

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA'S
COMMENTS ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL
MEDIA SERVICES AND ONLINE SAFETY**

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1. INTRODUCTION

The Independent Communications Authority of South Africa (the “**Authority**” or “**ICASA**”) appreciates the opportunity to comment on the Draft White Paper on Audio and Audiovisual Media Services and Online Safety Policy (“**the Draft White Paper**”).¹

2. BACKGROUND

- 2.1 In March 2018, the Authority received the Draft White Paper on the Audiovisual and Digital Content for South Africa of 2017,² to which ICASA made comments in January 2019. Thereafter, the Department of Communications and Digital Technologies (“**DCDT**”) published the first draft white paper for public comments on 09 October 2020, and the Authority provided its comments in February 2021.
- 2.2 The Authority participated in the public hearings held by the DCDT on the first draft white paper on 14 June 2021. The Authority was further invited to make further written submissions to DCDT on the first draft white paper following the public hearings. The Authority submitted its written representations on 30 July 2021.
- 2.3 Further, on 14 December 2023, the Authority provided written comments on the second draft white Paper published by the DCDT on 31 July 2023.
- 2.4 Now therefore, the Authority has considered the third Draft White Paper published on 11 July 2025. The Authority supports the underlying principles in the Draft White Paper more specifically the focus on public interest and retaining the three tiers of broadcasting, our written comments are in paragraph 4 below.

¹ Pages 2 to 68 of Government *Gazette* No. 52972 of 11 July 2025.

² The first draft white paper.

3. MANDATE OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

3.1 ICASA's mandate is, *inter alia*, derived from:

The Constitution of the Republic of South Africa, 1996 –

- 3.1.1 Section 192 of the Constitution requires that national legislation must establish an independent authority to regulate broadcasting in the public interest, and to ensure fairness and a diversity of views broadly representing South African society. Emanating from the merger between the Independent Broadcasting Authority (IBA) and the South African Telecommunications Regulatory Authority (SATRA), ICASA was established as the new constitutional entity responsible for regulating broadcasting as well as electronic communications and postal services in the public interest.

Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act") –

- 3.1.2 Section 2 of the ICASA Act confirms that ICASA is an independent Authority that regulates broadcasting, electronic communications, and postal services in the public interest.

Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA") –

- 3.1.3 ICASA is the authority tasked with the implementation of the ECA and realising the objectives set out therein. The primary objects of the ECA include, amongst others, to promote and facilitate the convergence of telecommunications, broadcasting, information technologies, and other services. ICASA is further mandated to manage the radio frequency spectrum and issue licences for services (broadcasting, postal, and electronic communications) as well as license the use of radio frequency spectrum.

- 3.1.4 ICASA has concurrent regulatory oversight/jurisdiction with the Competition Commission of South Africa on competition matters in the sector in line with Chapter 10 of the ECA, read with section 4B(8)(b) of the ICASA Act. ICASA also has concurrent regulatory oversight with the National Consumer Commission on matters relating to consumer protection (section 4(3A) (b) of the ICASA Act, read together with section 97 of the Consumer Protection Act, 2008 (Act No 68 of 2008)).

Broadcasting Act, 1999 (Act No. 4 of 1999) –

- 3.1.5 The Broadcasting Act makes provision for the Minister to formulate and develop broadcasting policy that contributes to democracy, development of society, gender equality, nation building, provision of education, and strengthening of the spiritual and moral fibre of society. The Broadcasting Act also provides for the charter of the South African public broadcaster. ICASA is charged with, amongst others; monitoring compliance with the Broadcasting Act.
- 3.2 It is on this premise that the Authority provides its comments on the Draft White Paper published by the DCDT.

4. ICASA’S COMMENTS ON THE DRAFT WHITE PAPER

The Authority’s view on the roll-out stages

4.1 Stage one:

The creation of an ombud

- 4.1.1 The Authority proposes that the Draft White Paper should replace the term “ombudsman” with the gender-neutral terminology: ombud.
- 4.1.2 The Draft White Paper outlines three categories of AAVMS for licensing, registration, notification, or exemption: (a) broadcasting

services, (b) on-demand content services, and (c) video-sharing platform services. However, it states that these terms will be reassessed in the First Stage.

