Industry, Human Capital and Policy Dimensions of Independently Produced South African Free-to-Air (FTA) TV Local Content in the Digital Environment

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Abstract

This research report assesses the readiness of the independent television (TV) production industry in South Africa to produce sufficient local content for the free-to-air (FTA) TV broadcasting sector in the digital environment. The research focuses specifically on the TV broadcasting services of the South African Broadcasting Corporation (the SABC) and e.tv. The research assesses the state of the South African independent TV production industry, the availability of adequately skilled human capital within the industry, and whether there is an enabling policy and regulatory framework to support the industry. The research employs three pillars of the digital transformation analytical framework developed by Hanna (2010), namely: industry, human capital and policy.

The research design used in this research is case study. The research design is supported by data analysis of secondary literature, documentary analysis of policies, legislation, regulations, stakeholder submissions to policy, legislative and regulatory processes, and other stakeholder documents. This is further accompanied by semi-structured interviews conducted among key stakeholders in the three spheres of focus of the research, namely the independent production industry, the television broadcasting industry and the policy-regulatory sphere.

The research finds that there are core elements in place for fostering the creation of independently produced local content, although with shortcomings. These elements include the availability of training institutions to equip personnel in the independent production industry with the requisite skills. The research finds however that there are still key positions within the industry which are difficult to fill due to the lack of qualifying skilled personnel. The research further finds that there is availability of a policy framework to enable the participation of historically disadvantaged individuals (HDIs) in the independent production industry through broad-based black economic empowerment (B-BBEE) policies and funding initiatives through government-run funding institutions.

It is also found that the Digital Migration Policy is one of the cornerstones for the future of FTA TV and is a catalyst to stimulate the demand for the production of local content. However, the policymaking process has been marred with policy developments that were either never completed, or that are taking years to complete, thereby delaying the achievement of policy intent. Meanwhile, the Regulator has, since its inception in 1993 post the apartheid era, strived to lay a regulatory framework that fosters the preservation and promotion of local content produced by the independent production industry. Yet the Regulator continues to experience difficulties with the monitoring of SABC and e.tv compliance with their obligations. The emergence of the COVID-19 pandemic has also created a challenge for the industry, including the total stoppage of production activities during the alert level 5 of lockdown.

The research also identifies potential interventions to address the identified shortcomings in support of the production of independently produced local content for the SABC and e.tv in the digital environment. These interventions primarily relate to policy realignment, ranging from human capital training and development, to creating a framework that spurs the independent production industry by introducing a pay-or-play principle for local TV content as an alternative to a quota-based compliance system. The research further finds that the 2020 Draft White Paper on Audio and Audiovisual Content Services Policy Framework introduces policy interventions that could positively shape the future of the independent production industry.

Dedication

I dedicate this research report as an inspiration to my daughter Naledi, who started her tertiary education this year, and to my son Mohau, who was born during the course of this research project.

Acknowledgements

I wish to thank my supervisor Dr Chris Armstrong for his support, guidance and meticulous attention to detail throughout this research. A special thanks go to my family, who stood by me through this journey.

Declaration

I, Dimakatso Susan Qocha, declare that this research report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Arts in ICT Policy and Regulation at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other university.

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Acronyms and abbreviations	
4IR	fourth industrial revolution
AFDA	Africa Film Drama Art
APP	Annual Performance Plan
B-BBEE Act	Broad-Based Black Economic Empowerment Act 46 of 2003 as amended
B-BBEE	Broad-Based Black Economic Empowerment
BBC	British Broadcasting Corporation
BDM	broadcasting digital migration
BDM Policy	Broadcasting Digital Migration Policy
BRC	Broadcast Research Council
CCI	cultural and creative industry
CFC	Cape Film Commission
CGH	content generation hub
DTI	Department of Trade and Industry
DTPS	Department of Telecommunications and Postal Services
DTT	digital terrestrial television
DAC	Department of Arts and Culture
DCDT	Department of Communications and Digital Technologies
DCF	Digital Content Fund
DCGH	Digital Content Generation Hub
DSAC	Department of Sport, Arts and Culture
DTCAG	Digital Television Content Advisory Group
DTIC	Department of Trade, Industry and Competition
ECA	Electronic Communications Act 36 of 2005
EME	Exempted Micro Enterprise
FTA TV	free-to-air television
GDP	gross domestic product

GFC	Gauteng Film Commission
HDI	historically disadvantaged individual
ITU	International Telecommunication Union
IBA	Independent Broadcasting Authority
IBA Act	Independent Broadcasting Authority Act 153 of 1993
ICASA	Independent Communications Authority of South Africa
ICT	information and communication technology
IDC	Industrial Development Corporation
IoT	Internet of Things
IP	Internet Protocol
IP	Intellectual Property
IPO	Independent Producers Organisation
KZN	Kwa-Zulu-Natal
MMA	Media Monitoring Africa
MDDA	Media Development and Diversity Agency
MICT-SETA	Media, Information and Communication Technologies Sector Education and Training Authority
MTEF	medium term expenditure framework
NAB	National Association of Broadcasters
NEMISA	National Electronic Media Institute of South Africa
NFVF	National Film and Video Foundation
NFVF Act	National Film and Video Foundation Act 73 of 1997
Ofcom	Office of Communications
PBS	public broadcasting service
PDI	previously disadvantaged individual
RFP	request for proposals
RSA	Republic of South Africa
SABC	South African Broadcasting Corporation

SABC TV	South African Broadcasting Corporation Television
SABPAB	South African Broadcast Production Advisory Body
SAIIPL	South African Institute of Intellectual Property Law
SAQA	South African Qualifications Authority
SASFED	South African Screen Federation
SBU	Strategic Business Unit
SMME	small, medium and micro enterprise
SOS Coalition	SOS Support Public Broadcasting Coalition
ToT	terms of trade
TV	television
UK	United Kingdom
UNESCO	United Nations Education, Scientific and Cultural Organisation
USAASA	Universal Service and Access Agency of South Africa
USD	U.S Dollar
VOD	video on demand
ZAR	South African Rand

Chapter 1: Introduction: South African Independently Produced Free-to-Air (FTA) Local TV Content and Emerging Digital Environment

1.1 South African free-to-air (FTA) TV

Since the freeing up of the airwaves at the advent of democracy in 1994, the South African free-to-air (FTA) television broadcasting industry has grown substantially. As of late 2020, the Independent Communications Authority of South Africa (ICASA) had licensed three FTA public service TV broadcasting services of the SABC, two commercial FTA TV broadcasters, namely e.tv and Kwesé Free TV, [1] and a variety of community TV services. Also, in 2013, Platco Digital (part of the eMedia Group that owns e.tv), launched a FTA satellite service, OpenView, carrying 18 channels (the terrestrial e.tv channel, seven additional e.tv branded channels, the three SABC terrestrial channels, and seven other independent channels). [2]

Meanwhile, as of late 2020, the digital terrestrial television (DTT) platform carried all three SABC terrestrial channels, its parliamentary channel, its sport channel (SABC, 2020, p. 66), its 24-hour news channel, its Encore channel, and an education channel (authorised by ICASA in April 2020). On the other hand, eMedia services on the DTT platform are the e.tv terrestrial channel and five e.tv-branded services (eMedia Holdings, 2020). According to the latest figures made available by the Department of Communications and Digital Technologies (DCDT) (formerly the Department of Communications) to the Portfolio Committee on Communications, as of early 2020, 1.1 million households had been registered to receive subsidised DTT set-top boxes, and out of these, 511,368 households had DTT set-top box installations and thus access to DTT (DoC, 2020a).The broadcasting

[1] As of late 2020, Kwesé Free TV had not begun its broadcasting services. Its deadline for commencement was March 2021.
[2] As of late 2020, OpenView had a viewership of more than 2 million households nationwide (eMedia Holdings, 2020, p. 13).

digital migration (BDM) over to DTT, once concluded, is expected to provide a better viewing experience to the South African TV viewers through, among other things, introducing a wide variety of TV channels and content, and a higher-quality picture. (BDM is the process by which terrestrial broadcasting services move from analogue to digital broadcasting (i.e., DTT).) South Africa has not officially switched off its terrestrial analogue TV broadcasting services, in spite of committing to the international switch-off deadline, set by the International Telecommunication Union (ITU), of 17 June 2015.

There was a 2018 commitment by government that the analogue-to-digital switchover would be completed by July 2020, with the Free Sate being the first province to fully migrate. At the finalisation of this research report in late 2020, the full migration of the Free State had not yet been completed, and the DCDT had announced Cabinet approval of a mid-2021 analogue switch-off date (DoC, 2020b). According to the department, in its 2020 annual report, the progress on BDM has been slow due to, among other things, the slow pace of households migrating to digital platforms, the high costs of set-top box production, inefficient project management systems, and the inability of the SABC to champion awareness (DoC, 2020b, p. 7).

This emergent digital-only, multichannel FTA environment has the potential to greatly affect the FTA TV local content value chain. The need for a stable and sustainable independent production industry, with the requisite skills sets and human capital, as well as an enabling policy and regulatory environment, are among the key elements influencing this value chain. According to the BDM Policy, first released in 2008 (and amended in 2012 and 2015):

> Broadcasting Digital migration presents the country with a unique opportunity to positively shape the future dynamics of the Information and Communications Technology (ICT) sector. Broadcasting digital migration will

> bring with it many benefits including: […] more channels and, therefore, more diverse content delivered to the South African public. (RSA, 2008, p. 11)

The Policy further states as follows regarding the creative sector:

> [T]he development of Creative Industries will provide an opportunity for the coverage of South African stories, entertainment and cultures in multichannel digital broadcasting, thus contributing towards building national identity and social cohesion, further providing an African perspective of South Africa as an integral part of the African continent. (RSA, 2008, p. 14)

1.2 South Africa's independent TV production industry

The film and TV production industry is one of the key industries that make a significant contribution to South Africa's gross domestic product (GDP). In the period 2016-17, the industry contributed ZAR5.485 billion to the GDP. Since the inception of democracy, there has been some concerted effort by government, through policy and legislative interventions, to correct the race imbalances within the film and TV independent production industry, brought about by apartheid. Historically, the independent production industry has mainly been white-male-dominated and lacking in participation by black South African and female. Furthermore, some white-owned production companies that recruit black people have been perceived to be fronting, as a means to be seen to have transformed, in order to obtain production opportunities and funding that they would ordinarily have not obtained. Through interventions, spearheaded by the Broad-based Black Economic Empowerment (B-BBEE) Act 46 of 2003 as amended in 2013 (B-BBEE Act) (RSA, 2013), large production companies are relatively transformed, while challenges remain with small production companies.

As a means to level the playing field for young black producers, government has, through the National Film and Video Foundation (NFVF), the Industrial Development Corporation (IDC) and the Department of Trade, Industry and Competition (DTIC, formerly the Department of Trade and Industry), introduced funding initiatives, to boost film and TV production by black independent producers. At a provincial and municipal level, film commissions and film offices support local film and TV productions, skills development and marketing.

1.3 Policy context

The Independent Broadcasting Authority Act 153 of 1993 (IBA Act) mandated the IBA to conduct an inquiry into the public broadcasting service, cross media ownership and control, and issues pertaining to local content.[3] To this end, the IBA developed the 1995 Triple Inquiry Report (IBA, 1995). One of the key areas of focus of the Report, relevant to this research, was the creation and production of local TV content. The Report advocated for the creation of South African local TV content by South African independent producers. It further recommended that such content should be produced in the 11 official South African languages (IBA, 1995, p. 3). Subsequent to the publication of the Triple Inquiry Report was the publication of the White Paper on Broadcasting Policy (RSA, 1998), which also emphasised the importance of local TV content, generated in various genres and formats, and produced by independent South African producers.

The Broadcasting Act 4 of 1999, which was published after the White Paper process in 1998, mandates the public service arm of the SABC to commission content from the independent production industry (RSA, 1999).[4] The Act further mandates the establishment, by the Minister of Communications, of an advisory body, referred to as the South African Broadcast Production Advisory Body (SABPAB), to advise the Minister on the production of

[3] Section 28(8)(b) of the IBA Act.
[4] Section 10(1)(h) of the Broadcasting Act.

independently produced content (RSA, 1999).[5] This body was established in 2000 but its findings have never been made public (ICASA, 2013).

