



OUTA

ORGANISATION UNDOING TAX ABUSE

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OUTA SUBMISSION ON THE DRAFT WHITE PAPER ON AUDIO AND AUDIOVISUAL CONTENT SERVICES

**POLICY FRAMEWORK: A NEW VISION FOR
SOUTH AFRICA 2023**

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Executive Summary

The purpose of this submission to the Department of Communications and Digital Technologies is to comment on the Draft White Paper on Audio and Audiovisual Content Services Policy. Together with this, it aims towards ensuring that the abuse of tax monies and irrational policy introduction is avoided and that sound policy is formulated. On 31 July 2023 a [draft](#) policy framework for ‘audio and audio-visual content services’ was gazetted for comment. Among other things, it proposes:

- a new licensing system
- repealing the ‘enabling provisions in law for must-carry regulation’
- a review of subscription service advertising revenue share to ensure the sustainability and viability of free-to-air services, and
- an end to exclusive transmission agreements for free-to-air public broadcasting service offerings.

This submission first provides a brief sketch of the background against which this White Paper is being presented: the failure of the SABC to be a quality service provider, the failure of the Department of Communications and Digital Technologies (formerly Department of Telecommunications and Postal Services, and Department of Communications prior to that) to enact its own strategies and vision towards ensuring a capable Fourth Industrial Revolution Task Force, and finally the lack in innovative and digital content platforms and programmes essentially giving the competitors – Netflix, ShowMax and others – a massive stake in the content service provider market. OUTA is concerned that the AAVCS contradicts its own mandate insofar as it seeks to require Class or Individual licenses for on-demand content services by an audio and audiovisual content services provider. This will result in unnecessary cost implications for the end-user: the citizens of South Africa.

The following legislation, policies and strategies are applicable:

1. State Information Technology Agency Act, 1998 (Act No. 88 of 1998)
2. Broadcasting digital migration policy – Gazette Vol 519 – 8 September 2008 – No 31408 as part of the Electronic Communications Act 2005 (Act No 36 of 2005).
3. Electronic Communications Act 2005 (Act No 36 of 2005), as amended by (Act No 37 of 2007).

4. National Development Plan (NDP (2023)
5. National integrated ICT policy white paper (2016)
6. National e-Strategy and e-Government Strategy 2017)
7. ICT SMME Strategy (2017)

This submission will provide commentary section by section highlighting concerns and/or applauding aims at progress. This will be followed by a discussion on the strengths and weaknesses of the Draft White Paper coupled with a number of key recommendations.

Abbreviations

4IR	Fourth Industrial Revolution
5G	5th Generation Wireless Networks
AAVCS	Audio and Audiovisual Content Services
ACS	Audio Content Service
AM	Amplitude Modulation
ASO	Analogue Switch-Off
AU	African Union
AVMSD	Audiovisual Media Services Directive
BDMP	Broadcasting Digital Migration Policy (2008)
DAC	Department of Arts and Culture
DSAC	Department of Sports, Arts and Culture
DED	Department of Economic Development
DTI	Department of Trade and Industry
DoC	Department of Communications
DCDT	Department of Communications and Digital Technologies
DIRCO	Department of International Relations and Cooperation
DSBD	Department of Small Business Development

DTT	Digital Terrestrial Television
DTH	Direct-to-Home satellite
DTPS	Department of Telecommunications and Postal Services
ECA	Electronic Communication Act, 2005, as amended
ECTA	Electronic Communications and Transactions Act, 2002 as amended
ECNS	Electronic Communications Network Service
ECS	Electronic Communication Service
FM	Frequency Modulation
FPB	Film and Publications Board
GSM	Global System for Mobile Communications
HDTV	High-definition Television
IBA	Independent Broadcasting Authority
ICASA	Independent Communications Authority of South Africa
ICT	Information and Communications Technology
IDC	Industrial Development Corporation
IoT	Internet of Things
IP	Internet Protocol
IPTV	Internet Protocol Television
ISP	Internet service provider
ITU	International Telecommunication Union
LTE	Long -term evolution
MDDA	Media Development & Diversity Agency
MIL	Media and Information Literacy
NDP	National Development Plan 2030
NFVF	National Film and Video Foundation

NGO	Non -Governmental Organisation
NPC	National Planning Commission
OCS	On-demand Content Services
Ofcom	Office of Communications: The Independent Regulator in the UK
OTT	Over - the -top
SABC	South African Broadcasting Corporation
SADC	Southern African Development Community
SARS	South African Revenue Service
SMME	Small Medium and Micro Enterprises
SOE	State -owned Entity
STB	Set -top box
UK	United Kingdom
USA	United States of America
USAASA	Universal Services and Access Agency of South Africa
VOD	Video on Demand
VSPS	Video Sharing Platform Services

Introduction

The purpose of this submission to the Department of Communications and Digital Technologies is to comment on the Draft White Paper on Audio and Audiovisual Content Services Policy (AAVCS). Together with this, it aims towards ensuring that the abuse of tax monies and irrational policy introduction is avoided and that sound policy is formulated. Doing so will encourage practical and implementable solutions to regulate and manage a fast-evolving industry whilst maintaining the purpose of the South African Broadcast Commission (SABC) in order to share important information to the general public of South Africa.

The Department of Communications and Digital Technologies (DCDT) has indicated that this White Paper aims to put in place a new audio and audiovisual content services licensing framework. If one looks at the dire state of the SABC; the issues have not changed that much, in fact, they have limped along and worsened, although thankfully there have been some leadership changes. The White Paper seeks to level the playing field between traditional broadcasters and over-the-top on-demand service providers, and address the inability of the current legislation to adequately regulate modern and complex digital technology. The DCDT is targeting that Cabinet adopts the final White Paper on AAVCS by 31 March 2024.

