

COMPANY : WORLD TRADE CENTRE
ATTENTION : TECHNICAL COMMITTEE MEMBERS
DATE : 9TH JUNE 1993
FAXNO : 397 - 2211
FROM : LISTED ORGANISATIONS
REGARDING : LOCAL SA TV CONTENT & INDEPENDENT
PRODUCTION
NO OF PAGES : 9 INCLUDING COVER SHEET

SUBMISSION ON LOCAL SOUTH AFRICAN TELEVISION CONTENT AND
INDEPENDENT SOUTH AFRICAN TELEVISION PRODUCTION, SUBMITTED
BY :

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9th June 1993

Olive Khoza
Secretary
Technical Committee on I M C and I T C
Multi Party Negotiating Process
KEMPTON PARK

FOR THE URGENT ATTENTION OF TECHNICAL COMMITTEE MEMBERS.

RE : LOCAL SOUTH AFRICAN TELEVISION CONTENT AND INDEPENDENT PRODUCTION

The attached proposal was prepared by the undersigned organisations. The contents thereof and the proposals made are fully supported by all the organisations and their constituencies which represent the vast majority of practising and aspirant stake holders, contributors and creative generators of programme and film production in South Africa.

The collective is a non-aligned coalition seeking to further the interest of film and television practitioners. We aspire to create a climate of free expression and association and the opportunity for the diversity of voices, languages and cultures to be able to find expression on the national airwaves and distribution networks.

The document that follows is a first step in a process of consultation and negotiation between the various vested interests on the one hand, and legislators on the other hand. We strongly recommend that the process is as transparent and as widely consultative as is practical so that the legislation that arises will find support from as many divergent sources as possible. The mass media has an extremely important role to play in the reconciliation and development of all South Africa's people.

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INTRODUCTION

In every country of the world, good local programming consistently draws better audiences than imported product. However, the volume of television programming that is consumed by broadcasters has led to global programming trends. Many programmes that are seen on television screens throughout the world are produced in the USA. Production costs for US producers are often recovered from its enormous domestic market and then exported to all other countries at a fraction of their manufacturing costs. Local content regulations have therefore been introduced by a great number of countries throughout the world. (see appendix)

Regulators in South Africa face the challenge of establishing laws and regulations, specific to South Africa, which fulfil the challenge of one hand, not stifling the development and commercial viability of the broadcasting sector, and at the same time ensuring that the distributions of broadcasting licenses truly increases the quality and diversity of programme supply and transmission for the benefit of South Africans. The South African broadcasting environment is likely to be characterised by a range of types of broadcasters: national, regional, local and subscription channels as well as public, private and community stations. While it is recognised that the IBA may prescribe different conditions for the different types of licensee, it is essential that all broadcasters share the responsibility and opportunity to contribute to nurturing South African cultures and attending to the informational needs of South African audiences.

NATIONAL RECONCILIATION

As South Africa changes, so should its television change in ways which respond to the needs of the country's people - and which mirror the full and exciting potential of the 20th century's own and most important medium. As South Africa moves towards becoming one democratic country, a new national character will hopefully arise that all South Africans can be proud of. Television could, and should, play a significant role in nurturing this. The cultural diversity of South Africa needs to be reflected on its national airwaves and the critical process of social and political change taking place in the country needs as wide an airing as possible.

DIVERSITY

A key mechanism in ensuring that the right of freedom of expression and the principle of diversity of opinion and culture characterise the new broadcasting environment will be the opening up of the airwaves to an increasingly diverse and innovative flow of films and television programmes made by South African producers.

It is vital that an increased and substantial amount of what is transmitted on television in South Africa are truly South African programmes made by South African producers for the benefit of the wider South African audience. Only by so doing will our people be able to inform each other, in their own words, of the realities that we live, the things that make us laugh, the problems that we face, the poetry that we write, the songs that we sing, or the fears and hopes that we have.