The first set of local TV content regulations was published in 1997 by the IBA, when it passed Regulations Relating to the Imposition of Specific Broadcasting License Conditions Regarding Local TV Content for Public and Private TV Broadcasting Services (IBA, 1997; Pygma, 2013, p. 62). The regulations, which include quotas for broadcasting of South African TV content and for procurement of this content from South African independent producers, have undergone various review processes, with the latest version being the ICASA Local Television Content Regulations of 2016 (ICASA, 2016a). These 2016 regulations were the outcome of a review process that ICASA commenced in 2013 with the publication of a research study. The review was necessitated by, among others, the need for ICASA to align the regulations to the needs of the multi-channel digital environment, as espoused by the 2008 BDM Policy. Furthermore, with the aim of developing the independent production and music industries, and ensuring that local content is aired, the aforementioned ICASA study sought to conduct a cost-benefit analysis and draw preliminary conclusions on the lowering of regulatory costs, promoting diversity and sector transformation, and forging a way forward concerning the independent TV production sector (ICASA, 2013, p. 19). The report laid the foundation for ICASA to launch a public inquiry via the publication of the 2015 Discussion Document on the Review of Local Content (ICASA, 2015a). The final Local Content Reasons Document and the Regulation on Local TV Content were subsequently published in 2016 (ICASA, 2016b). One of the key issues covered by the 2015 Discussion Document, which culminated in the publication of the Reasons Document, was assessment of the effectiveness of the local content policy objectives laid out in the 1998 White Paper. TV broadcasters, as well as ICASA, confirmed that these objectives were being met as TV broadcasters

[5] Section 38 of the Broadcasting Act.

were exceeding their local content quota obligations. However, in finalising its 2016 Local Content Regulations, ICASA introduced increased quotas for TV broadcasters.

The Electronic Communications Act 36 of 2005 (ECA) upholds the principles of the promotion of cultural diversity and the preservation of South African identity through the creation and broadcasting of independently produced South African content. The legislation defines independent TV production, in section 61(2)(b), as

> […] a production of local television content –
>
> (i) by a person not directly or indirectly employed by any broadcasting service licensee; or
>
> (ii) by a person who is not controlled by or is not in control of any broadcasting service licensee. (RSA, 2005)

It further defines local TV content, in section 61(2)(a), as:

> […] television programme excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements which is produced:
>
> (i) by a broadcasting service licensee;
>
> (ii) by a person who is a citizen of, and permanently resident in the Republic;
>
> (iii) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in the Republic, […] (RSA, 2005)

Countries worldwide continue to engage in media policy reforms to align their respective legislations and regulations to the changes in the ICT and broadcasting landscapes. One of the focal areas for the policy reviews is content regulation (Z-Comms, 2014, p 40). In line with this trend, in 2012, South Africa established an ICT Policy Review Panel (DoC, 2012). This was done against the backdrop that the existing broadcasting national policy was the 1998 Broadcasting White Paper, which was outdated. The process culminated in the publication of the panel's National Integrated ICT Policy Review Report in 2015 (DTPS, 2015b), and subsequently the National Integrated ICT Policy White Paper (DTPS, 2016). The National Integrated ICT Policy Review Report (2015b, p. 64) recognised that the prescripts of the 1998 Broadcasting Policy White Paper were premised on the needs of analogue broadcasting. However, the provisions of Chapter 5 of the Review Report were not carried over into the 2016 White Paper. This Chapter 5 of the report is directly relevant to this research, because its contents are dedicated to audio and audio-visual content services.

Chapter 5 of the 2015 Review Report includes reflections on the provisions of the 1998 White Paper regarding the mandate of TV broadcasters to promote local content by committing airtime to content produced by the independent South African production industry (DTPS, 2015, p. 107). The report supports the principles espoused by the 1998 White Paper and proposes that policy interventions be devised to ensure that these principles survive the changing content environment. The Review Report recognises that there are existing measures in place for the preservation of local content and the stimulation of the production industry—through the imposition of TV local content and independent production quotas via regulations—and further makes recommendations for government to consider pay-or-play provisions, as additional means to support the production of South African audio-visual content (DTPS, 2015). Adoption of a pay-or-play regulatory approach would mean that, should a TV broadcaster not be able to meet its local content quotas through the procurement of independently produced content, such a TV broadcaster would invest a specified portion of the money it ought to have used in the production in an initiative that develops the independent production industry.

The reconfiguring of government departments after the 2014 national elections brought about the splitting of the Department of Communications (DoC) into two entities, namely the DoC and the Department of Telecommunications and Postal Services (DTPS) (RSA, 2014a). The responsibility for audio-visual service policy matters covered in the aforementioned Chapter 5 of the National Integrated ICT Policy Review Report was transferred to the DoC, while the responsibility for the content of the rest of the chapters went to the DTPS, forming the basis for the content of the 2016 National Integrated ICT Policy White Paper.

The Minister of Communications published an invitation for Written Proposals on Broadcasting Policy Review Document (RSA, 2014b) calling for public inputs. Among the issues the Policy Review sought inputs on were content of local and national interest, the development of language through broadcasting services, and the broadcasting landscape beyond BDM. Written submissions in relation to this process were not made public. The DoC later indicated, in its revised medium-term strategic plan for 2015-16 to 2019-20, that it would start the process of developing an Audio-Visual and Digital Content Act in the financial year 2016-17, a process that would include the development of a Green Paper, a White Paper and a Bill to be submitted to Parliament (DoC, 2015, p. 20).

(In September 2020, after completion of this research project's data collection phase, it was announced that Cabinet had approved a Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa (South African Government, 2020). The Draft White Paper was then made public in October 2020. Due to the Draft White Paper being published after this project's data collection, it is only discussed in this research report's concluding chapter 6.)

1.4 Research problem and objectives

Since the beginning of South Africa's democratic transition, policy has attempted to lay a foundation for both the FTA TV broadcasting industry and the independent TV production industry to thrive. The ECA mandates that a significant proportion of TV content on FTA TV broadcasting be South African content, a significant percentage of which must be produced by independent South African content producers. The ECA empowers the regulator ICASA to prescribe regulations for TV broadcasting service licensees on local content and on the commissioning of independently produced South African programming.

The transformation that the FTA TV broadcasting industry is going through, which is necessitated by convergence, digitisation and BDM, presents TV broadcasters with the opportunity to provide more channels and thus a wider diversity of content. Thus, there promises to be greater need for content from the independent production sector. Yet it is not clear to what extent the current status of the independent production sector, its human capital, and its policy environment are conducive to local TV content production for the digital environment.

The core objectives of this study were to explore the state of South Africa's independent TV production industry; the industry's human capital; and policy in support of the industry. Ultimately this study sought to contribute to the literature on the South African TV industry, by providing insight into the steps the independent production industry, FTA TV broadcasters, policymakers and regulatory authorities in South Africa could take in order to foster a favourable environment for independent TV producers to deliver on its local TV content mandate in the digital dispensation. (It should be noted here that for purposes of this research, South African local TV content refers to content produced by the South African independent content producers. Additionally, the scope of the research was limited to independently produced local TV content carried by the SABC and e.tv, as they are the major procurers of such content by virtue of their license terms and conditions and other ICASA regulations.)

1.5 Analytical framework and research questions

The analytical framework for this research was based on three of the five pillars of the Hanna (2010) digital transformation framework, namely: industry, human capital, and policy. The three pillars were deployed to focus on the South African industry, human capital and policy in support of independently produced content to meet the needs of the South African FTA television broadcasting sector. Under these pillars, consideration was also given to the ideas of Doyle (2010; 2016 2018a; 2018b) on the impact of digitisation on the independent production industry in the UK.

The overarching research question, grounded in the three selected pillars from Hanna (2010), was: What are the industry, human capital and policy requirements in support of independently produced South African FTA TV local content in the digital environment? Research sub-questions were:

- What is the current state of South Africa’s independent TV production industry, and why?
- What is the current state of human capital in South Africa’s independent TV production industry, and why?
- What is the current state of policy in support of South Africa’s independent TV production industry, and why?
- What industry, human capital and policy changes, if any, are required in support of independently produced FTA TV local content for the digital environment, and why?

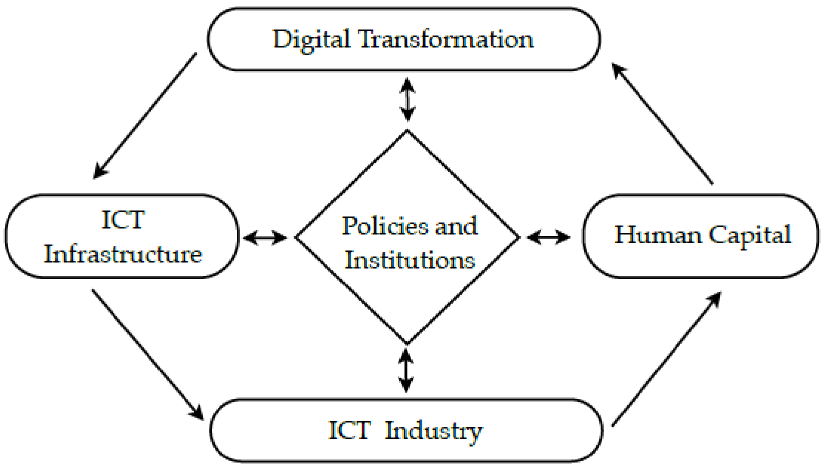
Chapter 2: Literature Review: Industry, Human Capital and Policy Dimensions of Independently Produced South African FTA TV Local Content in the Digital Environment

2.1 Digital transformation

Digital transformation is a shift to a new techno-economic paradigm. Digital transformation cuts across all sectors including media and entertainment, financial services, education, health care, public services, science and innovation, and manufacturing and logistics (Hanna & Summer, 2014, p. 4). Gebhart, Giessler and Abeck (2016, p. 136) define digital transformation as "the changes that the digital technology causes, or the influences it has in all aspects of human life". According to Gebhart et al. (2016), the rise in the usage of digital technologies such as mobile devices, social media and the Internet of things (IoT), among others, has brought about new opportunities.

Consequently, states and companies ought to rapidly adapt to the change brought about by digitisation. According to Hanna (2016, pp. 2-3), this rapid development of digital technologies requires an entrepreneurial state that drives innovation. To make digital transformation a reality, Hanna (2016), building on ideas first set out in Hanna (2010), states that governments ought to focus on enabling policies, human resources, institutions, and infrastructure to leverage the benefits of digital technologies and digital transformation. Hanna cites governments of countries such as the US, Singapore, South Korea, Finland, Sweden, Israel, Estonia, and China as having played key roles in driving the digital transformation agenda. These governments have partnered with the private sector to promote innovation towards a dynamic digital transformation ecosystem. On the other hand, Hanna (2016) points out that, many countries struggle to keep up with technological developments and fail to set policy and regulatory frameworks to meet the rapid change. According to Hanna in the earlier publication (2010), there are five key pillars to digital transformation which should guide a country's digital transformation strategy. These are depicted in Figure 1 below (taken from Hanna, 2010, p. 246):

Figure 1: The Digital Transformation Ecosystem



Source: Hanna, 2010, p. 246

Hanna (2010) places policies and institutions at the centre of the digital transformation framework since they are enablers for all other pillars. Hess, Matt, Benlian, and Wiesböck, (2016, p. 123) indicate that companies have gone out of business due to their inability to formulate adequate digital transformation strategies. The authors give an example of the video rental company, Blockbuster, which went bankrupt as a result of its inability to adapt to digital transformation. Unlike the digital transformation framework espoused by Hanna (2010), which focuses on five digital transformation pillars focused on countries, Hess et al. (2016) advocate for a digital transformation framework that is premised on four key dimensions to guide an institution's digital strategies. The first dimension focuses on the use of technologies and requires that digital technologies must reflect the institution's capacity to explore and exploit new digital technologies. The second dimension focuses on changes in added value. It dictates that the institution's use of digital technologies must reflect the influence of digital transformation on an institution's value-add. The third focuses on structural changes. According to the authors, this dimension refers to adjustments in the institutional framework, processes and human resource capacity that can accommodate and harness new technologies. Finally, the financial dimension encompasses an organisation's ability to respond to its ailing essential activities as well as its capacity to finance strategies focused on digital transformation. Hess et al. (2016) further note that from a TV broadcasting business point of view, digital transformation strategies should not only focus on the core activities of a broadcasting business—namely the development of content—but also on other elements of the company which can be digitally transformed to enable the TV broadcasting company to derive value out of its digital transformation strategy. In a case study of a broadcasting company that successfully adopted and implemented a digital transformation framework, the authors studied German FTA and subscription TV broadcasting company ProSiebenSat.1. The findings of the case study reveal that due to the successful roll-out of its digital transformation strategy, the TV broadcaster increased the revenues of its digital business by 20 percent within the space of 10 years. Among various services that the entity implemented was its move from linear TV broadcasting to video-on-demand and online-gaming (Hess et al., 2016, p. 126).