The point of what we are witnessing with the move by SABC and the TV licences related to Netflix and other streaming services is truly the tip of the iceberg. It is evident that the SABC has been financially mismanaged and politically interfered with over the past decade. The SABC has not been successful in collecting TV licence fees, and in so doing, proposed in 2021 that the current TV licence model must be replaced by new household taxes which municipalities will collect¹. In its last annual report tabled in October, the SABC said it had collected R815m in TV licences but the “evasion rate” – uncollected TV licence fees – remained high at 81%². Failure to collect revenue on TV licences - which are registered and trackable - does not create confidence in the ability of municipalities to achieve it either. This is of special relevance in consideration of the current financial and management crises in which most South African municipalities find themselves. Netflix and other digital disruptive business models are also game changers and the SABC has been sleeping while its competitors got the upper hand with innovative solutions and novel service offerings. By failing to utilise the opportunities close at hand brought on by

¹<https://www.moneyweb.co.za/news/south-africa/compliant-tv-licence-holders-get-slap-in-the-face-from-sabc/>

²<https://www.iol.co.za/ios/news/tv-licence-threat-for-streaming-services-2b9ca0f7-5805-4be0-8b11-3627ca4455aa>

the Fourth Industrial Revolution (4IR), SABC and DCDT also struggle to manifest implementation of their own Digital Opportunities, SA Connect and National e-Strategy programmes.

It is noted that the AAVCS acknowledges that the 4IR has already begun disrupting society. It is argued that these changes will require policy interventions to ensure that the disruptions and changes will not reinforce current disparities of access in South Africa to ICT technologies and services, thereby widening the digital divide.

OUTA is concerned that the AAVCS contradicts its own mandate insofar as it seeks to require Class or Individual licenses for on-demand content services by an audio and audiovisual content services provider. This will result in cost implications for the end-user: the citizens of South Africa. South Africa's smartphone penetration was 187.4% in 2023³, while mobile users increased overall. In 2022, the total number of fixed broadband subscriptions decreased by 8.2%⁴ as more South Africans opted for wireless solutions or used the Internet on their mobile phones. Mobile phones are therefore the predominant method whereby most South Africans access the internet and on-demand content services. Increasing the cost of access of these devices, the platforms and compounded by the cost of mobile data, ordinary South Africans can ill afford this policy. SA ranks at number 135 out of 233 countries with the most expensive mobile data costing an average of \$2.20 per 1 GB⁵. In consideration also of the 2.2 million jobs lost due to Covid-19⁶ and the current unemployment rate of 32.9%⁷, the government really ought to consider how its policy will adversely affect the citizens in the larger ecosystem of policy implementation. Many South Africans have not yet recovered from the Covid-19 impact, and adding to the existing tax burden will only exacerbate matters, as South Africa is already a high-tax country⁸.

The public will be outraged about this new policy, or at best, apathetic. As stated in the DCDT Annual Performance Plan for 2019/2020, "It is [...] imperative that the country responds with a seamless and coordinated plan to leverage the benefits and mitigate challenges that come with the 4IR. [...] The establishment of the Presidential Commission on the 4IR therefore places South Africa in a position to seize the countless opportunities presented by the 4IR and manage the challenges of rapid advances in Information and Communication Technology". It therefore seems that instead of seizing the opportunities

³ <https://datareportal.com/reports/digital-2023-south-africa>

⁴ <https://www.icasa.org.za/uploads/files/State-of-the-ICT-Sector-in-South-Africa-2023-Report.pdf>

⁵ <https://www.itweb.co.za/content/P3gQ2MGAXBRvnRD1>

⁶ http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0038-2353202200030001

⁷ <https://www.statssa.gov.za/?p=16312>

⁸ <https://dailyinvestor.com/finance/30291/cyril-ramaphosas-government-destroying-south-africas-finances/>

for growth in the sector, the government is seizing opportunities to make more money to counter its dismal financial state which has deteriorated sharply in 2023, and thereby stifling growth.

Over the period of 2021/2022 financials the department achieved 91% of its annual targets. Shockingly, the DCDT incurred a total of UIFW of R215,468,000 for the period 2021/22.

The business models of many SOE's are an issue across South Africa. There are some SOE's that taxpayers are willing to assist with funding, such as SANRAL, as roads are an economic enabler. With the SABC, the argument exists that there is a public education mandate and the government needs to subsidize to some degree. The financial audit reports of the SABC also paint a concerning picture: its outcome was qualified, which means that the financial statements contain material misstatements in specific amounts, or there is insufficient evidence for the Auditor General to conclude that specific amounts included in the financial statements are not materially misstated. The SABC also declared an UIFW expenditure amount of R235 027 000-00. UIFW refers to Unauthorised, Irregular, Fruitless and Wasteful Expenditure. Put into the perspective of the cost of data and mobile phones: money possibly wasted by the SABC could have resulted in approximately 6.3 million GB of data that could have been handed out for free⁹ to citizens who might have used this to become educated or start their own businesses, and 130 991 Huawei P8 Lite¹⁰ models to the unemployed PER YEAR. Therefore, the same entity that wishes to compete in the 4IR simultaneously seeks to both burden its citizens and indulge in UIFW expenditure. One would assume an entity expecting more from its citizens would at least take more accountability and provide a better product to its users.

Conversely, different countries have chosen different levels to which they cross-subsidize. Those countries whose public broadcasters only get a little tax money have business models where the revenue is mostly from advertising and somewhat from licences. According to a survey conducted by Deloitte in 2022, *Digital media trends*, “[the] use of subscription video-on-demand (SVOD) streaming services increased over last year from 82% to 89%, with the average respondent subscribing to four services [...] The survey revealed increases in streaming music and gaming as well. Only pay TV showed a decrease, and the shift has many state and local governments scrambling to make up lost tax revenue”¹¹. However, even in America, many states do struggle to collect this type of tax revenue compared with tax revenue collected from traditional cable TV providers and users. The Deloitte study further notes that: “Streaming

⁹ 1 USD = ZAR 15.46 and cost of 1GB at USD 4.30 = ZAR 66.48

¹⁰ Huawei P8 Lite is available from R3 199, <https://www.youthvillage.co.za/2016/06/top-10-cheapest-smartphones-can-buy-south-africa/>

¹¹ <https://www2.deloitte.com/uk/en/insights/industry/technology/tax-on-streaming-services.html>

across national borders brings a host of additional challenges. In Europe, many countries have implemented a digital service tax (DST), which, among other digital activities, taxes gross revenues derived from online placement of targeted advertising. DSTs have also been implemented in Africa, Asia, and Latin America. In a few jurisdictions, these DSTs may be applied to revenues from streaming services as well¹². Deloitte ultimately acknowledges that implementing DST is extremely complex, not only for the streaming services in different countries¹³, but also for the users.

