

MOTION PICTURE ASSOCIATION EMEA



Brussels, 26 September 2025

To: Ms Nonkqubela Thathakahle Jordan-Dyani
The Director-General
Department of Communications and Digital Technologies
C/O DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL
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By email: fwpsa2025@dcdt.gov.za

Dear Ms Jordan-Dyani,

MOTION PICTURE ASSOCIATION (MPA) SUBMISSION ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL MEDIA SERVICES AND ONLINE SAFETY

We thank you, and the Honorable Minister Solly Malatsi, for inviting stakeholder comments on the Draft White Paper on Audio and Audiovisual Content Services, published on 11 July 2025 (**Revised Draft White Paper**) by the Department of Communications and Digital Technologies (DCDT).

The Motion Picture Association is a trade association representing seven international producers and distributors of film and television content and serves as the global voice and advocate of the international film, television, and streaming industry. Our members are Amazon Studios LLC, Netflix Studios LLC, Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

We note that the Revised Draft White Paper is focused on establishing a roadmap of how the DCDT intends on finalizing its policy positions and how implementation thereof will commence in the two years following the publication of the revised paper as part of a three-stage process. It appears that the only finalized policy positions relate to the relaxation of cross-media and foreign ownership restrictions on ownership and control of local broadcasters.

MPA's prior submissions on previous versions of the Draft White Paper, filed in January 2021 and October 2023 respectively, were focused on key issues identified by our members as **priority items that require further attention to support the DCDT's stated policy objective of**

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establishing an enabling policy environment for increased foreign direct investment¹. As definitive policy positions were not adopted on these issues in the Revised Draft White Paper, we do not intend on repeating our earlier submissions in this response, but will rather summarize our views at a high-level, and we are eager to participate in future consultative rounds once the DCDT's envisaged three-stage process begins. Should DCDT wish to receive more information from us during Stage One when further research and benchmarking against international best practices will be undertaken, we stand ready to assist and collaborate.

In a nutshell, our response respectfully submits that:

- New obligations for On-Demand Content Services could stifle FDI and hurt the competitiveness of South Africa's audiovisual industry.
- A no-fault site blocking mechanism is of utmost importance to combat online piracy, which is an existential threat to the sector.

Enabling Regulatory Environment for On-Demand Content Services (OCS)

On-Demand Content Services (OCS) should not be encumbered with the same regulatory restrictions that have traditionally been applied to broadcasters, pay-tv, or theatrical distribution channels, as OCS do not require access to public resources such as spectrum and rights of way. Additionally, given their on-demand nature, content consumption in OCS remains at the discretion of the viewer. Furthermore, OCS operate in an extremely competitive and fast-evolving environment. The deployment of a wide array of restrictions –including local content quotas, investment obligations and network usage fees, among others– may unintendedly lead to highly negative consequences, including stifled foreign direct investments, restricted viewer access to legal offerings, and as a result, a worsened online piracy crisis.

We are encouraged by the DCDT's expressed willingness to seriously consider international best practices regarding the regulation of OCS. For instance, the Revised Draft White Paper mentions the United Kingdom, the European Union and Australia as examples. We support this approach as this will ensure that South Africa is competitive with other jurisdictions to position the local audio-visual industry (**AV**) for further growth. Below, we highlight the approach adopted by most jurisdictions in relation to: (i) licensing and (ii) contributions to local content.

Licensing/Registration and Notifications

We submit that in the majority of jurisdictions where our members operate, OCS are not required to obtain any form of authorization before offering their services to local audiences. This is because the conditions that justified the licensing of traditional operators, particularly the use of radio frequency spectrum, do not apply to OCS. Furthermore, the most significant OCS are already registered with the Film and Publication Board in compliance with the Films and Publications Act (FPA). It is therefore unclear what purpose additional requirements in this regard would serve. We are encouraged by the acknowledgment made in the revised Draft White Paper that OCS require a different regulatory approach within a licensing framework vis-à-vis broadcasters².

¹ This policy objective was restated in Para 12 of the Revised Draft White Paper.

² Paras 5.2.3 and 5.2.6 of the revised Draft White Paper.

