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26 September 2025

The Director-General

Department of Communications and Digital Technologies

C/O Draft White Paper on Audio and Audiovisual Media Services and Online Safety

Email: fwpsa2025@dcdt.gov.za

Dear Director-General,

Google - Submissions on the Draft White Paper on Audio and Audiovisual Media Services and Online Safety

1. Introduction

- 1.1. We refer to the draft white paper published on 11 July 2025 by the Department of Communications and Digital Technologies (**DCDT**) on audio and audiovisual media services (**AAVMS**) and online safety (**Draft Paper**) under Government Gazette No. 52972.
- 1.2. These submissions are made by and submitted on behalf of Google LLC (**Google**).
- 1.3. The Draft Paper sets out broad policy proposals and guiding principles intended to inform the development and implementation of a regulatory framework to address existing legislative gaps, which have emerged in response to the growth of global streaming platforms, user-generated content, and non-linear media consumption. The implementation of this framework is underpinned by the following:
 - 1.3.1. the promotion of South African identity and content;
 - 1.3.2. freedom of expression;
 - 1.3.3. constitutional values of non-racialism, non-sexism, and equality before the law;
 - 1.3.4. diversity;
 - 1.3.5. universal access;
 - 1.3.6. regulatory parity;
 - 1.3.7. economic growth;
 - 1.3.8. social inclusion;
 - 1.3.9. accessibility by persons with disabilities;
 - 1.3.10. promotion of fair competition; and
 - 1.3.11. protection of children.

- 1.4. Notably, the Draft Paper is guided by international best practices and the need to promote investment while also preserving South African culture and addressing the country's needs.
- 1.5. Google, in principle, agrees with the broader intention to augment the existing regulatory framework which was designed in an analogue broadcasting era and is no longer fit for purpose.
- 1.6. Google is a multinational technology company which offers various internet related services and products to users in various jurisdictions around the world, including South Africa. These services and products, placed into context, include YouTube, Google Play and Google TV (**Google Products**).
- 1.7. The high-level policy proposals and principles, and contemplated legislative changes apply to Google's operations in South Africa due to the availability of Google Products within the country. These developments are expected to have a significant impact on Google's local operations and may also influence its capacity to adequately meet the obligations envisaged under the proposed regulatory framework.
- 1.8. Whilst Google appreciates the objectives of the Draft Paper to amend the country's existing regulatory framework regarding AAVMS and online content, we also recognise the importance of balancing the need to address the changes within the media and preserving their freedom of expression.
- 1.9. The Draft Paper in its current form appears to defer concrete policy decisions to the three-stage process, which will be carried out in parallel. This limits the scope within which relevant stakeholders can provide substantial commentary on the Draft Paper.
- 1.10. We are encouraged by the number of proposals set out in the Draft Paper and the progressive steps taken by the DCDT to advance the information communication technology (**ICT**) sector. Accordingly, we have prepared these submissions to highlight provisions within the Draft Paper that are of concern to us, together with our corresponding recommendations.
- 1.11. We also wish to draw your attention to Google's precious submissions in 2020 and 2023 respectively which provide substantive proposals on the policy direction. These should be considered by the DCDT and the Independent Communications Authority of South Africa (**ICASA**) as they continue their work under this policy.

2. **General Comments**

- 2.1. As an introduction to our submission, there are specific aspects of the Draft Paper that we wish to provide an overview on before delving into the details of our concerns and proposed recommendations. These include:
 - 2.1.1. the absence of clear and comprehensive definitions, particularly in relation to which AAVMS services and content should be regulated and how;
 - 2.1.2. the fee obligations *vis-a-vis* the licensing regime and local content obligations; and
 - 2.1.3. the obligations assigned to Video-Sharing Platforms (**VSPs**) and Very Large Online Platforms (**VLOPs**).
- 2.2. We note from the Draft Paper that the definitions to be reviewed and amended will be determined following research and consideration by ICASA during the First Stage of the three-stage process. In our view, it would have been helpful if the DCDT had expressly

identified, even on a limited basis, specific terms that are intended to be reviewed and amended, together with the corresponding proposed working definitions.