To remedy the rising and inescapable trend to stream services, the broadcaster needs to acquire excellent content to please and attract the viewer so that they increase viewership and become more appealing to advertisers to entice businesses to advertise with them. With SABC, they were acquiring content with a time duration in which they had to air it, and because they weren't working out how many hours of content they needed, not ever airing it on TV - literally resulting in wasteful expenditure. They stopped doing that which resulted in re-runs which the public certainly would not find informative, attractive nor innovative, so it is no wonder that Netflix is considered a better viewing option as an on-demand content service provider.

The AAVCS also proposes a broader category of "audio and audio-visual content services". Within this broader category, there will be three sub-categories: (i) traditional broadcasting services (linear); (ii) on-demand content services; and (iii) video-sharing platform services (non-linear). Whereas broadcasting services and on-demand content services will require licensing for an entity with an annual turnover of R50 million, video-sharing platform services will be exempt from licensing, although both services will not be exempt from regulation. Who will manage these categories and how does the AAVCS vis-a-vis the DCT propose that it is not mismanaged? At the rapid rate technology is evolving, is it wise to try and regulate it instead of embracing it and finding better ways to enable more revenue for the fiscus?

The Organisation Undoing Tax Abuse (OUTA) submitted its commentary on the 2020 White Paper. The aim of the 2023 submission is to compare the two versions, to gauge whether the previous comments have been considered. OUTA believes that the TV License model is failing and our position is that any tax / levy that fails to achieve required compliance and is failing, due to poor administration and

¹² Deloitte, Deloitte Tax Atlas—DST: A global view on Digital Services Taxes, <https://www.deloitte.com/an/en/services/tax/services/gx-tax-atlas-digital-services-tax.html>

¹³ Deloitte, Digital services tax in Africa, <https://www2.deloitte.com/content/dam/Deloitte/za/Documents/tax/za-Deloitte-Africa-executive-summary-Digital-services-tax-in-Africa.pdf>

unenforceable mechanisms should close down. The revenue model for the State Broadcaster must be reviewed, as must its business model and cost structures.

There is a need for a public broadcaster and some of its funding needs to come from levies or general tax allocations, however, the question is how much and why and where does oversight of this lie. The best practice would be that SABC becomes financially viable as a broadcaster of choice and not a necessity.

The notion of switching the failed TV License revenue mechanism to other commercial broadcasters or live streaming entities or adding a tax to the sale of electronic devices is also not a solution in our view, as it has other unintended consequences and these items are already taxed through business taxes, VAT and import duties. OUTA argues that the SABC needs to find a new funding model.

We do however believe that the focus should change on giving citizens wider access to the internet at a more affordable price of data so that we can see more innovative and entrepreneurial efforts that can participate in both a local- and an international market. Thus, we believe the government should embrace digital disruption as an enabling tool that can create more small businesses and entrepreneurs to become contributing taxpayers in the future.

Section specific comments on White Paper

Section 1: Introduction and Context to the new policy framework

Broadly, OUTA is in agreement as to the aims of the white paper insofar as it seeks to modernize the South African broadcasting landscape. The rapid development of Information and Communication Technologies (ICTs), together with social media and other content streaming platforms, have caused disruptions in the manner and extent to which people access, utilise, consume and understand such information. It further brings into question the responsibility and relevance of the state broadcaster: 1) how should the content offering, regulation and service delivery adjust in order to accommodate the inevitable changes brought on by the 4IR, and 2) how will it remain relevant in light of global and local competitors who provide desired services at a fraction of the cost? In consideration of the foregoing, it seems as though while this policy formulation is needed, it is already late. It lags 15 years behind the questionable Broadcasting Digital Migration Policy (2008) and only managed to respond five years later to the National Integrated ICT Policy

Review Report (2015). It begs the question, that if past performance is used as an indicator of future success, how will the DCDT and state broadcaster ensure positive outcomes this time round?

Broadcasting Digital Migration (BDM) is converting an analog television broadcast to a digital television broadcast to provide new and improved broadcasting. Sentech, a signal distributor for the South African broadcaster sector, settled on digital terrestrial television (DTT) in 2000 by doing such tests utilizing the digital video standard or DVB-T. Unfortunately, 15 years later and 11 Ministers later, the transition is still far from complete.

The White Paper on Broadcasting Policy, published in 1998, set the framework for South Africa's broadcasting sector's change. It established principles for diversity, accessibility, and public interest in broadcasting while being conceived before BDM emerged. These principles have influenced how digital migration is approached, ensuring that the transition to digital broadcasting is consistent with the greater aims of social development and democratic engagement. The Broadcasting Digital Migration Policy, implemented in 2008, laid the framework for South Africa's shift from analog to digital broadcasting. It highlighted the government's goal, objectives, and principles for digital migration and the formation of a Digital Dzonga Advisory Council to oversee the process.

Together, these policies form a complete foundation for BDM implementation in South Africa. They illustrate the complex interplay of technological, regulatory, and social elements that have defined the process of digital migration. These regulations' evolution over time illustrates South Africa's continued commitment to aligning the country's broadcasting landscape with global norms while also addressing the country's particular requirements and concerns.

Specific section responses follow below:

Section 1.1.5: We agree that innovative disruptions will outpace policy development and therefore argue that this policy should rather embrace the digital disruptive world. Digital disparities in access to information communication technology are largely a result of the lack of access to digital infrastructure and data costs.