Contributions to Local Content

Here, too, financial contributions to film funds are not the norm in the majority of jurisdictions where our members provide services; such requirements are especially rare outside of Europe. In this regard, we note that leading production destinations such as the United Kingdom and Ireland have recently [ruled out imposing](#) financial contributions on OCS for a variety of reasons, including concerns for consumer welfare, chilling of investor appetite and doubts about the efficacy of such regulatory measures to promote investments in local content. In addition, when such financial contributions are implemented, an exemption should be provided for niche services and thematic services (i.e., services that, due to their nature or theme, are unable to contribute realistically to the production of local content).

Production Incentives

While measures such as financial contributions are not the norm, what is far more common are production incentives as a policy lever to stimulate local production industries. Production incentives lower the cost of production and enable producers who undertake qualifying expenditure to receive a contribution to that investment. According to Olsberg SPI's [Global Incentives Index](#), production incentives encouraging inward investment have been used in over 100 countries (with many countries offering region-specific policies) to *"attract high-value inward investment, strengthen local production sectors and build skills, employment and infrastructure in a future-facing global industry with ongoing growth prospects"*³. In addition to inward investment incentive programs, some territories also have domestic incentive programs designed to increase the value and volume of locally produced content. There is little doubt that the Foreign Film and Television Production and Post-Production Incentive offered by the Department of Trade, Industry and Competition (DTIC) has done wonders to attract foreign film and television productions and post-productions that have contributed towards employment creation, local procurement and enhanced the international profile of the South African film and television industry while increasing the country's creative and technical skills base.

Overall, production incentives are more than just a boost for the audiovisual sector. They also generate substantial spill-over effects across the broader economy. This has been well documented by various reports, including two recent studies:

- A report for the Norwegian Ministry of Culture & Equality found that the combined return on investment (ROI)⁴ was 4.7. This means that for every Norwegian Krone the Norwegian government invested, they saw a return of 4.7 NOK into the audiovisual sector and the wider economy⁵;
- Similarly, a 2024 report for the Icelandic Ministry of Culture calculated the combined ROI of the production incentive program at 6.8, demonstrating the positive effect of that production incentive for the whole economy⁶.

³ Global Incentives Index 2023, Oct 2023.

⁴ Return on Investment (ROI) is a ratio of the net cost of the incentive (total incentive net of direct tax receipts) with the Gross Value Added (GVA) impact effects. It is a measure of GVA return per NOK invested.

⁵ [Final Report to Norwegian Ministry of Culture & Equality by Olsberg SPI with Proba Research, Feb 2023](#)

⁶ [Final Report to Iceland's Ministry of Culture and Business Affairs by Olsberg SPI, April 2024](#)

Notwithstanding the potential benefits, the administration of the DTIC film incentive has come under challenges which have endured for several years. We look forward to these challenges being resolved to ensure that South Africa continues to be well-positioned to be the recipient of inward investment into the local audiovisual industry.

The Proposed Creation of a New Ombudsman for the Regulation of Online Media

Regarding the establishment of an ombudsman designed to act as a dispute resolution mechanism, we respectfully submit that there is not a clear regulatory need which justifies the creation of a new authority. In a sector like the audiovisual industry, where ICASA, the FPB and the DCDT already act as the institutional bodies of reference, it is our view that no clear gaps exist “between current legislation and the exponential growth in platforms and services”⁷ which justify altering the existing regulatory balance.

Combatting Online Content Piracy

Content theft and the illegal distribution thereof is perhaps the single biggest threat to the viability of a thriving film, television and streaming industry – depriving rightsholders, producers, talent, and investors from rightful earnings; and governments from billions of rands of taxable income every year. External sources estimate that piracy costs the South African creative sector about R 5.8 billion annually⁸. And instead, these illegal activities can often fund organized crime as many studies demonstrate that content piracy is actively practiced by organized criminal networks⁹. Moreover, content theft poses significant risks for consumers through malware applications being downloaded with the pirated content, exposing them to risks such as identity theft, credit card fraud, cyber-attacks, etc.¹⁰ Studies around the world show that there is a 57 per cent chance that an audiovisual piracy app will cause malware infection¹¹. By contrast, a consumer who is educated on online piracy can reduce the risk of infection of used devices by 31 per cent¹². It is in everyone’s best interests that an effective and efficient mechanism exists in law which can be relied upon to prevent the abuse of ICT infrastructure by pirate site operators, and to **block** user access to websites that are primarily designed to infringe on intellectual property rights or pose risks of consumer harms.