While the Hess et al. (2016) framework is a useful one, this research deployed digital transformation pillars from Hanna (2010) because they address digital transformation at a national level. Three elements of Hanna's digital transformation framework, specifically industry, human capital, and policies were deployed. These elements address the problem statement as outlined in chapter 1 and will provide guidance in answering the main question and sub-questions of the research.

2.2 The independent TV production industry

As explained in chapter 1, for purposes of this study, the industry examined is the South African independent TV production industry. (It should be noted that not all elements of the industry reviewed here are fully entwined with matters of digitisation and digital transformation, but they are all relevant to the industry's realities in the digital environment). According to UNESCO (n.d.), the cultural and creative industries are some of the fastest growing industries in the world. UNESCO indicates that these industries have an estimated global worth of USD4.3 trillion per year and generate 30 million jobs worldwide. In South Africa, the cultural and creative industries are among the key contributors to the country's GDP (NFVF, 2017). In the year 2016-17, the film and independent TV production industry contributed R12.2 billion to the country's GDP (NFVF, 2017), an increase from R3.5 billion in 2013 (NFVF, 2013). Based on these statistics, Collins, Ishizaka and Snowball (2019) observe that it is apparent that the film and TV industry contributes significantly to the economy. Flew & Cunningham (2010, p. 3) outline the global discourse, in agreeing which sectors fall under the creative industries and outline a number of definitions coined for the creative industry. The creative and cultural industries are defined as "those industries which have their origin in individual creativity, skill and talent and which have the potential for wealth and job creation through the generation and exploitation of intellectual property" (Higgs & Cunningham 2008, p. 4).

Doyle (2018a, p. 63) observes that the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions (2015) (UNESCO Convention) is the key international instrument that advocates for the preservation of access to diverse audio-visual outputs, including locally produced TV content. Doyle (2018a) adds that local audio-visual content is "essential in promoting social cohesion and integration, in maintaining plurality and democracy and sustaining regional and national identities" Doyle (2018a, p. 63).

In keeping with the global phenomenon of the preservation and promotion of social cohesion of diverse audio-visual outputs and locally produced TV content, through the cultural and creative industries, between 1994 and 1995 in South Africa, the IBA launched a Triple Inquiry. The Inquiry's focus was to review the public broadcaster, the South African Broadcasting Corporation (SABC), cross-media ownership and local content. The 1995 Triple Enquiry Report advocated for the generation of TV local content in 11 official South African languages. The next foundation policy document was the 1998 White Paper on Broadcasting Policy (RSA, 1998). In order to promote cultural diversity, the White Paper emphasised the importance of local TV content, produced by independent South African producers, in various genres and formats (Duncan & Glenn, 2010, p. 3).

Doyle's analysis of the UK (2016, p. 79) suggests that until the early 1980s, TV content production was viewed not as an economic activity but rather as a mere aid to the broadcasting service, in part due to the public service nature of TV. Also relevant was that there were only two TV broadcasters, BBC and ITV, until 1982, and both produced almost all of their content internally. However, the importance of a competitive and economically robust independent TV production industry has become paramount due to its ability to generate monetary value (Doyle 2016). According to Mediatique (2005), the UK licensing of Channel 4 in 1982 was key, as Channel 4 was mandated to procure content from independent producers. Flowing from this development, key regulatory and legislative intervention to endure the long-term sustainability and growth of the independent production sector were introduced. According to Oliver & Ohlbaum Associates (2011, p.4), the first was introduced by the Broadcasting Act 1990, which required the public broadcasting services of the UK namely BBC, ITV and Channel 4 to ensure that not less than 25 percent of the total broadcasting time allocated to "qualifying programmes" is dedicated to a "range and diversity of independent productions" (Oliver & Ohlbaum Associates, 2011, pp. 4, 5).

The second key development was introduced by the passing of the UK Communications Act of 2003 (UK, 2003). According to a report by the UK communications regulator Ofcom, based on a review of the operation of the television production sector (2015), The Act, among other things, allowed emerging production companies to control and exploit the intellectual property (IP) in their TV content productions (Doyle, 2016, p. 79). Furthermore, the Communications Act recognised the need for the establishment of codes of practice, negotiated between TV broadcasters and the independent production sector through PACT (an industry body for the UK independent production industry), and managed by Ofcom, to govern relations between the UK public service broadcasters (PBS) and the independent production industry, pertaining to the commissioning of content (Oliver & Ohlbaum Associates, 2011, p 7). The introduction of the codes was necessitated by the power the TV broadcasting sector had over the independent production industry. The industry was characterised by buyer concentration, as almost 90 percent of commissions were by the UK PBS, lack of bargaining power by the independent production industry and the existence of vertical integration within the market (Oliver & Ohlbaum Associates, 2011, p.7). The negotiated codes, known as the Terms of Trade (ToT), were adopted in 2004. According to Oliver & Ohlbaum Associates (2011), the ToT enabled an agreement on principles outlining available rights to TV broadcasters in line with their primary commissioning licenses and allowed for the independent producers to keep their primary rights subject to the negotiated licensing of those primary rights. The ToT also provided for a revenue sharing arrangement between producers and TV broadcasters in relation to the subsequent use of the IP of the commissioned content. The ToT benefitted the UK independent production industry as it brought clarity on the rules of engagement, and catapulted the industry into marketing its productions internationally, and this contributed to the growth of the industry.

Doyle (2010, p. 444) observes that the adoption of 360-degree strategies significantly changed the value provided by the independent production companies. A 360-degree strategy means the reuse and repackaging of content for different platforms, such as DTT and internet or mobile (Doyle, 2010, p. 444). Doyle (2016, p.87) reveals that most UK independent TV producers welcome the idea of selling broadcast rights to content in their independently produced content archives to other platforms in order to maximise returns for their productions.

Collins et al. (2019) observe that 20 years into democracy, the South African film and TV industry has, to a certain extent, transformed. They indicate that as compared to pre-1994, there have been developments in skills, knowledge, and advanced technical capacities in the industry, and they also note an increase in the variety of locations used for filming in South Africa. This, according to Collins et al. (2019), has encouraged and attracted the production of foreign film and TV series in the country. Wangen (2017, p.11) observes that, unlike pre-1994, where skills were mainly concentrated in the metropolitan cities, namely Johannesburg, Cape Town and Durban, there is a fairly significant shift in the geographical spread of skills to previously marginalised areas. Wangen (2017) further observes that there has been a move towards employing people with more diverse backgrounds, such as race and gender, as opposed to the previously racially exclusive nature of the independent TV production industry, which was largely white dominated.

Doyle and Peterson (2008, p. 18) point out that another challenge for the industry is that the UK independent TV production industry lacks financial stability. The authors indicate that this is partly due to weaknesses in the funding models currently in place. Doyle and Peterson (2008) indicate that there are two main types of funding models for the independent TV production industry: the cost-plus model, and the deficit financing model. The deficit financing model requires that in return for the right to broadcast a programme, the commissioning broadcaster offers the producer a percentage of the budget for the programme's production, with the difference borne by the independent TV producer. In return for this transaction, the producer retains the potentially lucrative secondary rights, which include selling the content to other broadcasters and to digital platforms, as well as to international markets. On the other hand, the cost-plus model is described as a case in which the TV broadcaster commissioning the production pays the full production cost (and occasionally the producer's envisaged profit) upfront. In return the broadcaster acquires all rights including the first window broadcast rights and all additional secondary rights emanating from the production (Doyle, 2016, p. 83). Due to their lack of capital, among other factors, small emerging independent TV production companies tend to favour the cost-plus funding model and lose access to the value that arises from their content (Chalaby, 2012).

A dispensation similar to the cost-plus funding model exists in South Africa and is enshrined in the Copyright Act 98 of 1978 (Copyright Act) (RSA, 1978). According to section 21(1)(c), a TV broadcaster who commissions an independent TV production, retains all rights to the content (Collins et al., 2019). Furthermore, the South African film and independent TV production industry is largely dependent on subsidy and incentive schemes offered by government through the National Film and Video Foundation (NFVF), the Department of Trade Industry and Competition (DTIC) (called the Department of Trade of Industry (DTI) until June 2019), the Industrial development Corporation (IDC) and commissions from the FTA TV broadcasters, the SABC and e.tv. According to Collins et al. (2019), the government funding model was based on the need to address the imbalances brought about by the apartheid government, i.e., the need to diversify the film and independent TV production industry by allowing historically disadvantaged individuals (HDIs) to gain access to the independent content production industry. The state sought to achieve this through the establishment of institutions that would act as funding vehicles on behalf of the state. To this end, in 1997 the South African government established the NFVF. In addition to correcting the imbalances of the past, the primary purpose of the NFVF is to create a platform that enables the South African film and video industry to grow, and to promote South African films locally and internationally (NFVF, n.d.). Additionally, in 2004, DTI introduced the Film and Television Production Rebate Programme. The purpose of this programme was to ensure the upliftment of HDIs and to also attract large-budget foreign productions to South Africa. Collins et al. (2019) further indicate that in 2008, the scope of the DTI programme was enlarged to incorporate support for local film and TV productions, as well as co-productions for both South African and foreign partners. According to Collins et al. (2019) for an application for funding to succeed, an applicant must, among others, comply with Broad-Based Black Economic Empowerment (B-BBEE) employment practices, which focus on the empowerment of HDIs (RSA, 2013). The applicant must also comply with reporting practices outlined in the B-BBEE scorecard in line with the B-BBEE Codes of Good Practice

(RSA, 2007). Collins et al. (2019) indicate that these funding initiatives have yielded an enabling environment in which the film and independent TV production industry can thrive.

2.3 Human capital in the independent TV production industry

Hanna and Summer (2014, p. 10) observe that skilled human resources are at the heart of the ICT revolution, both for users and producers. According to Abbasi, Vassilopoulou and Stergioulas (2017, p. 41), digital technologies have become intertwined with, and are pervasive in the creative industries. They are a catalyst that boosts creativity and consequently contribute to the lives and culture of society.

According to Hanushek et al. (2015), since the computer revolution in the 1980s, new TV production methods and technologies have tended to favour skilled labour. The authors observe that low-paying TV production jobs are being substituted by technologies. They further state that, as a result of these trends, the need to have basic digital skills is becoming a necessity in the modern-day TV broadcasting industry. Conversely, Halal et al. (2017, p. 85) argue that whilst digitisation threatens the labour force, they are of the view that it is difficult to automate creative jobs, as creativity is central to the human intellect. Consequently, they indicate that digitisation is an enabler in the creative industries, and anticipate that job numbers in creative fields, aided by digitisation, will grow dramatically (Halal et al., 2017).

Collins and Snowball (2015, p. 7) observe that even though the film and television industry in South Africa does create jobs (37 percent of which are in the high- and medium-skilled categories), employment in the industry is mostly project-based and consists of short-term contracts and freelancing. This observation is confirmed by the findings of the Report on Creative and Cultural Industry (CCI) Trends (2018) authored by Nelson Mandela University. The report indicates that creative work in South Africa is largely precarious in nature and there is lack of female representation within the industry. Moyer-Duncan (2011, p. 8) points to both gender and racial imbalances within the South African film and independent TV production industry.

The Trends and Skills in the European Audio-visual and Live Performance Sectors report (Tepper, 2016, p. 12) observes that "digital technology has transformed the landscape and content production process in many parts of the creative industries". The survey observes that digitisation has bypassed employment rules as it has, to some extent, created informal recruitment processes which have led to job insecurities within the creative sector—particularly among skilled creative personnel.

Tuomi (2007, p. 80), writing in the context of feature film, identifies gaps in skills within the South African independent TV production industry and makes recommendations that independent TV producers need to be trained in basic business development skills, including management, marketing, accounting and entrepreneurship. Tuomi (2007) also observes that filmmakers need some awareness of industry related laws, such as copyright and IP laws. According to him, there is also a deficit in financial skills within the industry that needs to be addressed. Thus, he advocates for greater interaction between training providers and the film and independent TV production industry, to ensure that training caters for industry needs at all levels including apprenticeships and mentoring initiatives. Moyer-Duncan (2011, p. 68) on the other hand, indicates that there is an improvement in the skills gap within the industry. According to the author, since the transition to democracy, there been a significant increase in film schools and availability of state resources for scholarships, grants, and tax breaks. As a result, the South African film and independent TV production industry is beginning to produce a generation of black filmmakers.

2.4 Policy linked to the independent TV production industry

Van Cuilenberg and McQuail (2003, p. 182) define policies as “conscious projects for achieving some goal, together with the proposed means and time for achieving them”. Hanna and Summer (2014, p. 9) are of the view that empowering policies and institutions play a pivotal role in enhancing interaction among all elements of the digital transformation process. Hanna and Summer (2014) posit that policymakers have a responsibility to define clearly the roles for government, the private sector, and other stakeholders in leading the digital transformation process. Policymakers are tasked with creating coherent policies while overcoming political and economic barriers.