Section 1.1.6: OUTA agrees that there will likely be knee-jerk reactions to new policies and tax enforcements, where industry players may resist the required amendments. Due to highly probable uncertainty, growth and investment in South Africa might be inhibited. Once again, in the face of South

Africa's unemployment, general citizen apathy and dismal economic state, further volatility and disenchantment is not desirable.

Sections 1.1.10 and 1.2.4 The Department of Communication adopted the Broadcasting Digital Migration Policy (BDMP) used to guide the digital migration process in South Africa and introduced Set Top Boxes (STB). The STBs are devices that enable television sets to become a user interface to the internet and enable TV sets to decode digital television. These devices were meant to facilitate the switch from analogue to digital TV broadcasting. However, after spending approximately R10 billion on these devices, the department abandoned the procurement, warehousing, transportation and installation of these devices.

OUTA believes that the SABC failed to effectively implement the BDMP which has resulted in the loss of revenue as a result of poor governance, performance and leadership. In addition, various government departments and State Owned Enterprises (SOEs) are challenged by the similar constraints of failing to implement and complete projects which have been allocated a budget and results in failed policy initiatives. The STB's are a classic example of how SOEs are squandering tax payers money through maladministration, corruption and wasteful expenditure. Yet expect tax payers to cough out more money to recover those wasted funds and pay for government's failures. As OUTA we believe that if this project was implemented effectively SABC would not have found themselves in this situation. The burning questions are (i) where are those STBs;(ii) what is being done by the department to recover the R10 billion spent to procure those STBs; and (iii) who is being held accountable for this failed project?

We believe that introducing a new system on top of a flawed system will not be effective either. This is due to a historic failure of implementation and the unfortunate reality that funds will be squandered, as per past examples, and no one will be held accountable for maladministration and wasteful expenditure.

Sections 1.2.1, 1.2.2, 1.2.3, 1.2.5, 1.2.8, and 1.2.10: The current National Development Plan's status is also concerning, where many targets have not yet been met. In addition, the triple scourge of unemployment, inequality and poverty has not been remedied, or improved, since 2012. Although the target date is 2030 (7 years), 11 years into the plan has failed to manifest part of the vision. This brings into question whether the White Paper's grounding in this anchor will contribute to its uptake and success. The South African government's ability to put in place a stable regulatory environment is also questionable, especially in the

face of severe economic, regulatory and service delivery challenges. One of the objectives of the White Paper, to “Protect the integrity and viability of the public broadcaster as the nerve centre of broadcasting in South Africa and a vehicle for nation-building and social cohesion” raises many doubts. If the SABC has failed in their mandate and mismanaged funds until now, it is highly likely the negative spiral will occur in this instance too. One cannot currently state with conviction that the public broadcaster acts with integrity (for example, its failure to secure broadcasting rights for the Rugby World Cup by 6 September is utterly disappointing).

Section 1.2.4: The progress, or lack thereof, on achieving Broadcasting Digital Migration in the set deadline, does not inspire confidence in the White Paper’s success.

Section 1.2.9: Indicates that the National Integrated ICT policy is based on the following principles; promotion of South African content, freedom of expression, value, diversity, transparency, independence, universal access, economic growth, social inclusivity and accessibility by people with disabilities, etc. As OUTA, we agree that upholding these principles is critical.

Section 2: Evolving Audio and Audiovisual Content Services Landscape in SA

Background and context are provided as to the evolution of broadcasting and regulation on local and global platforms. Three rationales are provided for grounding the AAVCS: 1) the scarcity rationale, 2) the public interest rationale and the 3) pervasiveness/influence rationale. A number of policy approaches to dealing with the current audio and audiovisual landscape are provided.

Specific section responses follow below:

Section 2.1.4: Logical flow of the paragraph is inhibited: “However, Cable radio [...] and Cable television [...] provided via coaxial cable originally [...], despite not using radio frequency spectrum to reach the public or sections of the public is also seen as being broadcasting”. It is recommended this sentence is rephrased to improve ease of reading.

Section 2.1.7: Creates the impression that the shift from analogue to digital transmission technologies on all platforms has taken place. Conversely, the Broadcasting Digital Migration (BDM) process has been

lagging since 2008 and has failed to be realised successfully. This conflicts with **Section 2.1.8** which references the 4IR and the need to prepare for this. Implementing a new policy and related regulation, whilst failing to conclude the BDM process, is worrying.

Section 2.1.10: This section aptly addresses the democratisation of information and the internet as its medium, such that it allows citizens to choose what they want to watch, when and how. OUTA agrees that it is no longer viable to regulate broadcasting in a traditional manner and it is correct that the model and business plans of regulators need to be adjusted. However, regulating new platforms and methods *on top of* existing ones, leading to a burden on the consumer, is also not a viable solution.

Section 2.2.8, 2.2.9, 2.2.10 and 2.2.11: It is heartening to see the White Paper taking note of global trends, and OUTA encourages the government to continue benchmarking against best international practices. However, OUTA does warn that benchmarking is not enough, follow-through and concerted efforts to implement safeguards, are equally important. BDM also provided opportunities for alignment, of which international and national deadlines have been missed time and again.

Section 2.3.7: Reference is made to the BDMP, which had to reach the deadline of 17 June 2015 set by the ITU. It is noted that this process is still incomplete and the new deadline is in the 2021/22 financial year. The AAVCS seeks to build on the provisions of the BDMP. This can be a skewed process since delays in the BDMP could adversely impact the implementation of the AAVCS without the sufficient infrastructure and legislative environment to support it. How will the DCDT ensure the AAVCS does not fall victim to similar long drawn-out processes simultaneously being compounded by Covid-19 and its consequences?