- 2.3. Google recognizes that licensing inherently involves the payment of fees. However, there is a current risk of duplication, as obligations to pay licensing fees may overlap with fees already payable under existing legislation, such as the Films and Publications Act, 1996, which covers activities like the distribution of online content. Furthermore, the DCDT proposes the introduction of an additional fee where the local content quota is not, or cannot, be achieved. The Draft Paper does not adequately address the position of platforms that rely on user-generated content or those that provide access to other over-the-top (**OTT**) services. In such cases, it may be impracticable to comply with the local content quotas, resulting in these platforms being unfairly subjected to further fee obligations. This creates a risk of arbitrary and potentially unjustified financial burdens on certain service providers.
- 2.4. In addition to the potential for duplication of fee contributions, there is also a risk of overlapping responsibilities and powers among the various regulatory enforcement bodies, as well as with the establishment of a new ombudsman.

3. **Summary of issues**

- 3.1. We have identified issues of particular concern and in respect of which we make certain recommendations. These include:
 - 3.1.1. Definition of terms;
 - 3.1.2. The establishment of an ombudsman;
 - 3.1.3. Platform definition and obligations;
 - 3.1.4. Imposition of fees on OTT services;
 - 3.1.5. Local Content; and
 - 3.1.6. Foreign Ownership

4. **Issue 1: Definition of terms**

4.1. Section 5.1 of the Draft Paper

4.1.1. Overview

- 4.1.1.1. The Draft Paper provides that the definitions within legislation, such as the Electronic Communications Act, 2006 (**ECA**), will undergo review and amendment. This process aims to more accurately encompass and identify the AAVMS services and content that have recently been developed or are currently in development, and specify the regulatory measures applicable to them.
- 4.1.1.2. It is proposed in the Draft Paper that this will be done in the First Stage of the implementation of the policy.

4.1.2. Concerns

- 4.1.2.1. The broad manner within which the Draft Paper addresses the intended amendments to the definitions in the legislation.
- 4.1.2.2. It is recognized that the review of definition changes is scheduled to occur during the First Stage of the implementation of the policy. However, this approach offers limited assistance to relevant stakeholders, as it does not provide, at the very least, provisional working definitions or identify specific terms that will require amendment.
- 4.1.2.3. The DCDT itself acknowledges that “[t]erminology is helpful in assessing which services or content to regulate and how to regulate”. At this stage, however, the terminology used also influences the interpretation of the Draft Paper and the proposals it contains. As a result, stakeholders are left to infer whether the Draft Paper applies to them, given the broad definitions of AAVMS services and content, as well as the approach to their regulation.
- 4.1.3. Recommendations
 - 4.1.3.1. Previously, the DCDT has provided working definitions for audio and audiovisual media services, as well as online content (albeit that the term “content” was used rather than necessarily services). In this regard, we propose the reinstatement of working definitions or core elements of the definitions, along with an overview of specific terms that are proposed to be changed.

5. **Issue 2: Establishment of an ombudsman**

5.1. Section 5.3 of the Draft Paper

5.1.1. Overview

- 5.1.1.1. The Draft Paper proposes the establishment of an ombudsman for the regulation of online media services and as a means to facilitate accessible dispute resolution. The overarching theme is to streamline the dispute resolution process and adequately give effect to the interests of the public.
- 5.1.1.2. The ombudsman will address complaints about online harm in the form of mis- or disinformation as well as unsuitable content issues.
- 5.1.1.3. The ombudsman will take into account the existing codes of conduct within the sector and liaise with relevant regulatory and self-regulatory bodies to ensure that there is no duplication of regulatory functions and that any gaps concerning the regulation of AAVMS services and online content are effectively addressed. The framework and enforcement powers of the ombudsman will be shaped by existing regulatory bodies, including co-regulatory and self-regulatory bodies. These bodies will be invited to submit proposals, which will be reviewed by the DCDT and will contribute to the overall design of the proposed approach to establish an ombudsman.

