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Promoting human rights and democracy through the media since 1993

Submission to Department of Communications (DOC) on the

ICASA Amendment Bill

25 July 2010

Submission by Media Monitoring Africa

1. Introduction

1.1 Media Monitoring Africa (MMA, formerly the Media Monitoring Project) welcomes the opportunity to make a submission to the Department of Communications (DOC) on the ICASA Amendment Bill. We would also welcome the opportunity to make oral presentations to the Department.

1.2 We wish to register our concern over the relatively short time period for submissions.

1.3 Given the importance and scope of the Bill, not just in terms of the issues it seeks to change but also that if implemented it would impact every person in South Africa, and given that there has not yet been a policy review process we believe the short period has prevented:

- 1.3.1 Proper, broad-based meaningful consultation with members of the public;
- 1.3.2 In-depth debate and discussion on the various changes; and
- 1.3.3 The development of clear alternatives to some of the issues provided.

1.4 The move by the Department of Communications to amend the policy governing ICASA is an exciting and invigorating moment for South Africa. It is of fundamental importance to ensure that all South Africans participate in shaping our “independent” regulator’s future. Especially given the history of its formation, and creation as critical to democracy and media independence. In addition, the role of “independent” regulation in this new digital era is critical to ensuring that all citizen’s needs are catered for, and not just a select few, with higher LSM’s for instance.

1.5 This submission will address the following areas:

- MMA’s Constitutional Assumptions.
- MMA’s assumptions of the “independent” regulator –ICASA- in the age of digitalisation.
- MMA and the SOS: Supporting Public Broadcasting Coalition.
- Proper policy review process: Not “Quick fix” Bills.
- Areas of concern relating to the Bill.
- Recommendations.
- Conclusion.

2. MMA’s Constitutional Assumptions

2.1 As human-rights based NGO, MMA approaches all regulation, and the regulator’s governing framework within a human rights-based framework. MMA’s point of departure therefore includes similar values to those originally contained in the Broadcasting Act, where in the preamble it noted that,

“[T]he South African broadcasting system comprises public, commercial and community elements, and the system makes use of radio frequencies that are public property and provides, through its programming, a public service

necessary for the maintenance of a South African identity, universal access, equality, unity and diversity”
(Broadcasting Act No.4 1999)

Within this rights-based framework, MMA understands the importance of the “independent” regulator and its effectiveness to democracy, but also to realising citizen’s constitutional right to receive and impart information. Further, as a key Chapter 9 institution and core component of the media environment in South Africa, the governing framework and policy of ICASA, and therefore its effectiveness, in entrenching South Africa’s democracy cannot be underestimated.

In this light, we respectfully draw attention to the core objectives of the Authority ICASA, as the constitutionally established body, in terms of the ICASA Act:

“(a) regulate broadcasting in the public interest and to ensure fairness and a diversity of views broadly representing South African society, as required by section 192 of the Constitution;
(b) regulate telecommunications in the public interest;”
(ICASA ACT 2000)

2.2 Given its function and purpose as an “independent” regulator, that is required to primarily regulate in the “public interest”, when ICASA’s policy is seeking to be amended, South Africa’s democracy is also under the spotlight.

2.3 Therefore, MMA strongly believes that there are core concepts that need to be clearly and unambiguously enshrined in any new legislation developed that will impact ICASA. These are:

2.3.1 New legislation must not further erode its independence, it is critical that it is protected against interference from powerful interests in society, both political and commercial. A regulator’s independence should not only be enshrined in law, but should be evident in all spheres of its influence, therefore a regulator’s independence must be respected in reality because its legitimacy depends on its ability to enjoy its independence.

2.3.2 An appointment process that is not dominated by representative of political and economic interests. Therefore the appointment process should not have inordinate levels of power by the ruling party, as this could lead to the appointments being purely “political” rather than in the “public interest.

2.3.3 The personnel employed must be independent from the government, political parties and the regulated industry so that the regulator’s independence is not compromised.

2.3.4 Transparent, open and independent accountability mechanisms. It is critical that the regulator is readily answerable to the public, it must not function “haphazardly” with a flagrant disregard for the public interest.

2.3.5 Sufficient mandate and power is critical so the regulator does not become dependent on other institutions to perform its duties effectively, like a

government department, political associations and in particular the regulated industry. This will enable it to perform effectively, serve the public interest and function independently from powerful interests.