4.1.3 An ombud function for the regulation of online media services will also be considered during this initial stage. The role of the ombud is intended to bridge the gap between existing legislation and the rapid expansion of platforms and services that are currently unaddressed by the law or relevant regulatory bodies. Specifically, the ombud will handle complaints related to online harm, including misinformation and disinformation, and other content issues, such as material unsuitable for children, content that incites violence, or content that is racist and unacceptable, for which there is no straightforward or accessible avenue for resolution at present. The DCDT will invite existing entities to submit proposals regarding their suitability or adaptability. A formal invitation will be issued within 60 days of this Policy's publication.

4.1.4 The Authority supports the creation of an ombud and is confident that it can play an effective co-regulation role by having oversight over the ombud. The Authority (as the regulator) will work closely with the ombud to provide guidance to online service providers on their obligations, whether licensed or unlicensed, registered, notified, or exempted. Therefore, the necessary resources need to be considered to empower the Authority to perform such duties.

Proposed policy directions to ICASA to undertake research

4.1.5 The Authority understands that under stage one, the Authority will be expected to undertake investigations and inquiries into international best practices in relation to section 5 (elements of the new regulatory framework). The range of section 5 is quite extensive. Additionally, the DCDT will need to allocate the required funding to ICASA in order to support this research effort.

- 4.1.6 The Authority looks forward to engaging the Minister on the proposed elements of the new regulatory framework as prescribed in section 3 (5) (a) of the ECA.

ICASA to conduct an inquiry into amendments to its regulations

- 4.1.7 The length of time it takes the Authority to conclude an inquiry can vary greatly depending on the nature of the inquiry, the complexity of the investigation, staff capacity and whether the Authority is appointing an expert service provider to provide support in conducting the Inquiry.
- 4.1.8 The section 4B Inquiry process and indicative timelines include:
- 4.1.8.1 Publish a notice in the gazette and questionnaire or request for information for 45 working days.
 - 4.1.8.2 Publish on ICASA's website answers to questions of clarity within 10 days after 45 working days, if necessary.
 - 4.1.8.3 Hold one-on-one meetings with stakeholders, if necessary.
 - 4.1.8.4 Publish a discussion document (based on the responses to the questionnaire) in the gazette for public comment for 30 working days.
 - 4.1.8.5 Hold public hearings within 3 weeks after receipt of written representations on the discussion document.
 - 4.1.8.6 Publish a summary of the findings in the gazette within 90 days after the conclusion of the inquiry and findings document on ICASA's website.
- 4.1.9 The process outlined above in paragraphs 4.1.8.1 - 4.1.8.6 does not take into account the Authority's internal and supply chain management processes.
- 4.1.10 At this juncture, it is impractical to envisage that the Authority can undertake an inquiry between six and 12 months. Additional staff are needed to increase the Authority's staff capacity to complete the

inquiry within the proposed time. Further, depending on the nature of the inquiry, the Authority might need to appoint an expert service provider. Further, it will be difficult to meet the proposed timelines because of the Authority's underfunded situation, hence the need to bring into reality the hybrid self-funding model as the ultimate solution.

Amendments to the Electronic Communications Act, 2005 to remove ownership restrictions

- 4.1.11 The Authority notes that the definitions of various terms that already exist in the ECA, will also be considered during the review in stage one and there may be other provisions (apart from the ownership restrictions) that may require amendment in terms of the ECA. The Authority will be in a better position to advise on those provisions in the Draft White Paper that require legislative change in the ECA for proper implementation.

4.2 Stage two:

ICASA to develop new regulations

- 4.2.1 The outcome of the Authority's research and/or inquiry process (in stage one) will determine whether the Authority will be required to amend its regulations and/or whether there is a need for new regulations.
- 4.2.2 It is worth noting that the Authority has published over 152 final regulations listed under 6 over-arching categories, which might require amendments as a result of stage one. The 7 categories include the final regulation under: Broadcasting (i.e., Sports Broadcasting Regulations, and Must Carry Regulations etc.), Consumer Protection (i.e., End-User and Subscriber service Charter Regulations, and Code for Persons with Disabilities Regulations), Electronic Communications, Licensing (i.e., Standard Terms and

Conditions for Individual Licences, 2010 as amended), and Radio Frequency Spectrum. These said final regulations are published by the Authority in its endeavour to carry out its mandate as highlighted in paragraph 3 of this document closely and will most likely have an impact on the provision of AAVMS.