One of the biggest enforcement challenges that governments and rightsholders face when attempting to clamp down on structurally infringing websites, is that these services are typically located in foreign jurisdictions and the identities and physical locations of the operators are not determinable. In South Africa, it is not currently possible to take effective action against non-domestic operators of pirate sites that locate their services in other countries while targeting South African consumers. This is the reason why the notorious infringing website, The Pirate Bay,

⁷ Para 5.3.

⁸ See mybroadband.co.za

⁹ See Europol's Internet Organised Crime Threat Assessment (IOCTA) 2024, [here](#). See INTERPOL's Project I-SOP, [here](#). See Royal United Services Institute (RUSI): "Taking the Profit Out of Intellectual Property Crime: Piracy and Organised Crime, [here](#)

¹⁰ [Digital Citizens Alliance - Piracy Subscription Services Drive Credit Card Fraud and Other Harms to Consumers, New Digital Citizens Alliance Investigation and Survey Finds](#)

¹¹ See Paul A. Watters, Audiovisual Piracy Cyber Risk for European Consumers, September 19, 2022, [here](#); and see also Paul A. Watters, Consumer Risk from Piracy in the Philippines, 8 November 2022, [here](#), Paul A. Watters, Piracy Malware Nexus in India, 10 January 2024, [here](#).

¹² See Paul A. Watters, Time to Compromise, December 2021, [here](#)

remains accessible to South African consumers today, even though user access thereto has been blocked by many countries around the world.

The international community has moved towards the implementation of **statutory no-fault site blocking remedies** to foster a collaborative environment in which rightsholders can work with Internet Service Providers (ISPs) and other internet intermediaries to block user access or divert internet traffic away from websites that are clearly designed to structurally infringe intellectual property rights and/or cause consumer harm.

In our view, the implementation of a balanced site blocking mechanism would elevate enforcement prospects and allay concerns for investors, content producers and owners, and be a major positive step taken by South Africa in the global fight against content piracy. In our experience, jurisdictions where rightsholders can adequately protect their intellectual property assets against unauthorized distribution and other infringements, are more attractive for high-level investments to be made into major content production and distribution projects. DCDT's important policy objective of establishing an enabling regulatory framework to invite new foreign direct investments would be well supported if it were to introduce adequate statutory measures to combat content piracy.

We commend the DCDT for recognizing the need for a “streamlined and fast track process for removal and site blocking” in the previous version of the Draft White Paper¹³. **We recommend that this issue again be expressly articulated** in the Revised Draft White Paper and escalated to an urgent priority item that the DCDT can work towards achieving in Stage One of the processes to follow.

At least 60 countries around the world have provisions in law which enable site blocking¹⁴. In South Africa, this could be achieved by updating the Electronic Communications and Transactions Act, 2002 (ECTA), which already contains notice and takedown provisions (for specific content – it does not enable website blocking) and ISP safe harbor provisions. As site blocking seeks to prevent the abuse of existing ICT infrastructure to infringe intellectual property rights and pose risks for consumers, DCDT has the legislative oversight mandate to introduce a site blocking provision into law. A model language for a site blocking provision that is concise, balanced, clear and technologically neutral is codified in Article 8.3 of the EU Copyright Directive. 18 countries in Europe and many other countries around the world have adopted legislative provisions inspired by or modelled on this section, to establish a no-fault injunctive site-blocking remedy as best practice to combat online content theft. This has proven to be highly effective in reducing consumer visits to pirate sites, and increasing access to legal services, while safeguarding investments, tax revenues, and intellectual property assets in the process.

The evidence shows that site blocking is effective both at reducing traffic to pirate websites and increasing the use of legitimate services. A site blocking order applicable to the main Internet Service Providers (“ISPs”) in a given country reduces traffic to the targeted piracy domains.

¹³ Para 38 of the Draft White Paper published on 31 July 2023.

¹⁴ In Africa, Kenya and Nigeria updated their laws in recent years to introduce site blocking measures.

For example, 53 piracy websites in the United Kingdom caused up to 95% drop in visits to the blocked sites¹⁵. Additionally, analysis in Australia, Portugal and the Republic of Korea found that visits to blocked sites dropped by between 60 per cent and 90 per cent.¹⁶ Site blocking also increases traffic to legitimate content sources among former users of blocked sites, as shown by research in Australia and the United Kingdom.¹⁷ In addition, in the United Kingdom, along with a decrease in the usage of pirate sites, blocks caused a 7 per cent to 12 per cent increase in the use of paid legal subscription streaming sites.¹⁸ It also caused an increase in new paid subscriptions.¹⁹ More recently, an article published in Harvard Business Review in February 2024 not only reasserted the positive results in UK in legal consumption increase due to site blocking, but also reported on similar findings in follow-up studies in Brazil and India.²⁰

In this context MPA highlights its written contribution published on WIPO's websites [here](#). MPA in particular highlighted the importance for legal systems to develop and implement best practices to secure strong protection of intellectual property rights (IPRs) while implementing safeguards and respecting fundamental principles such as due process, proportionality, transparency and the balancing of rights at stake.