- 2.3.6 Adequate and independent funding is fundamental to ensure credible, effective and efficient regulation. An underfunded and under capacitated regulator, leads to ineffectiveness and it will not be taken seriously, and will be perceived as, “toothless”.
- 2.3.7 Clear lines of accountability and roles between Board, management and oversight bodies of regulator.

Therefore, MMA respectfully submits that any amendment to policy relating to ICASA must be written to serve the best interests of the people of South Africa and should also respect the fundamental principles of democracy and “independent” regulation.

3. MMA’s assumptions of the “independent” regulator

–ICASA–

in the age of digitalisation

- 3.1 The “independent regulator” and the protection of this independence in reality, is critical to entrenching and sustaining democracy in South Africa. Its creation was critical to our democracy and media independence. It was created to align South African media to democratic principles and functioning in the “public interest”, in particular, repositioning the SABC from a “state broadcaster” to a “public service broadcaster”. As such an “independent regulator” is not only an indicator of democracy, but it should also serve as a vital means to enable public accountability and regulation in the “public interest”. Independent regulatory bodies are crucial to democracy, as it removes policy implementation away from the political arena, and views the public interest as supreme in decision making and regulations.
- 3.2 The absence of an “independent’ regulator” and failure to safeguard its independence in reality, would take South Africa back to the days of Apartheid. Prior to 1993, the media in South Africa was regulated and controlled by the state.
- 3.3 ICASA is a Chapter 9 institution, and has this special status precisely because of the importance of having an independent body regulate broadcasting. Critical to democracy and media freedom, ICASA has been established to “regulate broadcasting in the public interest” (ICASA Act 2000), and while Ministers may well seek to operate in a similar manner, their agenda’s ultimately are determined by the government of the day, and may not always operate in the public interest.
- 3.4 The “independent regulator” and its effectiveness are imperative to the SABC functioning as a public service broadcaster that acts in the public interest. The media landscape is continuously changing, causing the public interest to be under

threat. In the face of plurality posed by digitisation and increased desire to cash in on its monetary benefits and consumerism, the “independent’ regulator” is pivotal in protecting the public service broadcaster and the public interests represented by citizens. Therefore, with the advent of new technological and commercial media, the “independent regulator” is crucial in ensuring that the traditional principles of public service broadcasting are upheld and not neglected.

3.5 In seeking to address the challenges faced by ICASA, it should be stressed that the focus must be on strengthening the regulator and not on any actions that could undermine the independence and powers of the regulator. The solution is not to get rid of the regulator, but rather to strengthen it to “act courageously in the public interest”. It should be stressed that despite many positive developments in the broadcasting sector which were the direct result of the work of ICASA and its predecessor the IBA, it has not fulfilled its functions adequately. Nevertheless, an under-performing independent regulator is far better than no independent regulator. It is important to stress that despite the current weakened state of ICASA it has been responsible for the transformation of the industry. MMA therefore contends that it is fundamental that ICASA is strengthened, through a proper policy review process given proper attention. Some of the IBA and ICASA’s achievements include:

- The development and growth of community broadcasting;
- It has been instrumental in regulating the SABC from a state broadcaster to a public broadcaster. For example, ensuring that the SABC’s licence conditions, which uphold important public service values like local content, news, children, documentaries etc; were developed and applied, and
- There generally has been a common vision around meeting democratic values and needs, and this is to the IBA and ICASA’s credit.

4. MMA and the SOS: Supporting Public Broadcasting Coalition

4.1 MMA is a founding member of the civil society coalition, **SOS- Supporting Public Broadcasting Coalition (SOS Coalition)**. This submission is to be read in conjunction with the SOS Coalition submission, and MMA fully supports and concurs with the content and aims of the SOS submission.

5. Proper policy review process: Not “Quick fix” Bills

A full policy review process must be initiated for proper public engagement and input, there is too much at stake to risk “quick fix drastic Bills”. Effectively the South African public has been asked to comment on the ICASA Amendment Bill, in an insufficient amount of time. Since 1998 there has been no policy review process.