Furthermore, it is crucial that a diversity of supply of such material is ensured. One of the best ways to promote this desired cultural diversity and freedom of expression is to require that broadcasters transmit not only programmes that they themselves make, but also a substantial number made by independent producers from a broad range of backgrounds and points of view. The independence and diversity of these producers will check the centrifugal tendency of broadcasters towards uniformity of expression and programming practices.

ECONOMIC CONSIDERATIONS

On the macro level the economic playing field for South African producers is not even. Foreign programmes which have recouped their costs for production can easily undercut South African programmes in the South African market. The cheapest South African programme costs several times as much to make as against the acquisition cost to the SABC of an American or European programme. Clearly, if left to their own financial calculations, there is little incentive for South African broadcasters to spend the extra money on a South African production.

If the export potential existed for South African television programmes overseas the equation might be different. However, local programming by its language and cultural nature, is not easily transportable. While export potential should not be over estimated, there are possibilities for export, especially to the rest of the English speaking world, which could prove effective foreign exchange earners and marketers for the country's potential. Furthermore, to the extent that local productions substitute imported productions, South Africa will save foreign exchange.

INDEPENDENT PRODUCTION

Contracting productions to independent South African producers also makes sense - on the level of small business development and developing an economic sector which is vital to the long term competitiveness and economic well being of the country as we approach the 21st century - the audio visual and communications sector. No one can doubt the growing economic and technological significance of this industry, nor the great potential for growth which exists with it. By ensuring that a substantial proportion of television programmes are produced by independent producers we can stimulate the growth of this economic sector, encourage the development of business and employment opportunities in the communications industry for people who for too long have been excluded, all without the need for increased state subsidies.

Such economic motivations, taken along-side the crucial cultural and political motivations outlined above, provide the basis and framework for legislating a requirement of South African broadcasters that they present a substantial amount of quality and diverse South African produced programmes, and that a substantial amount of their programming be acquired at fair prices from independent South African film and television producers.

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SECTION I : SOUTH AFRICAN PRODUCTION

DEFINITION :

A television programme shall qualify as a South African production on the basis of all of the following criteria:

- a) The programme is produced by
 - i) a person who is a citizen or permanent resident of South Africa; or
 - ii) produced by a company, close corporation, partnership, joint venture or trust which is registered in South Africa and wherein the majority of directors and shareholders, members or trustees are citizens or permanent residents of South Africa; or
 - iii) a co-production with producers from other countries in which the South African producers hold at least a 50% financial interest
- b) The production employs an adequate number of South Africans as key and other personnel. The amount of South African input required, to be prescribed by the IBA, could be administered through a point system as is the case in Canada, Australia, France etc.
- c) The production expends a percentage of its production budget, to be prescribed by the IBA, within the borders of South Africa.

REGULATIONS

In order to ensure that an adequate quantity and diversity of quality South African productions are produced and transmitted by broadcasters, the IBA should be directed by the law to issue regulations to ensure that in each year, on each channel and for all television broadcasters.

1. At least 50% of their transmitted programmes, in each programme category, qualify as South African productions. Excluded from this measure would be advertisements, promotions, continuity announcements and tele-text.
2. That this requirement is applied in a fair and equitable way, for instance ensuring that it is applied in each day-part (breakfast, daytime, peak-viewing/evening, late night, etc) and taking into account the balance between first transmissions.
3. Noting that exceptions might be made in certain programme categories, for example, feature films; where such exceptions are made, in negotiation with the IBA, these should be compensated for in other programme categories.
4. That all television broadcasters should expend a minimum percentage of their gross revenue, to be prescribed by the IBA, on South African productions.

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5. That television broadcasters should expend a minimum percentage of their programme acquisition costs, to be prescribed by the IBA, on South African productions.
6. In instances where commercial broadcasters do not wish to fulfil any of the above requirements, the IBA may negotiate some form of compensation for this through, for example, increased broadcasting licence fees, surcharges on advertising or import duties.
7. Appropriate affirmative action criteria should be applied in the production of programmes, for instance through the employment of black people and women in key creative positions.
8. The production of programmes must be governed by the principles of centralised bargaining, adherence to negotiated minimum rates of remuneration and conditions of employment.
9. So as not to discriminate against other African countries in relation to the local content quota to as great a degree as such a system will inevitably discriminate against North American or European productions, programmes from African countries can be preferred in some way over programmes from other parts of the world. E.C. regulations are an example of such preference.
10. The new regulatory body should be empowered to define and require methods for measuring compliance with all of the above regulations, and have powers to investigate, monitor and audit the broadcasters to ensure that they do so.