Doyle (2018a) suggests that the UK Communications Act of 2003 (UK, 2003), which is geared towards the development of the independent TV production industry, has yielded success in promoting the development of the independent production industry. Doyle further suggests that it is broadcasting policy, and not industrial policy, that has been the main vehicle used by most jurisdictions to foster the growth of the independent production industry. According to Doyle (2018b), most governmental efforts in independent TV production have focused on promoting competition.

Skinner (2017, p. 65), writing in the South African context, indicates that with the coming into operation of the IBA in 1994, the IBA commissioned a Triple Inquiry, which sought to look into public broadcasting, cross-media ownership and local content quotas (IBA, 1995). Skinner (2017, p.75) indicates that the Broadcasting Policy Green Paper of 1997 and White Paper of 1998, building on the work started by the IBA Act of 1993 and the Triple Inquiry Report of 1995, solidified key policy issues pertaining to the need for local content quotas and the need for the opening up of the film and TV independent production industry by ensuring the inclusion of HDIs (RSA, 1998).

Doyle and Peterson (2008, p. 19) indicate that the licensing of the UK television broadcaster Channel Four in 1982 was the first step in breaking the duopoly enjoyed by the public service broadcaster, BBC and ITV, the commercial FTA broadcaster (Doyle & Peterson, 2008). By licensing Channel Four, Doyle and Peterson observe that, government introduced competition into independent TV production since Channel Four was mandated to commission independently produced TV content, and Channel Four was compelled to carry a much higher percentage of independently produced TV content than the BBC and ITV. This boosted the demand for independently produced TV programming and helped to break down the strength of the vertical integration of the BBC and ITV.

Writing in the South African context, Duncan and Glenn (2010, p. 6) point out that in 2000, the SABC Board commissioned a review carried out by McKinsey management consultancy. Recommendations of the review were for the SABC to replace most of its independently produced TV local content with cheaper imported programming. The reason why international productions are cheaper is because the production company selling the content will have already recouped the cost of production in its domestic market. Duncan and Glenn (2010) suggest that while the implementation of this recommendation resulted in the organisation turning a profit within six months, it also brought about some job losses through retrenchments due to redundancy of the in-house production arm of the public broadcaster. However, the 2008-09 financial crisis at the SABC had an adverse impact on programming as the SABC had to stop the commissioning of independently produced TV content and consequently, payments for work already commissioned were delayed as a result of the lack of finances. Due to the reliance of commissions from TV broadcasters, the decision by the SABC affected small production companies, with some having to close down (Skinner, 2011, p. 113). Duncan and Glenn (2010, p. 6) further add that as the SABC was in the process of downgrading its local content offering to broadcast international content, the IBA conceded to this reality by reducing the SABC's quota of locally produced content from 50 percent to 30 percent for all its public service channels.

Hill (2003, p. 63) explains that regulators address the issue of local content quotas, and quotas for the commissioning of independently produced content through regulation and via licence terms and conditions. Hill (2003) points outs that in order to support the local independent TV production industry in South Africa, the IBA in 1997, (IBA, 1997), imposed a quota system whereby all TV broadcasters were required to ensure that at least 40 percent of their local TV content consists of programming commissioned from the independent TV producers, and such content must be spread evenly across all genres. Mokhele, (2015, p. 108) indicates that not only do local content quotas protect the audio-visual markets, but they also boost the local content production industry and add value the local economies.

Hill (2003) stipulates that the availability of skilled independent TV producers with the necessary funding is also critical to the survival of the independent TV production industry. Hill (2003) points out that, in order to alleviate funding challenges for the independent TV production industry, governments establish funding institutions to meet the financial needs and additionally provide mentorship programmes for young and aspiring film and TV producers. Hill (2003, p. 64) explains that in South Africa, local content quotas and independent TV production quotas have been supported by the establishment of institutions such as the NFVF, that support the creation of local films and independent TV production.

The origins of the independent production quota system in the UK lie in the 1986 Peacock Committee report, which stipulated that at a percentage of the programming of the BBC and ITV had to be commissioned from independent producers. (Doyle & Peterson, 2008). In terms of the quota system, BBC and ITV are required to commission a minimum of 25 percent of their content from the independent production industry (Ofcom, 2015, p. 8).

Flynn (2015) identifies two major challenges the South African film and independent TV production industry face, caused by the provisions of the South African Copyright Act. These are: a lack of independent producer copyright protection for productions commissioned by third parties such as TV broadcasters, and the absence of rights clearance to access elements of copyright works for use as clips in documentaries and films. As Flynn explains, section 21(1)(c) of the Copyright Act (RSA, 1978) vests copyright ownership rights to the third party that commissioned independently produced content. Consequently, since most independently produced TV content is commissioned by TV broadcasters, especially the SABC, most independent TV producers have no rights over the commissioned work. Flynn (2015) further indicates that as a result of this legislative limitation, independent producers do not have the right to broadcast their own work to the public via licensing or through social media platforms such as YouTube or any other public platform from which they can derive an income.

Skinner (2017, p.115) points out that FTA TV broadcasters- particularly the SABC holding the rights tend not to fully exploit the rights they hold in the productions they commission, resulting in the independently produced TV content not being widely broadcast or distributed.

Flynn (2015) states that the first draft of the South African Copyright Amendment Bill, published in 2015, did not introduce any amendments to section 21(1)(c) of the SA Copyright Act, dealing with copyright ownership for content produced by a third party. The subsequent amendments of the Bill in 2017, however, changed the status quo, and allowed for the ownership of any copyright in the audio-visual work commissioned by a third party to be governed by a written agreement between the concerned parties (RSA, 2017), and made provision for the author to enjoy secondary rights in an instance where the agreement is silent on the rights ownership. Any disputes arising from the ownership of copyright were to be referred to the Copyright Tribunal. Subscription TV broadcaster M-Net, in its written submission to the DTI, was of the view that the proposed amendment of section 21(1)(c) was ambiguous and had the likelihood of creating some legal uncertainty (DTI, 2018c, p. 24). M-Net and the South African Institute of Intellectual Property Law (SAIIPL) were further of the view that referral to the Tribunal had the potential of opening the Tribunal up to haphazard referrals (DTI, 2018c, p. 30), and M-Net suggested that the author should first be required to engage the commissioning party for a possible solution rather than approaching the Tribunal outright. Other submitters suggested that the legislation should spell out the minimum provisions of the agreement to be entered into between the commissioning third party and the author. The NAB, on the other hand, recommended that the wording in the existing Act be retained.

The Bill was passed over to the presidency for ascension into law. In June 2020, by way of a letter addressed to the National Assembly, the President returned the Bill to Parliament, citing its likelihood to be declared unconstitutional. According to Klaaren (2020, p. 5) the President had three reservations with the Bill, including the widened exceptions on fair use. The return of the Bill to Parliament has caused further delays to the finalisation of this piece of legislation and has perpetuated legislative uncertainty.

In the UK, the initial position on the ownership of IP rights in independently produced TV content favoured TV broadcasters. The system was framed in a way that allowed broadcasters to acquire all IP rights attached to the content in perpetuity (Chalaby, 2010, p. 684). As observed earlier in this chapter, the passing of the 2003 Communications Act in the UK, introduced a more progressive approach through the development of the ToT, which availed opportunities for the independent TV production industry. The ToT introduced internationalisation of content, and a new regime for ownership of IP rights. Internationalisation enabled UK independent producers to market their independently produced content internationally, and divested IP rights ownership from TV broadcasters. Chalaby (2010) explains that the ToT sought to disaggregate TV content rights with a view to allowing production companies to retain rights not purchased by TV broadcasters, in addition to ancillary rights that are exploited through marketing, sales and licensing (Chalaby, 2010, p. 684). Consequently, this enabled production companies to own the IP rights in their independently produced TV content. The benefits brought about by the new IP regime transformed small production companies from living from hand to mouth, to being sustainable entities, and helped improve the financial performance and sustainability of the independent production industry (Chalaby, 2012, p. 22). At the same time, a report by Olsberg (2015) found that the ToT had adverse consequences on the BBC, which was, at the time the study, only exploiting 15% of the lucrative international rights for its programming procured from independent producers. Olsberg (2015) therefore observes that the only benefit the BBC derived from the ToT was access to the high-quality creative ideas of independently produced programming.

Chapter 3: Research Design

3.1 Research questions

As stated in chapter 1, the study's overarching research question—designed to allow exploration of the three pillars extracted from the Hanna (2010) digital transformation framework (industry, human capital, policy)—was:

- What are the industry, human capital and policy requirements in support of independently produced South African FTA TV local content in the digital environment?

The research sub-questions were as follows:

- What is the current state of South Africa's independent TV production industry, and why?
- What is the current state of human capital in South Africa's independent TV production industry, and why?
- What is the current state of policy in support of South Africa's independent TV production industry, and why?
- What industry, human capital and policy changes, if any, are required in support of independently produced FTA TV local content for the digital environment, and why?

3.2 Case study design

The overarching research design was a case study. Thomas (2011) defines case study research design as "the analyses of persons, events, decisions, periods, projects, policies, institutions, or other systems that are studied holistically by one or more methods". According to Lune (2017, p. 171), in order to arrive at a complete examination of the case being studied, one needs to employ a variety of techniques and rely on multiple sources of information. Yin (2018, p. 3) states that the first step to take in a case study is to determine a methodological path to follow. The first step in this research was the review of secondary literature in the area of industry, human capital and policy dimensions of independently produced South African free-to-air TV local content in the digital environment.

Lune (2017, p.176) supported by Yin (2018, p. 10), indicates that case study can be applied to all three purposes of a study, namely, to explore, describe and explain. The exploratory case study design was employed in this research. The benefit of case study is that it allows the researcher to do an in-depth focus on a case while maintaining a broad and holistic real-world perspective (Yin, 2018, p.5). Another benefit of using case study research design is its ability to incorporate different types of evidence that range from historic to contemporary evidence.

3.3 Qualitative methodology

A qualitative research study is one which aspires to make sense of the world by studying facts in their natural state, to develop an analytical approach to the world (Lincoln & Denzin, 2003, pp. 4-5). McMillan and Schumacher (1993, p. 479) define qualitative research as "an inductive process of organising data into categories and identifying patterns among categories." The three qualitative methods used in this study were: a qualitative analysis of the contents of secondary literature (as covered in chapter 2); collection and qualitative analysis of primary documents; and conducting, and qualitatively analysing the data from, semi-structured interviews (as covered in chapter 4).

3.3.1 Analysis of secondary literature

This aspect of the qualitative research was achieved by reviewing secondary literature relevant to the industry, human capital and policy in support of independently produced TV content for the South African FTA TV broadcasters. To the extent relevant, an analysis of online press reports as a secondary source of data was also conducted as part of the literature review. Some focus was also placed on local online publications such as TechCentral, MyBroadband, ITWeb and Bizcommunity. Van Cuilenburg and McQuail (2003, p. 182), define policy as "conscious projects for achieving some goal, together with the proposed means and time for achieving them".

3.3.2 Document analysis

According to Altheide (1996, p. 2), document analysis is a "research methodology for locating, identifying, retrieving and analysing documents for their relevance, significance and meaning". An analysis of primary documents relevant to industry, human capital and policies in relation to independently produced South African TV content for the FTA TV broadcasting industry was conducted. The documents analysed included:

Policies and draft policies:

- 1995: IBA Triple Inquiry Report
- 1997: Broadcasting Policy Green Paper
- 1998: White Paper on Broadcasting Policy
- 2008: Broadcasting Digital Migration Policy
- 2009: Draft Local and Digital Content Development Strategy
- 2012: Broadcasting Digital Migration Policy as amended
- 2013: National Integrated ICT Policy Green Paper
- 2014: National Integrated ICT Policy Discussion Paper

- 2015: National Integrated ICT Policy Review Report
- 2015: Broadcasting Digital Migration Policy as amended
- 2016: National Integrated ICT Policy White Paper
- 2020: Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020[6]

Laws, Bills and draft Bills:

- 1978: Copyright Act 98 of 1978
- 1993: Independent Broadcasting Authority Act 153 of 1993
- 1996: Telecommunications Act 103 of 1996
- 1997: National Film and Video Foundation Act 29 of 1997
- 1999: Broadcasting Act 4 of 1999
- 2003 Broad-Based Black Economic Empowerment Act 56 of 2003
- 2005: Electronic Communications Act 36 of 2005
- 2013: Broad-Based Black Economic Empowerment Amendment Act 46 of 2013
- 2017: Copyright Amendment Bill B-13B of 2017

IBA and ICASA regulations and related documents:[7]

- 1997: Regulations Relating to the Imposition of Specific Broadcasting License Conditions Regarding Local Television Content for Public and Private Television Broadcasting Services
- 2000: Discussion Paper on the Review of Local Content Quotas

[6] Since this Draft White Paper was made public in October 2020, after completion of the core data collection and analysis for this study, the paper's contents are only discussed in the concluding chapter 6 of this research report.
[7] The IBA and the South African Telecommunications Regulatory Authority (SATRA) merged in 2000 to form ICASA.