5.1.2. Concerns

- 5.1.2.1. While the proposal aims to avoid duplication, the creation of an ombudsman with powers that are similar to those that are already currently exercised by multiple regulatory and self-regulatory bodies may inadvertently lead to overlapping jurisdictions. This could result in confusion for stakeholders, inconsistent decision-making, and increased administrative burdens. The proposal does not provide clear mechanisms for delineating responsibilities or resolving conflicts between the ombudsman and existing bodies.
- 5.1.2.2. The proposal lacks specificity regarding the precise powers, remit, and limitations of the ombudsman. Without clear definitions, there is a risk that the ombudsman's authority could encroach upon or undermine the established roles of sector-specific regulators, leading to uncertainty and potential legal challenges.
- 5.1.2.3. The proposal asserts that the ombudsman will address gaps in regulation, but it does not identify what these gaps are or provide evidence that existing bodies are failing to address them. Without a clear needs assessment, the creation of a new ombudsman may be unnecessary and could divert resources from strengthening existing frameworks.
- 5.1.2.4. Moreover, the proposal does not set out robust mechanisms for holding the ombudsman accountable or for reviewing the effectiveness of the new framework. There is a risk that the ombudsman could operate with insufficient oversight, leading to issues of transparency and public trust.

5.1.3. Recommendations

- 5.1.3.1. To avoid confusion and overlap, the proposal should clearly define the ombudsman's powers, remit, and limitations. This includes specifying the areas of jurisdiction, the decision-making process, and how the ombudsman will interact with existing regulatory bodies. Clear provisions on the above will help prevent jurisdictional conflicts and ensure consistent regulatory practices.
- 5.1.3.2. The DCDT should develop clear mechanisms for holding the ombudsman accountable and for reviewing the effectiveness of the new framework. This could include regular audits, performance reviews, and transparent reporting requirements. Robust oversight will help maintain public trust and ensure that the ombudsman operates effectively and fairly.

6. **Issue 3: Platform definition and obligations**

6.1. Section 5.5.3 of the Draft Paper

6.1.1. Overview

6.1.1.1. “Platform definition and obligations” is listed as one of the material issues that needs to be addressed by the contemplated legislative changes. The Draft Paper lists the most likely obligations that will be imposed on VSPs and VLOPs.

6.1.1.2. Whilst Google is in agreement with most of the obligations, Google has concerns regarding the following obligations:

“establishing and operating systems allowing users of video-sharing platforms to rate the content”

“providing for effective media literacy measures and tools and raising users’ awareness of these measures and tools”

6.1.2. Concerns

6.1.2.1. These two obligations are unclear and may create unintended obligations.

6.1.2.2. As regards the rating of content, it is unclear whether it is intended for objectionable content to also be rated instead of flagged/reported.

6.1.2.3. The obligation for the implementation of effective media literacy measures, tools and raising users’ awareness of these tools and measures, does not set out what is envisaged through “effective media literacy measures” and how the DCDT will measure whether the measures and tools are effective. This could place an extreme burden on VSPs and VLOPs.

6.1.3. Recommendations

6.1.3.1. We propose that the DCDT amend the content rating obligation to provide clarity on the type of content that can be rated (i.e. limiting it to legal content). And also provide clarity on the purpose for content rating.

6.1.3.2. The development of precise definitions of harmful content is essential.

6.1.3.3. Express support for global best practices involving notice and takedown as opposed to strict (or other) liability of user-generated content.

6.1.3.4. In addition, examples of effective media literacy measures and tools need to be provided. The possible burden of the obligation on VSPs and VLOPs should also be considered.

7. Issue 4: Imposition of fees on OTT services

7.1. Section 5.5 of the Draft Paper

7.1.1. Overview

7.1.1.1. The Draft Paper makes reference to the perceived lack of parity between the treatment of licensees, specifically broadcasting licensees, and the treatment of OTTs as it pertains to fiscal contributions. Market players

and regulators are concerned that OTTs that provide services from outside the country are not contributing any revenue to the fiscus.

- 7.1.1.2. The Draft Paper notes that an assessment of fees to be applied, if any, will be carried out in the First Stage.

7.1.2. Concerns

- 7.1.2.1. The deferral of this to the First Stage is unfortunate. The issue of fees could have the opposite effect and deter foreign investment rather than facilitate and promote foreign direct investment.
- 7.1.2.2. It would be helpful to understand how the fees will be applied and whether the fees contemplated will be consolidated with other statutory fees such as those levied in terms of the Film and Publication Act, 1996, or registration fees for licences or whether these fees will be an additional charge to existing fees or levies.
- 7.1.2.3. It is also unclear whether the fees to be paid will also apply to platforms that enable easy and streamlined access to other OTT services in circumstances where these third-party OTT services will likely be expected to pay fees. An example of this is Google TV.