Section 2.3.8: The policy concern is noted. How will the DCDT ensure the AAVCS does not compete, and contradict or complicate, ICASA's Promotion of Diversity and Competition on Digital Terrestrial Television Regulations (2014)? This digital licensing framework envisaged ICASA to license new free-to-air and subscription broadcasting entrants on the DTT Mux 3. How will this materialise in the same environment wherein AAVCS is implemented?

Section 2.3.9: The past inequalities are acknowledged. In consideration of current challenges faced, it might be prudent to include these in the list of issues that directly impacted more recent policies (BDMP) and current envisioned ones (AAVCS). Inflated Unauthorised, Irregular, Fruitless and Wasteful Expenditure (UIFW), compounded by failed service delivery, maladministration and the awarding of tenders to service providers who cannot fully deliver on contracts within a reasonable budget, similarly destabilises the regulatory environment.

Section 2.3.12: OUTA agrees that the policy focus should consider global goals (SDG 2030), regional goals (AU Agenda 2063) and local goals (NDP 2030). To ensure the volatile, uncertain, complex and ambiguous technological world brought on by the 4IR is navigated, it is recommended stronger partnerships between government, private sector and civil society organisations are encouraged. The Presidential Commission on the 4IR, amongst others, should be more inclusive. This recommendation pertaining to inclusiveness also directly addresses **Section 2.3.22**.

Section 2.3.20: The budgets referred to for 2017 are already outdated. To ensure relevance, it is recommended this is updated.

Section 2.3.23: OUTA absolutely agrees that it “is important to deal with the vexing question of what should be the new vision for South Africa’s future industry”. We wish to encourage more frequent public participation on these matters, involving the private sector, business, civil society organisations, etc. Collaborative efforts towards leading to growth in South Africa can only be beneficial to all parties.

Section 3: Licence Framework and Thresholds for Audio and Audiovisual Content Services

The context for the licensing framework, together with the proposed new licence framework. It proceeds onto the exempt criteria for the AAVCS in terms of the individual licence and class licence and thereafter the types of AAVCS requiring licensing. In consideration of the foregoing section 3.5 addresses radio frequency spectrum licence and spectrum issues whereas 3.6 looks into transitional provisions. In general, this is the most technical section and contains a number of figures and baseline study support to supplement the policy. OUTA notes that the figures presented in the 2023 White Paper, are an improvement on the 2020 version, and appreciates the care taken to update it.

Specific section responses follow below:

Section 3.1.8: It is agreed that a new policy, legislative and regulatory architecture has to be developed to take into account the policy history and sector developments. OUTA recommends that together with such architecture, an improved implementation, monitoring and evaluation architecture should also be developed to assist the regulator, government and broadcaster in ensuring successful service delivery and process administration. A system which is transparent and functional will ensure these organs of state are held to account should they fail in their mandate.

Section 3.1.10: What is meant by “creating a level playing field”? This can be misinterpreted and should best be avoided in policy documents. Perhaps a baseline study must be conducted, or if this has already been done, it should be made easily accessible.

Section 3.1.13: It is concerning that the AAVCS and DCDT seeks to increase its influence on on-demand content service by increasing their obligations, i.e. to air increased amounts of South African audio and content. Although it is understood that South African content should be promoted, to regulate the airing of the increased amounts of such content, what does this mean for the democratising of information and the right of citizens to freely select that which they wish to watch and listen to, especially if they are paying for this service?

Section 3.2. OUTA acknowledges the new proposed licencing framework. However, affordability will be an issue. South African citizens are already purchasing data to access content and also pay exorbitant subscriptions for DSTV and Netflix. There are also a lot of other options apart from Netflix and DSTV that are ever-evolving. In addition, the majority of South Africans are struggling financially and we foresee this policy discriminating or excluding a lot of South African citizens from access to audio/audio visual content. Therefore, what will the department do to ensure that those who cannot afford to pay are not left behind without access to content? Is there a license threshold for those without income and what will determine that threshold?

Section 3.2.8: It is agreed that the current definitions (commercial broadcasting and public broadcasting service) are flawed and need to be addressed. Having clarity on the definitions and requirements of these broadcasting services will allow for better monitoring and evaluation. The funding model challenges of

the SABC are noted in **Section 3.2.8.3** and it is recommended that tighter control is enacted on the SABC UIFW expenditure together with stricter management of staff performance against KPIs. This is applicable also in the context of **Section 3.2.8** and **Section 3.2.9** where the current constraints of the SABC are noted together with operating three analogue channels. It is due to the delays in migrating from analogue to digital that these are seen as constraints.

Section 3.2.12: It is noted that the Draft White Paper seeks to take an innovative approach that differs from past licencing and regulation. However, based on past experience and current challenges, it is doubtful that this approach will prove to be successful.

Section 3.2.14: The annual turnover will be used to determine the type of licence an AAVCS needs to apply for - Individual or Class. These do not necessarily account for the success in service delivery versus cost-effectiveness. An AAVCS may fall in the class licence category due to its spatial operation, but be classified under an individual licence category due to its effectiveness in turnover and operations management.

Section 3.2.15: It is ironic to consider that all AAVCS conducting business in South Africa must provide the annual financial audits to the regulator, whereas the regulator itself fails to secure clean audits.

Section 3.3.10: The acknowledgement of the prioritisation of entrepreneurship and advancement of SMMEs is well noted and supported.

Section 3.4.4.2: This section is noted together with **Section 3.4.4.4** which speaks to Section 16 of Chapter 2 of the Bill of Rights in the SA Constitution. These are provisions and exclusions as provided in recognition of the Freedom of Speech principle (as seen in **Section 5.1.1**). It is recommended that Section 16 is specifically mentioned for alignment with the SA Constitution. OUTA agrees that content and communications should not provoke terrorist activities, incitement to violence or hatred directed against an individual or any group of people based on their sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. OUTA is in support of concerted efforts to provide effective media literacy measures and tools.

Section 3.5.4, 3.5.5, 3.5.6, 3.5.7 and 3.5.8 : It is recommended that the “several reasons” for not migrating to digital successfully by 17 June 2015, as per the ITU agreement in 2006, be made public as an addendum to this draft white paper. These reasons and the contributing factors must be transparent and traceable to allow for oversight not only by the government but also civil society and the private sector who are impacted by this implementation delay.