- 2006: ICASA South African Television Content Regulations
- 2009: Regulations on the Commissioning of Independently Produced South African Programming
- 2011: Issue Paper: A Review of the Broadcasting Regulatory Framework Towards a Digitally Converged Environment
- 2015: Findings Document: On the Review of Regulation on South African Local Content: Television and Radio
- 2012: ICASA Digital Migration Regulations
- 2016: ICASA Regulations on Local Television Content
- 2016: South African Local Content Reasons Document

Other:

- Stakeholder submissions to IBA and ICASA regulatory processes
- Stakeholder submissions to the DoC/DTPS/DCDT policy and legislative processes
- Stakeholder submissions to the DTI on the Copyright Amendment Bill
- TV broadcasters' annual reports
- ICASA compliance reports for SABC and e.tv

3.3.3 Semi-structured interviews

Semi-structured interviews conducted focused on the industry, human capital and policies in support of the production of independently produced South African TV content. The protocol used for the interviews is provided as Appendix III of this research report.

This being a broad topic requiring diverse viewpoints, purposive sampling was used to select the respondents. According to Descombe (1998, pp. 17, 29) in purposive sampling, respondents are chosen in line with the value they would add to the research, their connection to the subject matter of the research, and the likelihood of such respondents providing the most valuable information for the research. Purposive sampling further accommodates different viewpoints (Descombe, 1998, pp. 17, 29). The selection of respondents in this research was therefore based on the identified respondents' areas of expertise within the TV broadcasting industry, the independent production industry as well as from academia, with a view to ensuring diversity of views and opinion.

The individuals interviewed were drawn from: FTA TV broadcasters, the regulator ICASA, the independent production industry, broadcasting industry bodies, civil society, and academia. Each respondent was provided with a Participant Information Sheet, (marked as Appendix I of this report), and gave consent by signing an informed consent document, which is provided in Appendix II.

Table 3.1: Interview respondents

Respondent	**Respondent's organisation/ Entity**	**Nature of respondent's organisation/entity**	**Mode of interview**	**Date of interview**
1	South African Screen Federation (SASFED), and an independent producer	independent producers representative body	In person	20 January 2020
2	SOS Support the Public Broadcasting Coalition (SOS Coalition)	civil society body	In person	20 January 2020

3	Independent Communications Authority of South Africa (ICASA)	regulator	In person	21 January 2020
4	South African Broadcasting Corporation (SABC)	Free-to-air (FTA) TV broadcaster	In person	31 January 2020
5	SABC	FTA TV broadcaster	In person	31 January 2020
6	SABC and former independent producer	FTA TV broadcaster	In person	31 January 2020
7	National Electronic Media Institute of South Africa (NEMISA)	radio and TV broadcast training body	Skype	3 February 2020
8	University of Cape Town	academic institution	Phone	5 February 2020
9	Fuze Multimedia FX	independent production company	In person	15 February 2020
10	e.tv	FTA TV broadcaster	In person	18 February 2020
11	e.tv	FTA TV broadcaster	In person	18 February 2020
12	SABC, and a former NEMISA educator	FTA TV broadcaster	In person	18 February 2020
13	National Association of Broadcasters (NAB)	broadcasting industry association	In person	19 February 2020

14	City Varsity, and a former independent producer	academic institution	Skype	20 February 2020
15	ICASA	Regulator	In person	21 February 2020
16	ICASA	Regulator	In person	13 March 2020

As reflected in the list of respondents, some of the respondents interviewed were multi-disciplinary. Respondent 14 from City Varsity also has experience as an independent producer, as do respondent 6 from the SABC and respondent 1 from SASFED. Similarly, respondent 12 from the SABC has an independent production background and experience as an educator.

Furthermore, regarding representatives from academia, an additional interview was secured, with a respondent from AFDA, a private university. However, since the data collection period coincided with the beginning of the academic year, the respondent found it necessary to cancel the interview.

Interviews with respondents from the DoC/DTPS (now DCDT), the DTI (now DTIC) and the IDC were sought, but none of the people contacted made themselves available. The spread of COVID-19, which led to the national lockdown on 26 March 2020, appeared to play a role, as the potential respondents were preoccupied with responding to urgent matters in their work and personal lives.

This lack of policymaker availability for interviews necessitated an increased reliance on data from primary policy documents, which, fortunately for the aims of the research, were found to be plentiful for the topic being explored.

I conducted informal telephonic discussions with Individuals at the NFVF, SASFED and ICASA, to verify some specific details linked to data collected. Furthermore, I attended a stakeholder meeting on the Copyright Amendment Bill, where I informally gathered information relevant to the research from fellow attendees and the speakers.

In all my informal conversations and formal interviews for the study, I made it clear that I was interacting with people in my role as Master's student researcher, not in my work role as an ICASA Councillor.

Chapter 4: Findings

As explained earlier in this report, the research was based on the analytical framework of Hanna (2010), comprising three digital transformation pillars, namely industry, human capital and policy. Hence the findings in this chapter are grouped according to these three pillars.

4.1 Current state of the South African independent TV production industry

According to the Media, Information and Communication Technologies Sector Education and Training Authority (MICT SETA), in 2016-17 the total contribution of the film and TV industry to South Africa's gross domestic product (GDP) was ZAR5.485 billion (MICT SETA, 2018). In the same period, the Gauteng film and TV production industry contributed ZAR3.5 billion to GDP, while the Cape Town film and TV production industry contributed ZAR2.5 billion (MICT SETA, 2018). (The MICT SETA is a public entity responsible for ensuring the achievement of the country's skills development and economic growth within the information technology, telecommunications, electronics, advertising and film and electronic media sub-sectors).

In assessing the economic contribution of the film and TV production industry in the country, the National Film and Video Foundation's (NFVF) *Economic Impact of the South African Film Industry Report* (NFVF, 2017), indicated that production operations were predominantly centralised in the two largest metropolitan areas of Gauteng (accounting for 54.8 percent of productions) and the Western Cape (accounting for 23.8 percent) (NFVF, 2017, pp. 8, 19). The report attributed these trends to the strong availability of financial resources in these metros. The report further noted that for the industry to grow, focus must be placed on skills development, especially in the marginalised provinces where there are limited income-generating activities (NFVF, 2017, p. 4). Reflecting on the findings of the report, and in particular on the transformation element of the industry, the NFVF chief executive officer observed:

> There is a strong need for transformation in our industry. If the industry is to continue the same growth trajectory that has been witnessed in recent years, it should focus on transformation. Gender representation in particular remains low. The number of black, female-owned companies has remained stagnant. While this not only affects representation in terms of the content that is produced and protagonists therein, it stands to say that economically, PDIs [previously disadvantaged individuals] are still not well represented within the film and television sector….
> (Mkosi, in NFVF (2017)

In dealing with the level of transformation in the industry, a majority of the respondents interviewed for this research were of the view that, even though the independent production industry is showing some positive growth and is recovering from the historic economic exclusions based on race as entrenched by apartheid, a more radical approach to economic transformation is required. (South African economic transformation aims to enable historically disadvantaged individuals (HDIs) to participate meaningfully in the economy). HDIs refers to black persons, women, youth and persons with disabilities, who before the coming into operation of the 1996 South African Constitution were disadvantaged by unfair discrimination based on race, gender, disability and sexual orientation (RSA, 1996a).

Respondent 9 (2020) from Fuze Multimedia FX stated that the industry is highly informal as jobs are mostly secured through connections one has in the industry. The respondent further indicated that "fronting" still exists within the industry. (Fronting is a business practice where black people are employed into management positions of white-owned companies in the name of black economic empowerment, purely for compliance purposes and for gaining business opportunities. These black managers are often overlooked and undermined in key decision making processes within the company). [8] Not only does fronting paint a false picture that such production

[8] "Fronting practice" is defined in section 1 of the Broad-Based Black Economic Empowerment Act 46 of 2003 as amended in 2013.

companies are transformed and are compliant with the empowerment of black people, but it also avails lucrative production deals and funding opportunities the company would ordinarily not get if it was not compliant. The B-BBEE Commission,[9] established in line with the Broad-Based Black Economic Empowerment Act 46 of 2003-as amended in 2013 (B-BBEE Act) (RSA, 2013), has been tasked with, among others, curbing fronting, and it has powers to receive and investigate complaints on fronting (RSA, 2013). Adverse findings on fronting can result in fraud charges, which can lead to imprisonment of the parties involved in the fronting practice.

According to respondent 9 (2020), black independent producers seldom hold truly senior decision-making positions within production companies. The respondent further indicated that there are gender imbalances within the industry and that black female producers are still in the minority. Respondent 10 (2020) from e.tv was of the view that even though there are a notable number of successful black-owned or partly-black-owned TV production companies (as a result of economic transformation within the industry), certain developmental steps were missed, as evidenced by the number of black-owned production companies that have closed down. Respondent 2 (2020) from the South African Screen Federation (SASFED) indicated that many black producers who have closed down their companies have done so to get greater job security, either locally by seeking employment from broadcasting companies, or internationally through emigration—as the status quo makes it difficult to survive in the independent production field.

Most of the respondents stated that South Africa’s provincial film commissions and film offices play an important role in availing opportunities for fledgling independent production companies, through the provision of training, learnerships and funding. (Provincial film commissions are established and funded by provincial governments to market the province and grow film and TV content production in the province through funding. Provincial film

[9] The B-BBEE Commission is established in terms of section 13B of the B-BBEE Act.

commissions in South Africa are the Gauteng Film Commission (GFC), the KZN Film Commission, and the Cape Film Commission (CFC). Film offices such as the Durban Film Office, on the other hand operate at municipal level, and are funded by the municipalities concerned (NFVF, 2010, p. 12). Respondents from the SABC and e.tv indicated that through partnerships with film commissions and film offices, the TV broadcasters have successful local content productions commissioned and produced in different provinces. They referred to, for example, productions funded by the KZN Film Commission and thus produced in KZN. Respondent 10 (2020) gave an example of *Imbewu: The Seed*, an e.tv production which has a crew mainly from KZN. *Imbewu* is produced by GrapeVine Productions (a co-production between Word of Mouth productions, Videovision Entertainment and Luyks Productions) and the production is shot at locations in Chatsworth, Mbumbulu and Umlazi, in the KZN province.

Respondent 5 (2020) from the SABC spoke of the difficulty in commissioning content from provinces such as Mpumalanga and North West, but confirmed that given its mandate to commission content from these marginalised regions (in official languages other than English), the SABC attempts to contribute to these outlying regions through training, skills transfer and commissioning. Respondent 5 stated that even though it was challenging to produce the series *Giyani: Land of Blood*, a Xitsonga drama produced by Tshedza Pictures, a black-female-owned production company and shot in Giyani in Limpopo Province, the series is one of the most-viewed productions on the SABC TV platform.

According to the November 2019 television audience measurements released by the Broadcast Research Council of South Africa (BRC, 2019), the most-watched content on SABC and e.tv is locally produced content—produced mostly by HDI-owned South African independent production companies. (One notable exception is *Survivor: Millennials vs Gen X*, a competitive reality series that ranked second on the SABC3 TV platform and is a foreign production). Table 4.1 below depicts the top-viewed programming, the production companies, and the audience ratings.