MMA notes with deep concern the recent trend of “quick fix” media Bills, i.e. the Draft Public Service Broadcasting Bill and more recently the ICASA Amendment Bill. There is no proper policy review process instituted and the research conducted in the development of these Bills has not been made available publicly despite commitments from the Department of Communications to do so. Effectively people are being asked to comment on new ideas and proposals without any rationale or reasoning for the proposals or any evidence that they may be effective solutions to the challenges raised.

5.1 Request for background research

MMA submits that the Department of Communications has failed to release promised research on the draft Public Service Broadcasting Bill. It is critical that the South African public is informed on what exactly the rationale and assumptions are for the amendments. This is good law policy making process, and this is not made clear. The “*Memorandum on the objects of the ICASA Amendment Bill 2010*”, makes reference to “*background, objectives, purposes, and provisions of Bill*”. However this background section is highly inadequate in providing the rationale for the proposed amendments.

5.2 The draft Public service broadcasting Bill

MMA at this point would like to voice its dissatisfaction for the draft Public service broadcasting (PSB) Bill.

The PSB Bill has serious implications for the “independence” of ICASA and the independence of the SABC. MMA would like to note that there are some positive elements of the PSB Bill, including, greater accountability of the SABC, such as that ICASA must hold public hearings at least bi-annually on the SABC’s compliance with the Charter (Section 32(a)), and investigate public complaints and summon the SABC board to a hearing regarding complaints (b).

MMA urges the Department of Communications to drop the Bills and institute a proper policy review process, and undertake a proper focus on public service broadcasting and ICASA.

MMA submits that the PSB Bill has dangerous implications for our democracy, including:

5.2.1 The Bill undermines the independence of ICASA, gives the Minister disproportionate powers in respect of the SABC and therefore does not allow the participation of the regulator in key areas that affect the SABC’s delivery of the

“public interest”. Section 36 of the Bill, gives the Minister critical roles at the SABC, many of which fall within ICASA’s mandate yet ICASA is not even required to be consulted. For example, the implementation of local content matters (Section 36(4e)), despite this falling within ICASA’s jurisdiction. The regulator is responsible for regulating, monitoring and enforcing local content quotas, so surely the regulator should be consulted as it has valuable input to make on this matter.

5.2.2 Other areas that the Bill “silences” ICASA’s voice and participation at the SABC, whilst bestowing on the Minister inordinate amounts of power include:

- the amount of commercial programming (Section 14(3));
- performance management systems for the Board, (Charter, 3.10 (3));
- regulations on proper finance (Charter 3.10.3 (3));
- public complaints handling framework (Charter 4.3 (2)).

ICASA is not included in any of these processes yet the SABC’s commercial programming, areas of performance targets for the Board, funding model and public accountability (public complaints) mechanisms have a significant bearing on the “public service” function of the SABC, in particular it functioning as a public service broadcaster. ICASA therefore should be afforded an opportunity to at least give input, in these matters, and assess if it is in conflict with the “public interest”.

5.2.3 Section 39 of the Bill gives the Minister further powers, which includes to direct the SABC Board, including instruct the Board to take any action specified by the Minister if the SABC fails to comply with any “directive given by the Minister” under the Bill (Section 39(1)(e)). This forces the Board to play to the “tune of the Minister”, by allowing the Minister to intervene without the consultation of ICASA, who essentially is mandated to “regulate broadcasting in the public interest”. Minister interventions have direct repercussions for the independence of the SABC as well as the “public interest”. ICASA should be involved in this process and decide whether these interventions compromise the “public interest” in any way. Sadly, the PSB Bill allows the Minister to freely intervene in matters, without any independent body checking if the “public interest” is being sacrificed.

5.2.4 The PSB Bill implies conflicting roles as to policy maker and regulator, which adds greater confusion to the SABC’s accountability and oversight structure. Section 38 (3) says “Excluding the Authority, the Minister may further recommend the penalties or fines be imposed by the Authority”. This clause infringes on ICASA’s mandate and allows for the Minister to “meddle” in the regulators domain. ICASA is required to impose fines and decide on the amount issued to offenders. Yet, the PSB Bill allows the Minister the power to intervene and infringe on the domain of the “independent” regulator. The regulator should be allowed to independently decide on a fine and the amount without interference. Another example of conflicting roles in the Bill is, Section 38(1) “The Minister may direct any of the entities specified in this Act to take any action pursuant to Public Service Broadcasting if the entity is unable to perform its actions as prescribed in this Act”. Regulatory responsibility of enforcing policy is ICASA’s responsibility and not the Ministers.

