

Key points of Audio and Audio-visual Content Services Policy Framework

By [Peter Greal](#), [Nozipho Mngomezulu](#), [Karl Blom](#) and [Wendy Tembedza](#)

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The Department of Communications and Digital Technologies (DCDT) released a White Paper containing a framework for the provision of audio and audio-visual content services on 9 October 2020. The DCDT invites interested parties to comment on the proposals outlined in the White Paper by 30 November 2020.



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The White Paper seeks to bridge the gap between the legislative framework applicable to audio and audio-visual content services and the technological advancements and trends which have come with the global digital revolution - thereby promoting investment in the audio and audio-visual content industries and facilitating socio-economic development.

The general approach proposed by the DCDT

The DCDT proposes that South Africa adopt a similar approach to that taken by the European Commission. In 2005, the European Commission resolved to, amongst other things, relax the regulation of broadcasting and broadcasting-like services (i.e. non-linear services provided over the Internet), and to level the competitive landscape between traditional broadcasting services (which were subject to a particular regulatory environment) and non-linear services by introducing a basic set of rules for non-linear services.

The European Commission stated that a more technology neutral approach needs to be taken to the regulation of what has traditionally been referred to as broadcasting services and introduced a set of rules that apply in a technology/platform neutral way - so that is, rules that apply to all services regardless of the platform used to provide the services.

The White Paper adopts a similar technological neutral approach of treating services in the same way so as to ensure regulatory parity and fair competition.

Proposals contained in the White Paper

The White Paper proposes the following:

- **The new audio and audio-visual content services licence.** Replacing the current licence category of "broadcasting services" (which is deemed to be overly narrow and very platform specific), with a broader category of "audio and audio-visual content services".

- **Categories of audio and audio-visual content services licence.** Within the above broader category of an "audio and audio-visual content services" licence, there will be three sub-categories: (i) broadcasting services; (ii) on-demand content services; and (iii) video sharing platform services. Whereas broadcasting services and on-demand content services will require licensing, video sharing platform services will be exempt from licensing, although not exempt from regulation.

- **Transitional framework to convert licences.** A transition period of 24 months, for the conversion of existing licences to the new audio and audio-visual content services licensing framework.

- **Amend legislation to clarify that SABC is the sole public broadcaster.** Although the three tiers of broadcasting, namely public broadcasting, commercial broadcasting (free-to-air and subscription) and community broadcasting should remain in place, the definitions of commercial broadcasting and public broadcasting should be amended. In relation to the latter, the White Paper proposes amending the Electronic Communications Act, 2005 and the Broadcasting Act, 1999 to clarify that the South African Broadcasting Corporation is the only public broadcaster.

- **Individual and Class licence thresholds.** Applying thresholds based on annual turnover to determine what type of licence (i.e. Individual or Class) an audio and audio-visual content services provider needs to apply for. The Individual or Class licence will be issued for a defined period irrespective of fluctuations below the annual turnover threshold during the licence period.
 - *Individual licence threshold* - The initial threshold proposed for an Individual licence for broadcasting services and on-demand content service is an annual turnover of R100 million in the previous financial year;
 - *Class licence threshold* - The proposed entry level threshold requirement to hold a Class licence is proposed to be set at an annual turnover of R50 million in the previous financial year and those on-demand content services below this entry level threshold will be exempt from applying for a licence; and
 - in order to assist the regulator to properly monitor the above-mentioned thresholds and the size of the audience, audio and audio-visual content services, providers must provide the regulator with their annual audited financial records and their user / subscriber / audience numbers.

- **Relaxation of ownership (including foreign ownership) restrictions.** The White Paper notes that in various jurisdictions, regulatory authorities have started to relax ownership restrictions, and in some cases, have abolished them altogether. The White Paper makes the following proposals in relation to the ownership limitations in the audio and audio-visual content services market:
 - the removal of all limitations on the ownership and control of commercial sound and television broadcasting licensees;

- the removal of the cross-media ownership limitations - the White Paper notes that print media companies are no longer, by default, the largest media companies;
 - in order to increase foreign direct investment in the ICT sector, limitations in respect of foreign ownership of linear individual audio-visual content services (broadcasting services) will be retained, but will be adjusted from 20% to 49% i.e. a foreigner (other than a foreigner from an African Union [AU] country - see below) cannot directly or indirectly have a financial interest or an interest in voting shares or paid-up capital in a commercial broadcasting licence which exceeds 49%; and
 - a foreigner from an AU country can directly or indirectly exercise control over a commercial broadcasting licensee or have a financial interest or an interest in either voting shares or paid up capital in a commercial broadcasting licence which exceeds 49%, provided that this must be subject to a reciprocal agreement between South Africa and the AU country.
- **Framework for digital radio.** The White Paper proposes the progression of technical standards for digital radio and a licensing framework for digital audio broadcasting in South Africa.
 - **South African content quotas.** These quotas should be measured across the total bouquet of channels offered by a broadcasting service licensee, and if such licensee cannot meet the South African content quota due to the nature of the service, the licensee should be offered the opportunity to pay an amount of money or a minimum percentage of gross revenue into a fund that supports the creation of audio and audio-visual South African content (this measurement will also apply to the public broadcaster's bouquets).
 - **Enhanced protection of children and consumers.** Legislation should be amended to provide for a code of conduct for on-demand content services in order to ensure greater regulation to protect children and consumers.
 - **Regulation of advertising.** The legislative framework for advertising standards should apply to all audio and audio-visual content services, as the White Paper notes that there is currently a regulatory imbalance between the regulation of advertising on broadcasting platforms and online advertising.
 - **Intellectual property protection.** Legislative and regulatory mechanisms to protect against signal piracy must be introduced into the Electronic Communications and Transactions Act, 2002, to prevent persons engaging in the piracy of audio and audio-visual content services.

ABOUT THE AUTHOR

Peter Grealy, Partner, Nozipho Mngomezulu, Partner, Karl Blom, Senior Associate & Wendy Tembedza, Senior Associate at Webber Wentzel

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