Table 4.1 Most-watched SABC and e.tv shows

Most-watched SABC and e.tv shows in November 2019 during prime time, 17h30 to 22h00, by adults 15+ years			
TV Broadcast channel	**Programming**	**Production company**	**Audience**
Top 5 on SABC and e.tv			
SABC 1	*Uzalo*	Stained Glass Pictures (HDI-owned)	10,072,999
SABC 1	*Generations: The Legacy*	Morula Pictures (HDI-owned)	8,994,656
SABC 1	*Skeem Saam*	Peu Communication Solutions (HDI-Owned)	6,893,240
e.tv	*Scandal*	Ochre Moving Pictures (HDI-owned)	5,643,731
SABC 2	*Muvhango*	Word of Mouth Pictures (HDI-owned)	4,990,935
Top per channel			
SABC 1	*Uzalo*	Stained Glass Pictures	10,072,999
SABC 1	*Generations: The Legacy*	Morula Pictures	8,994,656
SABC 2	*Muvhango*	Word of Mouth Pictures	4,990,935
SABC 2	*Giyani: Land of Blood*	Tshedza Pictures (HDI owned)	2,122,640
SABC 3	*Isidingo: The Need*	Pomegranate Media (HDI owned)	936,217
SABC 3	*Survivor: Millennials vs Gen X*	US-based production	552,069
e.tv	*Scandal*	Ochre Moving Pictures	5,643,731
e.tv	*Rhythm City*	Quizzical Pictures (HDI-owned)	4,168,968

Source: BRC (2019) and researcher data collection

According to the Independent Producers Organisation (IPO), almost all the large South African independent production companies are B-BBEE compliant (ICASA, 2009, p. 18). It emerged from the interviews that, notwithstanding the imbalances that exist within the industry, both the SABC and e.tv do avail opportunities for content commissioned from fledgling independent production companies. Government's economic empowerment policies on B-BBEE and favourable contract terms and conditions imposed by the broadcasters on behalf of fledgling independent production companies, among other things, made this possible. Respondent 6 (2020) from the SABC stated that the SABC has ring-fenced slots and budgets for the commissioning of content from emerging black producers. The respondent stated that requests for proposals (RFPs), as well as evaluation criteria, are tailor-made for fledgling producers to ensure they do not have to compete with established independent production companies when pitching.[10] (Pitching is the process of presenting a programme idea to a potential funder.)

According to the NFVF (2010, p. 40), the DTI, through its Codes of Good Practice has set out B-BBEE elements[11] that entities need to comply with, to ensure adherence to black economic empowerment. In terms of the B-BBEE Codes, companies that have an annual turnover of ZAR10 million and below are classified as Exempted Micro Enterprises (EMEs) and are regarded as having a level 4 B-BBEE status, which equates to 65 to 74.99 B-BBEE points and a level 4 B-BBEE entity is regarded as fully B-BBEE compliant. This therefore means most production companies are level 4 entities by virtue of being SMMEs of the annual turnover of ZAR10 million or less. According to the NFVF (2010, pp. 39, 40):

[10] The data collection for this research was conducted in the period January to March 2020, before the full onset of the COVID-19 crisis in South Africa. The impact the pandemic on the industry is, thus, only discussed, briefly, in this report's concluding chapter 6.

[11] There are seven elements that need to be met for purposes of B-BBEE compliance, namely: management and control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development and ownership.

> "the application of the Code has proven to be problematic for the film and video industry as it is largely SME's that claim to have turnover of less than R 5m making them automatically exempt from its application. While other sectors such as the mining, construction and finance have developed sector-specific transformation charters, the film industry has not yet established its own charter".[12]

The NFVF further states that the DTI is working on a B-BBEE policy framework for the film and TV production incentive in order to eliminate automatic exemptions in the film and TV production industry and ensure that all production companies are B-BBEE compliant (NFVF, 2010, p. 41).

Respondent 6 (2020) from the SABC and respondent 9 (2020) from Fuze Multimedia FX had similarly negative views on the effectiveness of industry bodies. Respondent 9 argued that industry bodies such as SASFED and the IPO, which according to the respondent are expected to be advocates for the industry, are not effective as they do not objectively represent the interests of their members. According to the respondent, leaders of these bodies lack independence from the industry and tend to promote individual interests rather than those of their members when engaging with TV broadcasters on industry related issues, hence using the industry bodies as platforms to advance their personal interests. Respondent 6 from the SABC was of the view that the industry needed a unified self-regulatory body that would protect the interests of industry players by developing and administering industry guidelines and industry codes. The respondent indicated that this role would be played by an independent industry self-regulatory body, housed possibly under the Department of Sport, Arts and Culture (DSAC). This, according to the respondent, would mitigate against the promotion of the self-interests of the office-bears of current industry bodies. Respondent 9 advocated for a standards-setting industry body to regulate qualifications and tariffs within the industry.

[12] There are currently 11 sectors that have sector-specific charters, and these are: defense, agriculture, financial information and communications technology, property, chartered accountancy, integrated transport, forestry, tourism, marketing advertising and communications, and construction.

The NFVF (2010, p. 33) is of the view that the South African film and TV production industry is largely self-regulated even though the production value chain is subject to a number of laws that regulate aspects such as copyright, classification of content, and content quotas through, among others, the Copyright Act, the Film and Publication Act 64 of 1996 as amended (RSA, 1996c), the ECA and ICASA regulations. The NFVF further observes that:

> […] there remain various challenges regarding policies and legislation in the film industry. The film industry is a difficult sector to regulate because there are various government departments and institutions which have concurrent jurisdiction over it. This inevitably results in legislation and policy overlap and more importantly duplication of policies. The only remedy to this challenge is cooperative governance and intergovernmental relations. ICASA and government institutions need to apply the principles of inter-governmental relations to ensure policy coordination (NFVF, 2010, p. 54).

4.2 Human capital in the South African independent TV production industry

The NFVF *State of Skills in the South African Film Industry* report (NFVF, 2016) indicates that the industry lacks experienced, well-skilled personnel, particularly in the case of HDI. According to the NFVF (2016), there is a lack of interest in studying and academic development within the industry, as personnel are more concerned about earning a living than upskilling themselves, and this is in spite of the fact that rapid technological developments necessitate constant upskilling (NFVF, 2016, p. 11). Respondent 4 (2020) and respondent 9 (2020), from the SABC and Fuze Multimedia FX respectively, stated that the issue of skills remains a challenge in the industry, as not everyone in the industry attained formal training and many are largely self-taught and taught through experiential learning.

According to the MICT SETA's *Sector Skills Plan 2020 to 2025* (MICT SETA, 2019, p. 13), as of 2019, the film and electronic media sub-sector accounted for 9 percent of employers in the media, information and communication technologies sector (MICT), which represented approximately 2,765 employers (the overall number of employers within the MICT sector was 30,727). The MICT SETA *Sector Skills Plan 2020 to 2025* (MICT SETA, 2019, p. 15) points out that between 2018 and 2019, there was an increase in the industry employer base, and this growth consisted predominantly of small, medium and micro enterprises (SMMEs), which accounted for 96 percent of the growth. The film and electronic media sub-sector employer base grew from 2,827 in 2018 to 2,983 in 2019, across all employer sizes (small, medium and large), while the number of employees grew from 37,571 to 40,481 in the same period (MICT SETA, 2019, p. 16). In terms of geographic distribution, the MICT SETA (2019, p. 16) indicates that 53.1 percent of the employees are based in Gauteng, 20.7 percent in KZN, and 16 percent in the Western Cape. According to the report, these three provinces account for approximately 90 percent of all employees in the MICT industry.

Respondent 10 (2020) from e.tv indicated that one key success factor for white-owned production companies is that they possess business management skills, which most respondents confirmed tend to be lacking in the black-owned independent production companies. In respondent 10's view, "[the industry] still need[s] the white production companies because they have a back office", i.e., white-owned production companies are mostly well-established and have support staff whose core work is not production but rather support services to the core business of production. "They understand human resources, they understand law, and they understand accounting and we [black independent producers] do not take those things seriously", said respondent 10. Respondent 4 (2020) from the SABC proposed that the independent production industry should be at the forefront of providing career guidance to learners with respect to skills relevant to the industry, in order to break the cycle of ad hoc on-the-job training in the industry.

A group of employers interviewed for the NFVF skills audit (NFVF, 2016, p. 16) indicated that there are posts within the industry, that are difficult to fill, purely because of the unavailability of sufficient numbers of skilled people in those areas. These posts are: producers, editors, camera operators, directors of photography, script writers, sound engineers, and animators. According to the MICT SETA, scarce skills in 2019 were: corporate communications managers (776 vacancies), media producer posts (593 vacancies), broadcast transmitter operators (574 vacancies), copywriters (553 vacancies) and film and video editors (302 vacancies). Furthermore, employers interviewed in the aforementioned NFVF skills audit stated that universities and institutions of higher learning do not adequately train graduates for the workplace. These employers indicated that they are, as a result, reluctant to employ graduates fresh from school as they need to be trained.

Respondent 10 (2020) from e.tv stated that, based on the broadcaster's experience with internship learners, learners from private higher education institutions such as Africa Film Drama Art (AFDA) have a broader and better understanding of "the business of digital content" than their counterparts coming from vocational institutions such as the National Electronic Media Institute of South Africa (NEMISA). This, according to respondent 7 (2020) from NEMISA, is due to the fact that the South African Qualifications Authority (SAQA)-accredited curriculum for vocational institutions is outdated.[13] The respondent stated that the process of reviewing the curriculum is carried out by a panel of voluntary industry experts, and the review process entails a protracted bureaucratic process, which sometimes gets overtaken by industry and technological developments. Respondent 12 (2020) from the SABC indicated that even though the curriculum at NEMISA may not be of acceptable

[13] The role of SAQA is, among others: to register professional designations, to maintain the National Learners' Records Database, and to provide foreign qualifications evaluation and advisory services.

standard, NEMISA still has value as a publicly funded vocational institution created to bridge the skills gap for black youth who cannot afford to go to universities. According to respondent 12, the qualification obtained from vocational institutions equips learners with a basic academic qualification that can be a steppingstone towards furthering their studies or getting a basic job in the industry.

According to respondent 9 (2020) from Fuze Multimedia FX, short courses on TV broadcasting and production from NEMISA and private vocational colleges such as Boston and Birnam do not produce job-ready graduates. The respondent stated that learners need to go through a three- to four-year tertiary degree to learn fundamental principles of TV broadcasting and production. The respondent recommended that in addition to attaining theoretical training through a degree qualification, tertiary graduates also need practical training. The respondent believed that tertiary degree graduates ought not to rush to start their own production companies, but rather that they should job-shadow in production companies to gain experience. Tertiary film school graduates interviewed in the NFVF skills audit (2016, p. 15) believed that in addition to formal training obtained from institutions of higher learning, graduates should be exposed to networking experiences with seasoned industry players and exposed to the technical workplace environment via internships to experience the entire TV production value chain.

4.3 Policy linked to the South African independent TV production industry

4.3.1 Policies

4.3.1.1 Broadcasting White Paper

In 1997, the Department of Communications (DoC) initiated a process to institute a broadcasting policy framework for the democratic South Africa (DoC, 1997). The first step was the formulation of the Broadcasting

Policy Green Paper of 1997 (RSA, 1997a), followed by the 1998 White Paper on Broadcasting (RSA, 1998). Both the Green Paper and the White Paper recognised key policy issues already espoused by the IBA Act of 1993, including the need for local content quotas and the need to open up the film and TV independent production industry by ensuring the inclusion of HDIs. The Green Paper recognised that, under apartheid, "the commissioning policies spawned an independent production industry, which served the white minority both in terms of its content and in terms of creative and financial opportunities" (DoC, 1997, p. 4). The White Paper mandated the creation of a "Broadcast Production Investment Fund", whose purpose would be to stimulate the local content production industry for it to become self-reliant. Contributions to this fund were to come from the industry, private stakeholders, sponsorships and government grants (RSA, 1998). (To date this Fund envisaged by the White Paper has not materialised) The White Paper informed the contents of the 1999 Broadcasting Act (RSA, 1999). The White Paper further mandated the regulator to review its South African content regime and develop a strategy to "achieve a broadcasting system which is predominantly South African content". This was to be achieved within a period of 10 years (ICASA, 2013, p. 63).

4.3.1.2 National Integrated ICT Policy White Paper

In 2012, government initiated a process to draft a Green Paper and White Paper for a National Integrated ICT Policy (DoC, 2012). The National Integrated ICT Policy Review Report (DTPS, 2015b)—which was intended to provide guidance to a Green Paper and White Paper process—stated that "policy will be strengthened to ensure that South African content is promoted across all platforms and across all tiers" (DTPS, 2015, pp. 88, 122). The report further indicated that the 1998 White Paper on Broadcasting Policy should be amended to align with the digital regime.

Chapter 5 of the report was dedicated to audio and audio-visual content-related issues (DTPS, 2015, p. 88). Recognising the need for the preservation of local TV content produced by the independent production industry, the report indicated the need for the continued preservation of the industry, and stated that even though there were already measures in place to ensure that TV broadcasters dedicated airtime to the broadcasting of locally produced TV content through the imposition of local TV content quotas, more creative policy interventions were necessary to ensure the continued support and production of local TV content (DTPS, 2015, p. 107). To this end, the report recommended that government consider pay-or-play provisions as an alternative approach to quotas in support of production of the South African audio-visual content (DTPS, 2015). As explained in chapter 1, the Pay-or-play principle requires a TV broadcaster that is not able to meet its local content quotas through the procurement of independently produced content to invest a specified portion of the money it ought to have used in the production of local content in an initiative that develops the independent production industry. Also, recognising that convergence brings about a variety of platforms to access content, including non-linear and on-demand services, the report recommended imposition of local TV content across all platforms (DTPS, 2015, p. 108).