5.2.5 To further add to the enormity of the Minister’s power at the SABC, the PSB Bill says that the “Minister may establish an advisory body to assist him/her” in the effective monitoring and implementation of the Bill (Section 36(1)(2)). However this advisory body’s conditions and composition must be determined by the Minister. This requirement completely undermines the independence of the advisory body. In drafting legislation, one way to dilute the power of government and thereby protect from any undue political interference, is to include other independent entities in the process and executions of government roles. Sadly the Bill does not allow for this dilution.

It appears that both fo these Bills have been hurriedly developed to address challenges with ICASA and the SABC. However in doing so they fail to address many of the key challenges faced by both institutions.

6. Areas of concern relating to the Bill

6.1 Powers to the Minister: Unconstitutional

In its current form the Bill would see an erosion of ICASA’s independence. ICASA is a Chapter 9 institution and has this special status precisely because of the importance of having an independent body regulate broadcasting.

Critical to democracy and media freedom, ICASA has been established to "regulate broadcasting in the public interest" (Icasa Act 2000) and, while Ministers may well seek to operate in a similar manner, ultimately their agendas are determined by the government of the day and they may not always operate in the public interest.

The powers granted to the Minister of Communications are both unconstitutional and illogical. There is no evidence or rational presented to substantiate the proposed amendments. Table 1 below outlines the additional roles and power given to the Minster, as well as the possible implications for it.

Table 1: The amendments that erode ICASA’s independence

Proposed Amendment in Bill	Possible implications
<p><u>Amendment of section 4 of Act 13 of 2000 (0):</u></p> <p>ICASA must: <i>“implement policy and policy directions made by the Minister in terms of the Electronic Communications Act and Postal Services Act”</i>.</p>	<p>This creates confusion in the role of government and ICASA. Ordinarily, the Department of Communications and Parliament are required to be policy-makers. ICASA’s must ensure policy implementation through monitoring and enforcement. “Policy directions” could lead to possible “directing ICASA” in its</p>

	role as policy implementer, and eroding its independence.
<p><u>Amendment of section 4 of Act 13 of 2000 (5e):</u></p> <p>The chairperson of the ICASA Council is required to “<i>perform such other functions as the Minister may determine, subject to prior notification being given to the National Assembly</i>”.</p>	<p>This is a clear and unambiguous infringement of ICASA’s constitutional independence, and suggests that ICASA is an extension of the Department of Communications. ICASA is required to have institutional independence; it is a Chapter 9 institution. It is dangerous to allow the Minister this power over the Chairperson. The Minister must respect the institutional autonomy of ICASA.</p>
<p><u>Amendment of section 6A of Act 13 of 2000 (4):</u></p> <p>“<i>The evaluation of the performance of the chairperson or other councillor must be conducted by a panel constituted by the Minister or his or her delegate</i>”.</p>	<p>This gives the Minister the dominant power in ICASA’s Councillor performance evaluations, which creates problems for the independence of ICASA’s accountability mechanisms. ICASA Councillor’s could operate in fear of their performance bonuses being compromised.</p>
<p><u>Amendment of section 17A of Act 13 of 2000 (1):</u></p> <p>“<i>The Authority must establish a Complaint and Compliance Committee which consists of not more than seven members nominated by the Minister in consultation with the National Assembly and appointed by the Authority. One of whom must be councillors</i>”.</p>	<p>The Bill (Memorandum of the ICASA Amendment Bill 2010) says that one of the ways to improve the functioning of the Complaints and Compliance Committee is “<i>Involving the Minister in the nomination of the members of the CCC</i>”. It is not clear how the Minister’s involvement in the appointment process will increase the effectiveness of the CCC. It rather seems that this is an attempt to widen the power of the Minister in the different areas of ICASA.</p>

6.1.1 Why is the Minister given this power and more roles??

Giving the Minister such powers over ICASA is dangerous.. ICASA’s effectiveness and strengthening does not lie in the hands of the Minister, and giving him more power over ICASA will not be a solution to the challenges being faced. It is imperative that a proper

policy review process is conducted and that ALL challenges being faced by ICASA are addressed. MMA submits that one of the core reasons for ICASA poor performance in recent years has been precisely because its independence has been undermined and some of its core challenges have not been addressed.