¹⁵ See Brett Danaher et al., *The Effect of Piracy Website Blocking on Consumer Behavior*, MIS QUARTERLY 631, June 2020, at 637 (“We see that the November 2014 blocks [of 53 sites] were effective at reducing visits to blocked sites. Visits to blocked sites dropped by 88% from the three months before the blocks to the 3 months after.”); at 639 (referring to data from blocking waves in 2012 and 2013, “Visits to blocked sites drop by 80 to 95% across the various groups, indicating an effective block”, available [here](#)).

¹⁶ See, for example, *Motion Picture Association, Measuring the Effect of Piracy Website Blocking in Australia on Consumer Behavior*, January 2020, at 4 (referring to a December 2018 block, “Average visitation to blocked sites declined sharply for the treatment group, with visitation to this group of sites was [sic] down 61% overall from the pre-period to the post-period.”), available [here](#); INCOPRO, *Site Blocking Efficacy – Key Findings: Australia* (report prepared for Australian Screen Association, July 2018), at 2 (“Site blocking in Australia has resulted in an overall usage reduction of 68.7% to blocked sites when comparing usage recorded in April 2018 to before blocking took effect. Usage has decreased for each blocking wave implemented in the country.”), available [here](#); Nigel Cory, *A Decade After SOPA/PIPA, It's Time to Revisit Website Blocking*, INFORMATION TECHNOLOGY & INNOVATION FOUNDATION, January 2022, at 9, Fig. 2, available [here](#), citing INCOPRO, *Site Blocking Efficacy in Portugal: September 2015–October 2016* (industry research report), May 2017, at 2 (“The findings in this report show that overall the blocks have had a positive impact, reducing the usage in Portugal of the websites targeted by the blocking orders in Portugal by 69.7%.”), available [here](#); Motion Picture Association, *MPA Study on Site Blocking Impact in South Korea: 2016*, at 11 (“The Level 1 impact was clear: visits to blocked sites had declined on average 90% as of three months after a block (97% after Wave 1, 93% after Wave 2 and 79% after Wave 3),”), available [here](#).

¹⁷ See Danaher et al., *supra* note 6, at 646 (“We observe that [the 2014 blocking of 53 major piracy sites] causally increased usage of paid legal streaming sites”); Australia Blocking Summary, *supra* note 7, at 1 (“For users of sites targeted for blocking, traffic to legal content viewing sites increased by 5% in the post-period following the blocking.”).

¹⁸ See Danaher, *supra* note 6, at 633 (“We find that the 2013 blocking of 19 major video piracy sites and the 2014 blocking of 53 major video piracy sites caused meaningful decreases in total piracy as well as a 7% to 12% increase in usage of paid legal streaming sites among users affected by the blocks.”).

¹⁹ See Danaher, *supra* note 6, at 631 (“We show that blocking 53 sites in 2014...caused an increase in new paid subscriptions.”).

²⁰ See Brett Danaher, Michael D. Smith, & Rahul Telang, *Pro Sports Has a Piracy Problem*, HARV. BUS. REV., Feb. 14, 2024, (“The piracy-tracking firm VFT estimates that 17 million viewers watched [the February 11] Super Bowl on illegal pirate streams.”), (“What we found is that the results from website blocking in India and Brazil are consistent with what happened in the UK: The blocking caused a decrease in piracy and an increase in legal sales.”), available [here](#).

Conclusion

In conclusion, we hope you find this submission helpful. MPA offers its full assistance and cooperation for the further consultative processes that are to follow. We would gladly engage on any issues that DCDT would like to receive more information on. We are well placed to provide information and research materials on international best practices, including as it relates to regulatory frameworks for OCS in other prominent jurisdictions, site blocking, the protection of intellectual property rights and combatting content piracy in the online environment.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Emilie Anthonis', with a long horizontal flourish extending to the left.**Emilie Anthonis**

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