Even though provisions for audio and audio-visual services were discussed in the process leading to the publication of the National Integrated ICT Policy White Paper and key policy recommendations made on the stimulation of the production of local TV content and the promotion of the independent production industry—through Chapter 5 of the National Integrated ICT Policy Review Report (DTPS, 2015b)—the eventual White Paper published in 2016 excluded provisions for audio and audio-visual services. These now fell within the ambit of the DoC, while the National Integrated ICT Policy White Paper remained within the mandate of the DTPS (DTPS, 2016, p. 2). (The DoC had been split into two departments, the DoC and the DTPS, after the 2014 national elections. After the 2019 elections, the two departments were merged back together, in June 2019, as the DCDT).

4.3.1.3 Written Proposals on Broadcasting Policy Review

In 2014, the then-DoC published an invitation for written proposals on a broadcasting policy review (DoC, 2014b). Among the issues that the review sought inputs on were content of local and national interest, development of language through broadcasting services, and the broadcasting landscape beyond BDM. Following the publication of this review, the DoC, in its revised medium-term strategic plan for 2015-16 to 2019-20, committed to reviewing the 1998 White Paper on Broadcasting Policy (DoC, 2015, p. 10). In line with its strategic objective to improve universal access to the broadcasting services by 2019 (DoC, 2015, p. 33), the department further reported that it would commence the process of developing the Audio-Visual and Digital Content Act in the 2016-17 financial year. According to the DoC, the process would include the development of a Green Paper, a White Paper, then a Bill, which would be submitted to Parliament for enactment into law (DoC, 2015, p. 20).

Contrary to the initial view by the department that it would commence the review process with the publication of a Green Paper, the department stated in its Annual Report 2018-19 (DoC, 2019a, p. 45) that a draft White Paper on Audio-Visual and Digital Content Policy had been submitted to Cabinet for approval—seemingly bypassing the Green Paper step. The White Paper was subsequently withdrawn in 2018, with the view to aligning it with the government's fourth industrial revolution (4IR) strategy and the reconfigured departments as announced by the President in 2019. The White Paper was to be re-submitted to Cabinet in the 2019-20 financial year.

In its 2019-20 to 2021-22 Annual Performance Plan (APP) published in 2019, the DoC committed to focusing on the support for growth and development of the creative industry by 2019 by encouraging the production and display of local content on TV and radio (DoC, 2019b). Recognising that the broadcasting multi-channel environment will require more diverse, high-quality digital local content that explores and reflects all aspects of South Africa, the DoC indicated that it would work closely with the independent production industry to develop strategies to generate relevant content (DoC, 2019b, p. 22).

(In September 2020, after the completion of the data collection, the data analysis, and the first draft of the majority of the research report, Cabinet approved the Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020. The DCDT published this Draft White Paper for public comment on 9 October 2020 (DCDT, 2020). Due to the timing of the publication of this draft policy, after the completion of my research, its contents are only discussed in the concluding chapter (chapter 6) of this research report).

4.3.1.4 Broadcasting Digital Migration (BDM) Policy

In 2008, the DoC published the Broadcasting Digital Migration Policy for South Africa (BDM Policy) (RSA, 2008). Although the policy does not make specific reference to the independent production industry, it recognises that a key driver for the uptake of digital broadcasting services in the country will, amongst others, be the provision of compelling local content and the policy calls on ICASA to revisit its approach to local content regulation:

> the traditional model for South African content regulation is based on minimum percentages and took into account factors which applied in a single channel analogue environment. Given the new digital broadcasting era, these content quotas shall be reviewed by ICASA to reflect the multi-channel digital environment. (RSA, 2008, p. 14)

Furthermore, the BDM Policy states that "Digital Content Generation Hubs" (DCGHs) will be established, to accelerate the production of digital content, to contribute to the advancement of the creative industries, and to promote the generation of jobs. The policy also recognises the need to develop the creative industries, as this will act as a catalyst "for the coverage of South African stories, entertainment and cultures in multichannel digital broadcasting […]" (RSA, 2008, p. 14). The BDM Policy has subsequently been amended in 2012 and 2015—but these amendments have not had an impact on the policy's aforementioned provisions relating to the development of the creative industries (RSA, 2012; 2015b).

4.3.1.5 Draft Local and Digital Content Development Strategy

In 2009, and in an apparent response to the 2008 BDM Policy's call for, inter alia, the establishment of DCGHs, the DoC published a draft Local and Digital Content Development Strategy for public comments (draft strategy) (DoC, 2009). The DoC's 2011-14 Strategic Plan highlighted that the development of the draft strategy would be one of the key projects to be undertaken by the department over a period of four years, anticipating that by 2013-14 the strategy would be at an implementation and monitoring stage (DoC, 2011, p. 25).

Among the stated purposes of the draft strategy were the encouragement for the development of digital local content by HDIs and ensuring the participation of SMMEs in the independent production industry. The draft strategy proposed establishment of "content generation hubs (CGHs)" (DoC, 2009, p. 11). These would be established as a joint initiative between national and provincial governments, mandated to act as centres of excellence by supporting emerging content producers in the provinces and to act as vehicles for poverty alleviation through skills development and job creation. Several respondents mentioned the meaningful role that such "content hubs" could play in ensuring the availability of diverse local content produced in underserved languages and commissioned from regions other than Gauteng and the Western Cape. However, respondent 2 (2020) from SASFED was of the view that from an independent producer's perspective, it is not economically viable for production companies to be established outside the metros. This respondent believed that due to the migration of talent into the metros, it is not necessary for content to be produced in the respective regions, as the requisite regional story-writing talent could be available in the metros. Respondent 10 (2020) from e.tv stated that while there may be talent in the regions, for that talent to be harnessed it needs to come to the metros where established independent production companies are based.

The draft strategy further advocated for the creation of a “digital content fund (DCF)” (an idea which echoes from the 1998 Broadcasting White Paper’s call for a Broadcast Production Investment Fund), which would be administered by the Media Development and Diversity Agency (MDDA). The DCF would support digital content through, among other things: nurturing talent and skills in the digital content industry; conducting research on the digital content industry; providing subsidies for fledgling content producers and content produced in historically disadvantaged and marginalised languages; and encouraging content productions and initiatives outside the key metros of Johannesburg, Cape Town and Durban (DoC, 2009, p. 9). The draft strategy indicated that the DCF would be funded through government allocations, donations, grants and content production levies from TV broadcasters.

Although TV broadcasting stakeholders—including the broadcast industry body the NAB—were in support of the creation of a fund to support the production of independently produced digital content, the NAB (2009) cautioned against government placing a financial burden on TV broadcasters by imposing a content production levy on them. According to the NAB, TV broadcasters make other contributions, through annual licence fees to ICASA and payment of 0.2 percent of their annual turnovers to either the Universal Service and Access Agency of South Africa (USAASA) or the MDDA (ICASA, 2011a).

The SOS Coalition, in its 2015 report entitled *Establishing a Local Content Fund: The Experience of Funding Universal Access and Service*, suggested that instead of a new content levy scheme being introduced, contributions made by TV broadcasters to the MDDA should be used to fund local digital content (SOS Coalition, 2015). According to the SOS Coalition, the TV broadcasting industry contribution to the MDDA in 2019 was

R51,743,849 (MDDA, 2019, p. 59; SOS Coalition, 2015). The SOS Coalition further suggested that, in order for the TV broadcasters' contributions to be channelled towards the funding of independently produced content, the statutory mandate of the MDDA would need to be expanded (SOS Coalition, 2015).

4.3.2 Laws

4.3.2.1 Broadcasting Act

The Broadcasting Act of 1999, which is focused on the SABC, mandates the SABC to commission content from the independent production industry[14] and provides for the establishment of a South African Broadcast Production Advisory Body (SABPAB) to advise the Minister on the production of the independently produced content (RSA, 1999).[15] The first SABPAB was established in 2001, but there is no clear indication as to how long its term was (ICASA, 2013, p. 66) and its output is not in the public domain. Subsequent attempts have been made by various communications ministers to re-establish the SABPAB. In 2010, Minister Siphiwe Nyanda published an invitation for candidates to serve on the SABPAB, followed by another invitation issued by minister Dina Pule in 2012, then by Minister Faith Muthambi in 2014, and subsequently by Minister Stella Ndabeni-Abrahams in 2019 (DoC, 2019c), however there have been very few outputs from the body.

One of the rare, published outputs was a presentation by the DoC to the Parliamentary Portfolio Committee about the SABPAB in 2014 (DoC, 2014a). The purpose of the presentation was to brief the Portfolio Committee on the establishment of the SABPAB. The presentation outlined an overview of to the South African content industry, highlighting among others, skills shortage within the industry, the concentration of TV production activities in the key urban areas, and further highlighted the lack of support for aspirant young producers. The presentation recognised that once formulated, names of the appointed SABPAB members will be published in a government

[14] Section 10(h) and 11(c) of the Broadcasting Act.
[15] Section 38 of the Broadcasting Act.

gazette, and its immediate functions would be to review the draft Local and Digital Content Development Strategy. Furthermore, the DoC reported in its 2019-20 to 2021-22 APP that in the medium term expenditure framework (MTEF) cycle 2015-16 to 2017-18, the SABPAB produced a report that made recommendations on funding and skills development for the creative industry and recommended the creation of an audio-visual skills development fund to assist with training in line with technological developments. The SABPAB also called for inter-departmental collaboration to strengthen support for audio-visual skills (DoC, 2019b, p. 13). The department did not indicate whether requisite consultations with the NFVF, broadcasters and the ministers dealing with arts and culture with trade were undertaken, as required by legislation and the terms of reference of the SABPAB. Furthermore, the aforementioned report was never made public.

4.3.2.2 Electronic Communications Act (ECA)

The ECA of 2005 encourages, inter alia, promotion of cultural diversity and preservation of South African identity through the creation and broadcasting of local content (RSA, 2005). Upon its inception, the ECA repealed the Telecommunications Act (RSA, 1996b) and the IBA Act (RSA, 1993), while the Broadcasting Act (RSA, 1999) remained, but in amended form.

Chapter 9 of the ECA absorbed the provisions of the IBA Act of 1993 dealing with the commissioning of independently produced content by TV broadcasters (which were conceived in an analogue dispensation),[16] including the definitions of local content and independent TV production (RSA, 1993).[17] Furthermore, the ECA mandates ICASA to prescribe regulations for TV broadcasters regarding the commissioning of independently produced South African programming,[18] and defines independent TV production as:

[16] Provision of section 53 of the IBA Act.
[17] Section 53 of the IBA Act.
[18] Section 61(1) of the ECA.

> a production of local television content-
>
> (i) by a person not directly or indirectly employed by any broadcasting service licensee; or
>
> (ii) by a person who is not controlled by or is not in control of any broadcasting service licensee. (RSA, 2005)[19]

The ECA further defines local TV content as:

> Television programme excluding transmission of sporting events and compilations thereof, advertisements, teletext and continuity announcements which is produced:
>
> (i) by a broadcasting service licensee;
>
> (ii) by a person who is a citizen of, and permanently resident in the Republic;
>
> (iii) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in the Republic,…. (RSA, 2005)[20]

In 2012, the ECA was amended, with the objective of, among other things, aligning the ECA with the B-BBEE Act (RSA, 2013). Key amendments that were made were the inclusion of the definition of broad-based black economic empowerment as well as the amendment of the objects of the Act[21] to incorporate an object to "promote broad-based black economic empowerment, with particular attention to the needs of women, opportunities for youth and challenges for persons with disabilities" (RSA, 2012). The definitions of independent TV production and local TV content were not amended in this ECA amendment process.

[19] Section 61(2)(b) of the ECA.
[20] Section 61(2)(a) of the ECA.
[21] Object 2(h) of the ECA.

4.3.3 Regulations

4.3.3.1 Local TV Content Regulations

In order to, among other things, accommodate the requirements of the multi-channel environment as envisaged by the BDM Policy (RSA, 2008)—which states that ICASA should review local content quotas to reflect the multi-channel digital environment (RSA, 2008, p. 13)—ICASA undertook a review process of its 2006 South African Television Content Regulations (IBA, 2006).

e.tv, in its written submission to the ICASA Discussion Document on the Review of Regulations on South Africa's Local Content: Radio and Television (ICASA, 2014) (the discussion document), supports the amendment of the local content regulations "to allow for a bouquet-wide quota for new digital only channels"[22] (e.tv, 2014, pp. 11, 12). The SABC in its written submission to ICASA on the draft Regulations on South African Local Content: TV and Radio, TV (SABC, 2015a, p. 7) proposes a scenario where a TV broadcaster would be obliged to provide a prescribed number of programmes per genre, rather than prescribing the number for individual channels as is the current regulated process. This would mean local content quotas would be measured across a bouquet of channels rather than looking at individual channels within a bouquet. Pay-TV service providers, M-Net and MultiChoice, which are both part of the same media group (Naspers), argued in their joint written submission that the current per-channel regulations for local content quotas were for the analogue environment and could not be transposed into the multi-channel digital environment (M-Net & MultiChoice, 2014). The submission indicated that the regulations should move towards local content requirement that apply across the TV broadcaster's entire service and not to an individual channel of a licensee (M-Net & MultiChoice, 2014, p.14).