Currently, the independence of ICASA is compromised in legislation and practice. For example, the ICASA Act 2000 gives the Minister of Communications a great level of power in its appointment process and performance management structure. The ICASA Amendment Bill would further compromise and aggravate ICASA's independence, should it be adopted.

In addition, the PSB Bill and ICASA Amendment Bill, bestow an inordinate amount of power and roles to the Minister and Department of Communications. It should be noted that the Minister and Department of Communications already have dense roles regarding the SABC and ICASA in current legislation. The draft PSB Bill and ICASA Amendment Bill cede the following roles to the Minister, to name but a few:

- Issue policy directives to ICASA (ICASA Bill, Amendment of section 3 9f Act 13);
- Evaluation of performance of ICASA chairperson and councillors (ICASA Bill, Amendment of section 6A);
- Appointment of members of Complaints and Compliance Committee members (ICASA Bill, Amendment of section 17A);
- The implementation of local content matters at the SABC (PSB Bill, Section 36(4e));
- To determine the amount of commercial programming at the SABC (PSB Bill, Section 14(3));
- Conducting Performance management systems for the SABC Board, (PSB Bill, Charter, 3.10 (3));
- Determine regulations on proper finance at the SABC (PSB Bill, SABC Charter 3.10.3 (3); public complaints handling framework (Charter 4.3 (2)).
- “Excluding the Authority, the Minister may further recommend the penalties or fines be imposed by the Authority”. (PSB Bill, Section 38 (3));
- “The Minister may direct any of the entities specified in this Act to take any action pursuant to Public Service Broadcasting if the entity is unable to perform its actions as prescribed in this Act” (PSB Bill, Section 38(1).
- The Minister may establish an advisory body to assist him/her” in the effective monitoring and implementation of the Bill (PSB Bill, Section 36(1)(2)).
- Direct the SABC Board, including instruct the Board to take any action specified by the Minister if the SABC fails to comply with any “directive given by the Minister” under the Bill (PSB Bill, Section 39(1)(e)).

These powers granted to the Minister and DOC, undermine the independence of the SABC and ICASA. In addition, there is confusion and overriding of roles, instead of devoting their time to policy the DOC will be performing duties that are not in its

domain. In addition, if the Minister and DOC are given these additional powers by the Bills, there is extra resources and capacity needed. There is also the issue of extra responsibility regarding Digital Terrestrial Television (DTT).

MMA submits that if the Minister and DOC are given these uber-powerful roles not only will it undermined media freedom but it is doubtful that the DOC and the Minister will be able to cope with the roles and duties in addition to doing the work the DOC is tasked with. This is a pertinent issue given that the dire state of affairs of the SABC, including the debt crisis and financial irregularities, also in some small part due to the failure of oversight by the Department of Communications. Also, ICASA is required to submit to the DOC its annual report, ICASA has failed to compile any compliance reports on the SABC, and under the existing powers the DOC has failed to hold ICASA accountable for these failures which begs the question as to what guarantee there is that the DOC could ensure compliance if it has even more duties and responsibilities?

In addition, MMA is deeply concerned by recent press reporting that there are simmering tensions between the Minister of Communications and director-general Mamodupi Mohlala, “As of the week of the 18 July 2010 the department was operating with only one full time deputy director-general. The remaining five posts are being manned by staff in an acting capacity” (The Time, 18 July 2010). Further, there are also accusations against Mamadupi for suspending several senior managements and spending millions of Rands on legal fees and consultants. Other accusations against Mamadupi include, hiring former colleagues from the pension fund without proper procedure, issue policy directives which are the domain of the Minister as the head, running up legal bills etc. The ability of the DOC to effectively execute all these roles is therefore questionable.

Therefore, MMA submits that the Bill is unconstitutional, administratively illogical and over burdensome, and also counter-productive. It is counter-productive in the sense that it is not going to operate better simply because the Minister is given more roles at ICASA. Its underperformance and effectiveness would be severely aggravated should the proposed ICASA Amendment Bill be adopted; it amounts to a serious violation of ICASA’s independence. Critically this means that the Bill is taking away power from the people of South Africa and giving this power to a Government Ministry.