- 4.2.3 Further, the DCDT would have to establish a special task team (with relevant industry players, which includes the Authority) in order to undertake research on whether “*a new Bill is required to harmonise and rationalise any duplication in regulatory entities, policies, laws*”.³

4.3 **Stage 3:**

As noted above, the DCDT may need to establish a special task team for the successful implementation of stage 3, which requires the drafting of a bill (where necessary) in order to address the gaps in the law and undertake a socio-economic impact assessment.

4.4 **Specific Comments**

Ad: Clarification on Paragraph 4.12

- 4.4.1 Paragraph 4.12 indicates that ICASA reports to the Minister. However, it’s important to note that ICASA is a Chapter 9 institution is accountable to Parliament. While the Minister is involved in the appointment and performance management of ICASA councillors, this does not change the fact that ICASA's primary reporting channel is to Parliament, not the Minister.

Ad: Clarification on Paragraph 5.5.7

- 4.4.2 The Authority has observed that the Draft White Paper raises concern regarding the respective roles of the Commission and the

³ Page 53.

Authority in respect to sports broadcasting rights. The Authority is of the view that the proposed role of the Commission in respect of sports broadcasting rights will have to be considered during the research conducted in stage one.

Ad: Correction on Paragraph 5.5.9

- 4.4.3 Paragraph 5.5.9 erroneously states that code of conduct responsible for the protection of children and other consumers is administered by the Broadcasting Complaints Commission of South Africa (BCCSA) only. Paragraph 5.5.9 also states that the code of conduct is exclusively applicable to the members of the National Association of Broadcasters (NAB). It should be noted that it is not compulsory for broadcasters to become members of the NAB. The Authority is responsible for developing a code of conduct and monitoring compliance by broadcasters that are not members of the NAB. Therefore, paragraph 5.5.9 should be revised to reflect as such.
- 4.4.4 When examining the institutional frameworks, it will be important to explore how we can rationalise the regulatory bodies to better support the AAVMS sector.

Ad: Ownership and control of broadcasting licensees

- 4.4.5 The Draft White Paper mentions lessons from the United Kingdom, the United States of America, New Zealand, and Australia.⁴ These lessons are summarised and not referenced, and therefore, it is a challenge to engage with the lessons provided in order to provide input.
- 4.4.6 The White Paper on Broadcasting Policy, 1998, seeks to ensure that the broadcasting system meets the needs of South Africa, it is imperative that effective ownership and control of our broadcasting system remain in the hands of South African citizens. Although the

⁴ Pages 50 – 51.

increase may be necessary, the Draft White Paper does not provide the rationale, and the cost-benefit of the decision in South Africa on the increase from 20% to 49%.

Ad: Local content obligations

- 4.4.7 The Authority supports the retention of local content obligations that are in line with public interest considerations.
- 4.4.8 The Draft White Paper states that “the current approach of specifying a minimum percentage of total broadcasting time per TV channel will be revised by ICASA so that this is measured across the total bouquet of channels offered by a broadcasting service licensee”. The Authority submits that measuring content across the total bouquet is easily applicable to subscription broadcasting services. The Authority is of the view that one cannot measure local content across the total bouquet for the SABC because its stations have different public obligations, such as genre and language.

5. CONCLUSION

- 5.1 The Draft White Paper is a comprehensive and forward-thinking policy framework that positions South Africa well for regulating digital content and platforms. With enhanced clarity on implementation, enforcement, and institutional coordination, it can set an example in navigating the balance between freedom and responsibility in the digital age.
- 5.2 Nonetheless, the Authority is concerned about the length of time it has taken the DCDT to conclude this process. The DCDT’s prompt attention in finalising the Draft White Paper will be greatly appreciated as this will bring certainty to the industry, and it will ensure that the policy will not be overtaken by events.

5.3 ICASA trusts that the DCDT will consider its inputs on the Draft White Paper. We are available to respond to any that may arise from this submission.