7.1.3. Recommendations

- 7.1.3.1. The final white paper should, to the extent feasible, provide an overview and address the different fees that are already payable and whether there is an intention to consolidate these into one overarching fee.
- 7.1.3.2. It is also recommended that the final white paper expressly address OTT service providers that provide access to other OTT services and whether a fee is to be payable and against which objective, measurable criteria such fees will be defined.

8. **Issue 5: Local content**

8.1. Section 5.5.6 as read with 5.5.10 of the Draft Paper

8.1.1. Overview

- 8.1.1.1. There are concerns that OTTs (and on-demand content services) do not have any local content obligations which are currently imposed on broadcasting licensees.
- 8.1.1.2. The intention is to review the minimum percentage of local content that ought to be broadcasted, and to the extent that the local content percentage cannot be met, that the licensee choose to pay a specified sum of money or minimum percentage of gross revenue to the Digital Development Fund.

8.1.2. Concerns

- 8.1.2.1. The contemplated approach is inflexible to the fact that consumer preferences often determine what is made available on global online platforms or the commercial arrangements that will need to be entered

into by global online platforms in order to meet the local content threshold.

8.1.2.2. Whilst it is appreciated that the nature of the service has been considered, this falls short in that it does not take into consideration OTT service providers who are not in control of the specific content that is provided (as that would fall within the domain of other third-party OTT services).

8.1.2.3. The proposal in respect of a payment of gross revenue should also be more specific. It is unclear whether the gross revenue is the gross revenue of the parent company (which is based abroad) or a related subsidiary. Additionally clarity is needed on what services will be used to calculate the gross revenue.

8.1.2.4. One of the Google Products, Google TV is not in control of the content that third-party OTT providers have available and the result is that it may not reach the minimum quota and will be subjected to contributing to the Digital Development Fund even if the content is beyond its control.

8.1.3. Recommendations

8.1.3.1. It is also recommended that the final white paper expressly address OTT service providers that provide access to other OTT services and whether there will be a requirement to meet the local content obligations or make a contribution to the Digital Development Fund.

8.1.3.2. Consider flexible, proportionate contribution models allowing for alternative support for local content, e.g. showcasing and training along with exemptions for foreign or niche platforms.

9. Issue 6: Foreign Ownership

9.1. Section 5.6 of the Draft Paper

9.1.1. Overview

9.1.1.1. As highlighted by the DCDT, audience diversity and plurality of ownership are key principles underpinning the policy and legislative framework of South Africa's broadcasting industry.

9.1.1.2. The Draft Paper proposes that foreign ownership in respect of linear individual audio-visual content services (broadcasting services) will increase from 20% to a maximum of 49%.

9.1.2. Concerns

9.1.2.1. The current proposal does not consider circumstances where an entity offers both linear and non-linear audio content services .

9.1.3. Recommendations

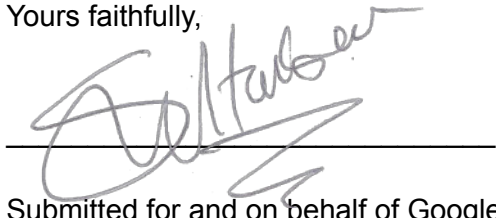
9.1.3.1. It is proposed that the DCDT clarifies the position in respect of entities that provide linear and non-linear audio content services, and whether or

not ownership requirements apply to non-linear audio content services and the reasons.

10. **Conclusion**

- 10.1. Google commends the DCDT's initiative to keep up with the evolving nature of the ICT sector and the sector's apparent synergy with the broadcasting sector to align with established and successful practices internationally. That said, the current Draft Paper defers concrete policy decisions to a later stage (through the three-staged implementation process) which may not be available for public comment.
- 10.2. Google remains committed to engaging with the DCDT as a partner in developing an effective policy for AAVMS and online content which will ultimately influence legislative reforms. Google remains available to engage further with the DCDT and relevant stakeholders on the issues and recommendations highlighted in these submissions.

Yours faithfully,

A handwritten signature in dark ink, appearing to read "S. T. S.", is written over a solid horizontal line.

Submitted for and on behalf of Google