6.2 ICASA: Severely challenged and weakened

The credibility and effectiveness of ICASA has been in free fall. The current problems that ICASA is facing, and is already in the public domain, as well as gaps in the current system include, but are not limited to:

- ICASA has chosen to narrowly interpret the law
- While ICASA should not unduly interfere”(This term taken from the ECA Act Chapter 1 2, (Y)) in the SABC, or other matters of public broadcasting at the same time, it must be empowered to act independently in the public interest and intervene to resolve crises in the public interest.

- Public service broadcasting would not be in the present crises were it not for the failure to act of the oversight bodies, ICASA being one of these essential bodies. For example, ICASA was partly responsible for distancing the SABC from accountability. Another example, ICASA's absence of leadership on the SABC crises that have befallen the SABC in the recent years and have resulted in its integrity being in free fall, including the: SABC Board, senior management, financial crisis, content, allegations of bias and political interference. Despite ICASA being mandated to "protect the integrity and viability of the SABC" (*Electronic Communications Act 2005*).
- There is a lack of clarity in law and role of ICASA. For example; The Charter of the SABC must be clarified and clearly framed, otherwise it is almost impossible for the Authority to monitor and enforce compliance with this charter.
- Failures by Parliament's portfolio committee on communications to exercise oversight role effectively. For example Parliament could have requested the Authority to submit Annual report on the SABC's compliance. At present the law requires the Authority to monitor compliance by the SABC but there does not appear to be any reporting mechanism to parliament for this compliance. Had such reporting taken place some of the crises at the Authority and SABC may have been avoided.
- Similarly failure by Department of Communications to exercise sufficient oversight in respect of quarterly financial reports submitted to it by the Authority. Analysis and discussion of these may have revealed challenges within the Authority.
- Institutional funding – for far too long ICASA's funding has not been stable, this has resulted in many challenges to ICASA's ability to fulfil its functions. There is a clear need for ICASA to be self funded in line with other regulators.
- Under resourced and under capacitated, and ICASA's ability to function effectively as an administrative body have resulted in numerous challenges and unnecessary delays.
- Ability to acquire and retain pre-eminent employees in their fields. ICASA has served as the recruitment ground for broadcasters and others in the telecommunications industry.
- There appears to be an absence of effective monitoring and performance management systems for staff and councillors. Absence of public accountability for delays.
- Power imbalance. Despite ICASA's legislative power it has previously been at the mercy of some of the bigger industry players, recently evidenced in attempts to get mobile operators to reduce costs.
- Ability to effectively evaluate and monitor public broadcasting services, as evidenced in absence of monitoring and compliance reports.
- Apparent fear of acting in the public interest, where it may be perceived to be acting in conflict of political interests.
- ICASA has a low profile within those outside of the communications sector, the concern is that it engenders an absence of accountability with broadcasters, members of the public and in particular what the role of the Authority is.
- The regulatory environment surrounding public broadcasting, levels of accountability, roles and functions of Parliament, the Minister, the SABC Board and ICASA are difficult to understand and unclear. These factors combined with competing political interests encourage more of a hands-off approach to public

broadcasting than a hands-on approach. The impact of the hands-off approach has been clearly highlighted by ICASA's virtual silence on the SABC crises. Another instance of this hands-off approach can be seen in ICASA's response to the FXI Blacklisting complaint about the SABC which was delayed and sought to sweep the issues aside rather than taking decisive action.

- Anecdotal evidence and media reports of:
 - failure of leadership;
 - inadequate monitoring and evaluation processes of broadcasters as well as employees;
 - maladministration and incompetence;All need to be addressed and investigated formally.

6.3 What ICASA challenges does the Bill address?

In light of these challenges, and gaps in the current systems, the proposed Amendment Bill fundamentally fails to address the strengthening of ICASA. The sole reference to strengthening the regulator appears in the *Memorandum of Amendment section 4 B*, saying “*the purpose of clause 3 is to reduce unreasonably long consultation periods during inquiries, to improve turn-around times and thereby strengthening the Regulator*”. MMA submits that this is inadequate; and it is deeply worrying to assume that all that is needed to strengthen ICASA is to reduce unreasonably long consultation periods during inquiries. In addition, the Bill suggests inadequate solutions to the some of ICASA's problems, thereby failing to get to “the root of the issue”.