SECTION II : INDEPENDENT SOUTH AFRICAN PRODUCTIONS

DEFINITION :

A production shall qualify as an independent South African production when

- a) When it is produced by
 - i) A South African citizen or permanent resident who is not directly or indirectly employed by any broadcaster, or
 - ii) A South African company, closed corporation, partnership, joint venture or trust which neither owns nor is owned by, in whole or in part, any broadcaster.

REGULATIONS :

In order to ensure that an adequate quantity and diversity of quality programmes produced and transmitted are acquired from independent South African producers, the IBA should be directed by the law to issue regulations to ensure that in each year, in each programme category, on each channel and for all television broadcasters,

1. At least 50% of their South African productions be acquired/commissioned from Independent South African producers, or at least 25% of all programmes transmitted, in each programme category, should be acquired from independent South African producers. Excluded from this measure would be advertisements, promotions, continuity announcements and tele-text.
2. That this requirement is applied in a fair and equitable way, ensuring, for instance that the range of independent productions applies to the terms and costs of acquisitions as well as the types of programmes involved, that the quota is applied in each day-part (breakfast, daytime, peak-viewing/evening, late night, etc) and taking into account the balance between first transmissions of a given programme and repeat transmissions.
3. Noting that exceptions might be made in certain programme categories, for example, feature films; where such exceptions are made, in negotiation with the IBA, these should be compensated for in other programme categories.
4. In instances where commercial broadcasters do not wish to fulfil any of the above requirements, the IBA may negotiate some form of compensation for this through, for example, increased broadcasting licence fees, surcharges on advertising or import duties.
5. In order to secure a diversity of supply of programmes from the independent production sector, the IBA should ensure that :
 - a) A limit be imposed on how much work within any one programme category an independent producer or production company may receive that will be counted towards this particular quota.
 - b) Appropriate affirmative action criteria should be applied with regard to the

commissioning of independent producers, for instance, through producers employing black people and women in key creative positions.

6. The production of programmes by independent producers commissioned by broadcasters should be governed by the principles of centralised bargaining, adherence to negotiated minimum rates of remuneration and conditions of employment.
7. Independent producers from African countries should be preferred in some way to producers from other parts of the world.
8. The new regulatory body should be empowered to define and require methods for measuring compliance with all of the regulations above, and have powers to investigate and audit broadcasters to ensure that they do so.

APPENDIX**Examples of regulation in a few countries:****1. UNITED KINGDOM**

- * 65% of broadcast time to be originally produced or commissioned for the ITV services.
- * At least ten hours per week of children's programmes to be produced locally.
- * At least ten hours of religious programmes produced in the UK.
- * 25% of all original programming (excluding news or news related programmes) should be commissioned from independent producers.
- * Eleven categories of programming have minimum original programme content laid down. These are : arts, current affairs, children's, documentary, drama, education, features, game shows and light entertainment, religion, situation comedy and sport.

2. FRANCE

- * French channels, including Canal Plus, are obligated to broadcast for 50% of all programming, that made by French producers and 60% of those of EC origin.
- * Alternatively, French broadcasters contribute 15% of their turnover to French productions.

3. AUSTRALIA

- * 50% of all programming broadcast during peak viewing hours must be of Australian production origin.

4. SPAIN

- * 55% of all programming on channels must be of Spanish origin.
- * 40% of all feature films must be of EC origin.
- * Films may not be transmitted until two years after release on the theatrical circuit unless the broadcaster contributed to 30% of the production cost.

5. FINLAND

- * At least 35% of commercial television programming must be produced domestically.

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