Section 3.5.8: It is problematic that the government seeks to make Sentech the only provider of ECNS for the public broadcaster on the DTT and satellite platforms in a post-ASO environment. It is problematic because Sentech was the SOE responsible for the roll-out and operation of the infrastructure required for the two National DTT frequency networks. Failure to deliver on a service one was entrusted with, ought to be penalised, not given greater scope of responsibility.

Section 3.5.17: It is noted that the White Paper wants to create a digital future for radio. How does this compare with the current host of digital radio platforms, that host South African radio stations? There is already a digital radio reality.

Section 3.6.1: Are more legislation provisions really necessary? Although the aim is for this to support a transitional framework, it is common knowledge that legislation takes long to develop, table, approve, and implement. By the time this takes place, the transitional period ought to be completed.

Section 3.6.2: It is doubtful that the regulator will complete the transitional period between the existing licensing framework and the new licensing framework within 24 months. Delays in the BDMP do not excite positive prospects nor trust in the regulator’s ability to enact its own policies in a timely manner.

Summary of Key Draft Policy Proposals: The input from various stakeholders is useful, and the inclusion thereof is welcomed.

Section 4: Public Broadcasting in the New Policy Framework

This brief section has three focal areas: key policy principles, legislative amendments and a contribution to a sustainable and active SABC.

Specific section responses follow below:

Section 4.1.1: It is recommended that the names or representing institutions of public and key stakeholders, who partook in the parallel process during 2018, be made available on the DCDT website or as an addendum to the white paper. In addition, an addendum containing the names of entities (upon their approval), who submitted commentary on the 2020 White Paper, will be welcomed. This should ensure transparency of the consulting processes as well as confirm inclusivity.

Section 4.1.2: OUTA agrees that the SABC’s governing legislation (and governance practices), must be brought up to date.

Section 4.1.4: Though guiding key principles are needed, especially in consideration of values which are highlighted such as a “strong, sustainable and independently governed SABC...” and the “repurposing” of the SABC together with the instruction that the SABC must work to rebuild and maintain public trust, etc., these do not translate in actually holding the SABC management to account for failure of doing so. Practical measures must be put in place to penalise those holding high offices, for example, not receiving annual increases or bonuses. It is also doubtful whether the government will be able to responsibly implement changes in the public broadcaster, due to ill success in past endeavours. OUTA notes the state of the SABC has not improved between 2020 and 2023. This raises concerns as to its ability to meet its mandates, implement and enforce governance measures, and regain the public’s trust in the years to come.

Section 4.2.4: What is understood as “unfunded mandate” and the “public mandate” programme, and who decides these mandates?

Section 4.3.1 and 4.3.2: OUTA agrees that a “strong and financially fit SABC is vital for South Africa”, and OUTA strongly motivates the Government, the Board and Parliament take the necessary legislative and financial steps to ensure this.

Summary of Key Draft Policy Proposals: It is concerning that the “The SABC has requested for an exemption on certain clauses of the PFMA and DCDT will support the SABC on the request for exemption with the National Treasury. Because that request for exemption will allow the SABC to turn around quicker

in terms of their supply chain processes, but also to turn around quicker in terms of improving the position of the entity to as to ensure that the public broadcaster is sustainable". By no means must this be approved, since there is more than enough evidence that showcases how maladministration and misappropriation of funds occur when supply chain processes are manipulated. The SABC's failure to manage their finances and annually incurring high UIFW figures, proves they cannot be trusted.

Section 5: Content Regulation of Audio and Audiovisual Content Services

In consideration of the content regulation inherent to AAVCS, this section addresses a number of aspects related to content. The first is the protection of constitutional principles followed by cultural and national interests. The third subsection focuses on the protection of children and consumers whilst the fourth speaks to commercial communications such as advertising. The second to last subsection is on the provision of greater accessibility to audiovisual media services for persons with disabilities and the last on copyright and intellectual property. In general this Section 5 is dense and generally inaccessible in tone and content complexity to the majority of South Africans.

Specific section responses follow below:

Section 5.1.3 and 5.1.4: OUTA agrees that an independent broadcasting regulator is necessary for a democracy and to ensure freedom of expression. ICASA is therefore the independent authority and its legality is extended to the IACA Act of 2002. However, ICASA fails to fulfil its own mandate as has also had an unqualified financial audit for 2021/22 which means that the financial statements contain no material misstatements. ICASA also incurred a total UIFW amount of R33,532,000-00 in the 2021/22 financial year. Unless the Auditor General expresses a clean audit outcome, findings have been raised on either reporting on predetermined objectives or non-compliance with legislation, or both these aspects. Who regulates the regulator?

Section 5.2.1 and 5.2.6.3: The three core issues concerning the community broadcasting sector are agreed with. Addressing these will lead to greater inclusivity across the board, particularly insofar it speaks to local communities, target audiences and non-profit/non-governmental entities.

Section 5.2.7.14: It is supported that audiovisual content, broadcast free-to-air terrestrially by the public broadcaster, may not be exclusive to a single subscription audiovisual content service. Making re- and multi-transmission possible supports the notion of the democratisation of information.

Section 5.2.7.17: The public inquiry must be open to all and dealt with transparently with outcomes published on a public platform.

Section 5.2.8.7: How will South African content quotas be enforced for online broadcasting services? This is extended to **Section 5.2.8.8** where broadcasting service licensees, who fail to host such quotas, need to pay a specified sum of money, or minimum percentage of gross revenue into a fund, which supports the creation of the audio and audiovisual South African content. This is highly problematic, for who will host, monitor and account for that “fund”, and how can it be sure that on-demand services, like Netflix, will be ‘penalised’ and their contributions to the “fund” be used to enrich state coffers instead of the intended support of quality South African content?