For example, the issue of underfunding, this is at the core of ICASA's problems. Therefore it would seem that the Bill is counter-productive. In order for ICASA to act courageously and in the public interest it is fundamental it has the appropriate and necessary resources to do so. A case in point is amendment of section 4 (1A), it gives ICASA the power to defend “legal proceedings” but again fails to address one of its main challenges, a lack of funding and capacity, which has weakened ICASA's effectiveness in legal proceedings against big operators, like MTN and Cellc.

Another case in point is, one of the purposes, objectives and backgrounds of the Bill is, to improve turn-around times so that the responsibilities of ICASA are improved (Enactment, Draft ICASA Amendment Bill). MMA contends that greater turnaround time is highly dependent on capacity and funding. In addition, putting in place quicker turn-around times without addressing the issues of funding and capacity severely questions the quality of work that will be produced. The Bill fails to address the other challenges infringing on ICASA's turn-around times. Similarly the background and objectives says that the Bill aims to improve the functioning of the Complaints and Compliance Committee, through turnaround times for resolution of complaints and its effectiveness. The same argument can be applied here.

Also, ICASA (and its predecessor the IBA) has been given more roles over the years, including telecommunications and Postal services, and however ICASA has not been given greater capacity and funding for these additional roles.

MMA submits that the proposed Bill fundamentally fails to address ICASA's challenges, and where it does, it is inadequate.

7. Recommendations

MMA submits the following recommendations to strengthen ICASA:

7.1 A full and comprehensive Audit commissioned by Parliament to be carried out by the Auditor General of the Authority. The comprehensive audit should cover:

- ICASA's administrative functions and regulatory functions;
- The degree to which it operates successfully;
- Governance issues, (including a review of appointment procedures and criteria ensuring greater public participation);
- Performance management systems;
- Review of accounting and monitoring and evaluation systems;
- Capacity and ability to fulfil its functions;
- Review of the appointments procedures, criteria for positions and performance management systems should be addressed, to ensure strengthening of independence from political and or commercial interference and interests, and thereby also ensuring widespread public participation in such processes.

Based on the results of the audit a comprehensive strategy can be developed to address the weakness and build on the strengths of the Authority. Such an audit is however essential in order to ensure that the Authority can effectively fulfil its functions in the best interests of the public. As part of the comprehensive Audit process it is also imperative that a Restore the credibility of the SABC, in particular assess ICASA's role or lack thereof in the events and reasons that have led to the current state of the SABC's credibility, - This requires a multi layered strategy.

7.2 Urgent clarification regarding precisely which roles and areas the Authority must regulate and effectively monitor and evaluate in the public interest, with regards to, in particular, public broadcasting.

7.3 Appropriate funding structures must be put in place, to ensure self funding of the Authority. This can be easily achieved through ICASA receiving a percentage of the annual licence fees that it collects, not only would this ensure greater independence of the Authority but also greater stability and planning ability.

7.4 Address management and capacity issues through implementation of appropriate, independent and comprehensive performance management systems and implementation of other staff retention strategies. Such systems also need to ensure that there is accountability to parliament, senior management where appropriate as well as public accountability.

7.5 Build and develop monitoring and evaluation capacity, for example that takes into consideration digitisation and effective monitoring of local content.

- 7.6 Ensure that cutting edge public interest research is appropriately and frequently conducted and therefore funded, that would inform for example, a blueprint for public service broadcasting in the age of digitisation and therefore the long term vision of the direction of the industry
- 7.7 Develop a cutting edge research and policy development department at ICASA.
- 7.8 Develop means for public information dissemination, education and public engagement arm around broadcasting, for example on areas of the importance of public broadcasting, the importance of DTT for the average person.
- 7.9 Develop a simplified accessible means of engaging ICASA regarding complaints and other issues. The website as well as mobile communications processes as a means of two way communication could be explored as a means of achieving this.

MMA therefore implores the Department of Communications (DOC) to stop these “quick- fix” Bills and embark on a full policy review process. If the PSB Bill and ICASA Amendment Bill go through in their current formats they will invite disaster, and our democracy will be fundamentally undermined,

8. Conclusion

- 8.1 MMA thanks the Department of Communications (DOC) for the opportunity to make this submission.
- 8.2 Please do not hesitate to contact us at the numbers below should there be any queries over our submission, or if we can be of assistance in developing any of the recommendations further.

Yours sincerely,



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