrality and continues to implement both DTT and DTH whilst at the same time driving down the costs of DTT, either through negotiation or regulatory intervention. Taking all this into account, the SABC submits that the population coverage stipulations for DTT in the Broadcasting Digital Migration policy and DTT Regulations should also be removed.

Finally the SABC submitted that public broadcasting services – or to use the language of the Draft White Paper “public audio and audiovisual content services” - still have a huge and important role to play in society. South African society is scarred by extreme income and social inequalities, high rates of unemployment and an economic meltdown exacerbated by the Covid-19 pandemic. We have seen massive pressure on the education system as remote learning cast an unforgiving spotlight on the digital divide. Artists and the independent content production sector have suffered greatly, with productions delayed, cancelled and many content businesses went under. The disturbing proliferation of fake news and misinformation via global social media networks has also undermined trust in public institutions and fueled division through hate speech, racism and xenophobia, across the globe.

Notwithstanding these serious challenges during the pandemic, the SABC demonstrated emphatically that there is a critical need for a sustainable public broadcasting service which supports our citizens and constitutional democracy. The SABC was able to step up during the pandemic and launched an Education Channel, helped to get television productions going again and provided free-to-air access for critical health and public interest briefings on our national television and radio platforms. Therefore, it is vital for South Africa to reimagine the role of the public broadcasting service and all its audio and audiovisual content services in the context of major societal challenges and technological developments.