Section 5.2.9: The notion of fair competition sport broadcasting rights is supported. Sport is a key ingredient to national unity and identity. It is noted that content, in the public’s interest (such as the 2023 Rugby World Cup), ought to be accessible to all South Africans with access to the national broadcaster, either via radio or TV. This also relates to **Section 5.6.6**. Not only is the SABC currently failing in securing the 2023 Rugby World Cup licencing rights, but it is opening the gateway for privacy to flourish, leading to double negative implications. In **Section 5.6.7** it is noted that privacy is damaging the “South African creative industries and the economic contribution of sport events”, but what can be expected? Privacy is a natural consequence due to the failure of the national broadcaster.

Section 5.3.1: OUTA agrees that the protection of children and consumers should be considered, especially due to the higher number of content available, especially online. However, the freedom of access to information and freedom of expression need to be balanced. See also **Section 5.3.4** where reference is made to other policies, such as the ICT Policy Review, the Draft White Paper on the Audiovisual and Digital Content for South Africa and the Draft Audiovisual Policy Green Paper.

Section 5.3.8: OUTA agrees that education and awareness initiatives are essential towards promoting the protection of children and consumers.

Section 6: Support of Domestic Audio and Audiovisual Production and Creative Industries Sector

This very brief section considers content funding mechanisms and institutions together with consolidation and institutional alignment of a number of SOE and other South African entities such as SARS.

Specific section responses follow below:

Section 6.1.3, 6.1.4 and 6.1.8: The National Film and Video Foundation (NFVF), Industrial Development Corporation (IDC) and the Media Development and Diversity Agency (MDDA) all had unqualified financial audits for 2018/2019 which means that the financial statements contain no material misstatements. Unless the Auditor General expresses a clean audit outcome, findings have been raised on either reporting on predetermined objectives or non-compliance with legislation, or both these aspects. How are they regulated and monitored to ensure they adhere to their mandates and national objectives? And what mechanisms are in place to hold them to account should they fail to meet these?

Section 7: Ownership, Plurality, Competition and Investment

This section includes the reform of broadcasting ownership limitations in the Electronic Communications Act, the limitations on foreign control of commercial broadcasting ownership and finally a section on the impact of the AAVCS white paper on foreigners from African Union countries.

Specific section responses follow below:

Section 7.1.6.2: The need for distinguishing between competition and plurality policy is noted and supported. In particular, the burden of the outcome should not fall on the end-user, i.e. the South African citizens.

Section 7.1.8.4: The consultations between ICASA and the Competition Commission, on how these regulatory authorities will align their efforts in the shared responsibility of mergers and acquisitions and

how these impact fair competition and media plurality, need to include consultations with the private sector and civil society organisations.

Section 7.3.2: The recommendation to afford a foreign person/s from an African Union member country, to exercise control over a commercial broadcasting licensee, or have a financial interest in voting shares or paid-up capital in a commercial broadcasting licensee of up to 49%, is concerning. This means that the SA government could pander to the interests of such person/s from an AU member country which could negatively impact the interests of SA's own interests. Decision-making and implementation capabilities of up to 49% are exported to outside SA, and thereby addressing the needs of other countries' broadcasting requirements. The SA regulator and broadcaster should first attend to and prioritise SA's needs. Although this will be based on a reciprocal agreement between SA and the relevant country, how will it consider the needs of South Africans over and above the needs of other African nationals?

Section 7.3.4: OUTA agrees that rigorous enforcement through compliance monitoring is absolutely essential. This is not only needed for AAVCS, but across the board of all DCDT entities.

Section 8: Developing Human Capital, Digital Skills and Digital Media Literacy

This section is fundamental to the success of the white paper and its intended implementation, for without a digitally literate society, SA will neither be able to compete with other countries in the 4IR nor meet the basic and complex demand of its citizens. This section therefore looks at human capital and digital skills development as well as digital media literacy. Whereas these two foregoing elements seem to be out of place, it does align with other DCDT projects and strategies such as the SA Connect project and Digital Opportunities and National e-Governance strategies. To compete with and partake in the 4IR, SA requires both a functional and effective broadcaster and a society equipped with the requisite skills to partake in its offerings.

Specific section responses follow below:

Section 8.1.1: Statistics refer to globalisation and digital technological disruption and its impact by 2020. This should be updated. It also refers to how education and training have remained the same over the past decades. The DCDT (as the DoC and DTPS) had their Digital Opportunities Strategy linked to the roll-

out of ICT-skills training with NEMISA and other service providers. Funding for such training, at universities, and at target NHI pilot sites, was ended and/or not actively supported from 2017. It is not due to a lack of interest, but rather institutional and political will to make funds available for such training programmes across government departments.

Section 8.1.2: Current adult education systems can be aimed to reskill or upskill staff, but failure to do so also lies within the various SETAs who fail to successfully and transparently attend to national training needs. The combined declared UIFW expenditure across 21 SETAs in 2021/22 amounted to R458 514 000, which if combined with the UIFW of SABC, NEMISA, ICASA, etc., starts to paint a shocking picture of wasted funds that *could have* been used to attend to these training needs.

Section 8.1.3: A transparent and nationally advertised process must be followed to identify and select the “key skills partners” to help with the requisite skills training. Once they have been selected, their names must be made available to the public and progress must regularly be monitored.

Section 8.1.4: OUTA agrees with the multi-stakeholder approach to work together on initiatives and actions to develop human capital. This support is extended to **Section 8.1.5** on the prioritisation of vulnerable groups.

Section 8.1.6: The impact of Covid-19 cannot be emphasised enough. This is why it is imperative to consider the implications of additional taxation on citizens.

Section 8.2: There is inconsistency in referring to digital media literacy and media literacy. Due to the extreme relevance of and need for this discipline. It is recommended to refer to the overarching concept of Media and Information Literacy (MIL), as aligned with UNESCO¹⁴. Information Literacy and Media Literacy are traditionally seen as separate and distinct fields. UNESCO’s strategy brings together these two fields as a combined set of competencies (knowledge, skills, and attitude) necessary for life and work today. MIL considers all forms of media and other information providers such as libraries, archives, museums and Internet irrespective of technologies used.

¹⁴ <http://www.unesco.org/new/en/communication-and-information/media-development/media-literacy/mil-as-composite-concept/>

Section 8.2.4: Many organisations already exist which provide MIL research and training. Instead of investing funds to create such an entity or group, it is recommended that existing initiatives are empowered to fulfil their mandates, often overlooked by the government.

Section 8.2.6: OUTA agrees, there must be a shift from tick-box quotas to policies strengthening the sector in a meaningful manner.

Section 9: Next steps

This section provides nine steps going forward, specifically the post-submission deadline of 8 September 2023. The stakeholders' engagement and contributions of 2020 are acknowledged. OUTA notes the advice given that "that all stakeholders should use this consultation process to provide their final advise, corrections, guidance, and inputs to the DCDT on the best way to finalise this policy process". Whereas much content in this commentary may be a repeat of the 2020 submission, it is noted that many items remain relevant, and OUTA will be remiss in its civic duty to omit these items. It is also noted that "The stakeholders are further encouraged to propose the agile and collaborative regulatory tools i.e. (regulatory sandboxes) that could take the industry forward and encourage innovation". OUTA recommends that further public participation events be hosted, ensuring the presence of a diverse range of stakeholders. Finally, making all submissions available on the DCDT's website is welcomed, since it will promote transparency.

Concerns

Throughout the years we have witnessed how SOEs squander taxpayers' money; outsource to incompetent service providers who fail to provide services that they were entrusted with, and then tax payers are requested to pay more money in order to stabilize those SOEs. Set-top boxes are an example of a failed policy initiative, yet a budget was allocated to ensure that this project was completed. This question to what extent accountability is enforced and what are transparency mechanisms implemented to ensure maladministration and wasteful expenditure does not occur as frequently.

It is of extreme concern that the SABC wants an exemption on certain clauses of the PFMA, and that DCDT supports this request. The SABC has regularly proven that it cannot manage its finances. Supply chain processes should not be manipulated by an entity plagued by poor management and annual UIFWs.

Considering the poor transparency and accountability measures, how will the department ensure that the collection of revenue from streaming services is transparent and what are the measures of accountability in place to ensure all funds collected are used in an appropriate manner and not squandered as it frequently occurs in government departments?

With technology and innovation ever evolving, how will this policy accommodate progress and also manage competitors and new businesses, devices etc? To what extent will the public sector and civil society be involved or included in this new licence framework?

Recommendations

The following recommendations are of note:

1. The revenue model for the State Broadcaster must be reviewed, as must its business model and cost structures. The SABC must become financially viable as a broadcaster of choice.
2. The public broadcaster and some of its funding needs to come from levies or general tax allocations, the question is how much, why, and where do oversight of this lie? The TV License scheme should be scrapped.
3. OUTA is in support of the draft white paper wherein it states that the Minister should initiate a review of all state-owned companies and entities within its portfolio to determine the relevance of their mandate. OUTA contends that ICASA as a Chapter 9 Institute, and many SoEs, in particular those related to this white paper - such as the SABC, Sentech, USAASA and NEMISA - fail to attain the goals set for itself and adversely impact the country due to poor service delivery, maladministration and mismanagement of funds.
4. OUTA believes that 4IR provides a significant opportunity, especially for entrepreneurs, the youth and previously disadvantaged members of the public to tap into local and global economies by utilising the digital tools at their disposal, like smartphones and access to digital streaming platforms and social media. The government should rather focus on providing more access to the

internet at lower cost to these people, instead of trying to keep up and regulate innovation in this space.

5. The Minister and DCDT should consider the greater environment in which the AAVCS is situated and address areas of concern therein. It is impractical to recommend policy changes in one sphere, essentially plugging a hole, without fixing the broader systemic issues. If ICASA, Sentech, USAASA, the FPB and SABC are currently incapable of attending to their institutional and service delivery requirements, they certainly will fail at equipping South Africans with the requisite literacy skills and electronic capabilities required to be effective in the 4IR.
6. Existing initiatives prioritising MIL research and training should be empowered, instead of creating new mandates and government entities which may fail at doing so.
7. Finally, for a policy which seeks to prioritise basic information literacy, this AAVCS is inaccessible to the larger public who will find the complexity of terms and stipulations challenging. In consideration that it is the South African citizens to whom the financial burden will fall should licensing and service delivery costs increase, it seems rather unfair to expect of them to be fully informed and versed on the implications of the AAVCS and related policies.

Conclusion

OUTA believes that the TV License model is failing and our position is that any tax / levy that fails to achieve required compliance and is failing, due to poor administration and unenforceable mechanisms should close down. The revenue model for the State Broadcaster must be reviewed, as must its business model and cost structures.

There is a need for a public broadcaster and some of its funding needs to come from levies or general tax allocations, the question is how much and why and where does oversight of this lie. Best practice would be that SABC becomes financially viable as a broadcaster of choice and not a necessity. The notion of switching the failed TV License revenue mechanism to other commercial broadcasters or live streaming entities, or to add a tax to the sale of electronic devices is also not a solution in our view, as it has other unintended consequences and these items are already taxed through business taxes, VAT and import duties.

There are aspects addressed within the AAVCS which are absolutely essential: 1) the prioritisation of digital media literacy and skills training amongst the general and rural populations of South Africa, 2) equipping and preparing the country for the 4IR to also be competitive globally and 3) evaluating the state broadcaster and its current mandate and service delivery capabilities to ensure it is effective and responsible.

However, should the DCDT Minister fail to evaluate the macro-environment in which these policies and processes are situated, this white paper and its roll-out will be unsuccessful. The inability to manage a current failing system will not result in success, should the system only be amended. The systemic concerns are rooted within the entities themselves, and therefore an internal audit and evaluation ought to take place before the responsibility becomes displaced onto the citizens.