[22] The 2016 regulations define bouquet as "a collection of video or audio channels marketed as a single package, often transmitted in a single data stream, or a thematic environment where channels are devoted to a specific programming genre".

The two entities further made an observation that the authority appears to have just "tweaked" the 2006 regulations in developing the draft regulations (M-Net & MultiChoice, 2014, p. 10).

The ICASA Findings Document: Review of Regulations on South African Local Content: Television and Radio (the findings document) (ICASA, 2015b, p. 50), noted stakeholders' recommendations for it to align the local content TV regulations to a digital multi-channel environment, focusing on bouquet, rather than individual channel, quota requirements. Furthermore, the ICASA South African Local Content Reasons Document (ICASA, 2016b, p. 5) that accompanied the 2016 Regulations indicated that the envisaged regulations would be applicable to the digital environment as they would be forward-looking. According to the reasons document, the bouquet-based approach would be applied on digital incentive channels to be licensed by ICASA. The 2016 regulations define digital incentive channel as a new channel authorised in terms of the 2012 ICASA Digital Migration Regulations, to be provided by TV broadcasters on a digital-only basis as a digital broadcast, in addition to existing TV channels as an incentive for TV households to migrate to digital broadcasting. The 2012 ICASA Digital Migration Regulations (ICASA, 2012) outline the authorisation procedure for digital incentive channels by the SABC and e.tv and assign multiplexes to the said TV broadcasters for digital broadcasting purposes. (A multiplex is a broadcast signal that contains a bundle of several channels).

According to Regulation 7(1) of the ICASA Regulations on Local Television Content (ICASA, 2016a) (the 2016 regulations), all licensed TV broadcasters[23] are to ensure that a minimum of 40 percent of their local content programming is produced by the independent production industry. Regulation 7(2) of the 2016 regulations further makes it obligatory for licensed TV broadcasters (excluding community TV broadcasting outlets) to "ensure [that]

[23] Public, community, commercial and subscription TV broadcasters.

50 percent of the annual independently produced programmes budget is spent on previously marginalised local African languages and/or programmes commissioned from regions outside the Durban, Cape Town and Johannesburg Metropolitan cities” (ICASA, 2016a). Additionally, regulation 8(1) of the 2016 regulations stipulates that the local content requirements shall be applied per bouquet and not per channel. The local content percentages and quotas in the 2016 regulations are still in line with the 2006 regulations, which were conceived in an analogue dispensation. The effective date of the regulations is 24 months from the date of them being published in a government gazette. Although ICASA does not give the rationale for the effective period of two years after publication of the regulation, an engagement with a general manager at ICASA, in a period after the data collection of this research revealed that the two-year commencement period envisaged that by 2018 TV broadcasters would have fully migrated to DTT.

According to the e.tv Annual Compliance Report produced by ICASA (ICASA, 2018), compiled for the financial year 2015-16 and released in 2018, the report is intended to report on e. tv’s compliance with its licence terms and conditions in regard to the ECA, the ICASA Act of 2000, as amended, the broadcasting Act of 1999 and any other legislation and regulations. The 15-year licences of TV broadcasters are to expire in 2023[24]. The compliance report outlines the terms of reference that guided the development of the compliance report.[25] In the compliance report, e.tv is reported to have commissioned content from “more than” 20 independent production companies, and ICASA has confirmed that e.tv has indeed complied with this obligation. The report further indicates that even though e.tv “programming has, during the period under review reflected provincial diversity, and e.tv has succeeded in commissioning content from production companies based in other regions, the majority of its

[24] In 2008, ICASA issued TV broadcasters with new15 year converted licenses in line with chapter 15 of the ECA.

[25] The e.tv compliance report terms of reference were based on the TV broadcaster’s compliance with the TV broadcaster’s Broadcasting Service License, SA TV Content Regulations, Regulations regarding Standard Terms and Conditions, Universal Service Access Fund Regulations, General License Fees regulations, Digital Migration Regulations 2012, Code for Persons with Disabilities and Compliance Procedure Manual Regulations.

productions are still based in Gauteng and the Western Cape [and] one major production has been commissioned in KZN" (ICASA, 2018, p. 9). The 2020 e.tv Annual Compliance Report (ICASA, 2020a, 9) reveals similar results, and appears to be a replica of the 2018 compliance reports in most instances, as for example it records the commissioning of content from "more than" 20 independent production companies by e.tv. Furthermore, the e.tv 2020 compliance report is still based on the 2006 local content regulations, notwithstanding the fact it was compiled in the period 2018-19, (with no specific dates provided) when the 2016 regulations were already in effect. The report acknowledges that the 2016 regulations came into effect in March 2018 (ICASA, 2020a, p. 11).

Although ICASA's annual compliance reports for e.tv are up to date, with the latest e.tv monitoring report being published in March 2020, the most recent ICASA annual compliance reports for SABC could not be located when conducting this research, hence much reliance has been made on its annual reports. The 2008 ICASA Compliance Report for the SABC could be found. Measured on quarterly basis, the 2008 Report records that SABC 1's annual performance for 2008 was 76.79 percent, while SABC 2 achieved 76.02 percent. Both SABC 1 and 2 surpassed their regulatory mandate of broadcasting 55 percent of local content. SABC3's performance was 48.5 percent and surpassed its regulatory mandate to achieve 35 percent of local content (ICASA, 2008a).

Respondent 15 (2020) from ICASA indicated that due to the extensive nature of the licence terms and conditions of the SABC TV services, constant monitoring of the SABC is a challenge for ICASA. The respondent indicated that based on the limited compliance monitoring personnel of eight people within the organisation, ICASA neither actively monitors, nor does it develop annual compliance reports for the SABC TV services, but rather undertakes random spot checks on the SABC TV services. MMA in its written submission (MMA, 2015) raised concerns about the lack of effective compliance monitoring by ICASA, cautioning that currently ICASA relies on data received from licensees. This, in the view of MMA, creates lack of confidence in the quality of reports generated by ICASA. ICASA also stated in its findings document on local content that “the Authority notes the need to improve on the current monitoring of compliance with Local Content regulations and will make a decision on the most efficient method” (ICASA, 2015b, p 50).

The 2016 regulations also create incentives to encourage diversity of commissioning by awarding points towards the achievement of local content quotas to TV broadcasters who commission independently produced content in marginalised local African languages and from regions outside of Durban, Cape Town and Johannesburg.[26] According to the regulations, a TV broadcaster that commissions programming from an independent production company based in one of six provinces (Mpumalanga, Limpopo, the North West, the Northern Cape, the Free State, or the Eastern Cape) is awarded a score of three points towards the total score for having commissioned local content from any of the aforementioned provinces, while productions commissioned in KZN (the province containing the Durban metro) are awarded a lower score of two. The regulations do not award any points for productions commissioned in Gauteng and the Western Cape, the provinces containing Johannesburg metro and Cape Town metro respectively. Also, in the furtherance of transformation and B-BBEE, the regulations award three local content points to programming commissioned from an HDI-owned production company (ICASA, 2016a).

According to the SABC 2019 Annual Report (SABC, 2019, p. 33) the SABC TV services achieved their pre-determined objectives for the period under review (2018-19). In its predetermined objective to meet ICASA’s content quotas of 55 percent for each public service broadcasting TV service, namely, SABC 1 and SABC 2, SABC 1 is reported to have recorded an achievement of 77.7 percent of its local content quotas, while SABC 2 achieved 80 percent. On diversity in TV content commissioning, and in line with the ICASA regulations, the

[26] Regulation 9 of the 2016 ICASA Local Television Content Regulations.

SABC TV broadcasting services managed to commission 14 programmes from provinces other than Gauteng, against a set target of 10 programmes. The provinces are: Eastern Cape - 1, Free State - 1, KZN - 2 and Western Cape - 10 (SABC, 2019, p. 33). Furthermore, the SABC reported to have commissioned content from independent production companies owned by persons with disabilities as its delivery on public value but the report does not provide numbers in this regard (SABC, 2019, p. 45).The SABC further reports in its 2020 Annual Report (2020, SABC) that all its TV channels are broadcast on the DTT multiplex, namely its three channels, currently on the analogue platform, its parliamentary, sports, education, 24 hour news and Encore channels. (SABC, 2019, p. 52). e.tv broadcasts five channels on the DTT multiplex, while OpenView—the only FTA multichannel satellite broadcasting service thus far—broadcasts 18 channels (eMedia holdings, 2019).

4.3.3.2 ICASA Digital Migration Regulations 2012

As alluded to earlier in this chapter, the ICASA 2012 Digital Migration Regulations provide for digital incentive channel authorisation procedures by ICASA for TV broadcasters adding digital only channels to their DTT platform in order to help incentivise TV households to switch over to DTT. Furthermore, as part of incentivising speedy migration to digital platforms by viewers, the 2012 regulations further mandate the establishment of the Digital Television Content Advisory Group (DTCAG), comprised of representatives from ICASA, TV broadcasters, the independent production industry, consumer protection organisations, and civil society organisations. The role of DTCAG is to:

> […] advise the Authority on the most effective way to ensure the supply of digital television content to encourage end-users to acquire set-top boxes in order to begin viewing digital television services as well as monitoring and compliance with content obligations. (ICASA, 2012)

Furthermore, the transitional provisions of the regulations mandates that once the regulations come into effect, ICASA is to amend existing licenses of TV broadcasters to reflect that such TV broadcasters will broadcast multi-channel services utilising DTT.[27] However, should ICASA not amend the licenses as expressed, existing TV broadcasters will be deemed to be authorised to provide multi-channel broadcasting services.[28] The 2012 regulations recognise that up until FTA TV broadcasters have fully migrated, they must continue to comply with the ICASA 2006 regulations on local content until such time that they are amended or repealed. TV broadcasters are to apply for an exemption for sports, news and education channels they may broadcast on the DTT platform.

4.3.3.3 Regulations on Commissioning of Independently Produced Programming

In 2009, ICASA published Regulations on the Commissioning of Independently Produced South African Programming (ICASA, 2009). The objective of the regulations is to monitor all TV broadcasters' commissioning practices for independently produced programming and "ensure that commissioning practices of independently produced South African programming are conducted in a manner that is fair, transparent and non-discriminatory" (ICASA 2009). The regulations require TV broadcasters to develop and submit their commissioning protocols, which are a set of policies, to ICASA for approval, within 120 days of the coming into effect of the regulations. These protocols can be amended by the TV broadcaster notifying ICASA of such amendments 30 days before the amendment becomes effective. The protocols must be published on TV broadcasters' websites for public access.

In its Position Paper on the Notice to Prescribe Regulations Regarding the Commissioning of Independently Produced South African Programming (ICASA, 2009, 48), which preceded the publication of the commissioning protocols regulations, ICASA observes that problems around ownership of copyright emanating from the Copyright Act are outside of its ambit but indicates it would continue to regulate the imposition of obligations for

[27] Regulation 12(1) of the 2012 Regulations.
[28] Regulation 12(2) of the 2012 Regulations.

the formation of commissioning protocols by TV broadcasters. By way of Annexure A to the regulations, ICASA prescribes guidelines for TV broadcasters in developing their commissioning protocols. Annexure A outlines:

- terms of trade for licensees, indicating that the terms of trade must be fair, transparent and non-discriminatory.
- the commissioning process, which is to be simple and transparent;
- editorial standards;
- programme fees, which must specifically outline the factors that TV broadcasters consider in formulating their prices;
- distribution arrangements, requiring TV broadcasters to prescribe a transparent framework for the distribution and payment of content commissioned from the independent production industry;
- procurement and ethical standards, requiring that in their dealings with the independent production industry, TV broadcasters must exercise the highest ethical standards; and
- complaints handling mechanisms to be followed in resolving disputes emanating from the commissioning practices of TV broadcasters.

Unlike in the UK where the Communications Act of 2003[29] mandates the public service broadcasters (BBC and S4C) to develop Codes for Commissioning practices, which are general in nature, and approved by Ofcom (Ofcom, 2007), the ECA is not prescriptive on the development of such codes, but only directs ICASA to promulgate regulations on the commissioning of independently produced SA programming.[30] Furthermore, even though the Broadcasting Act of 1999 does provide for the SABC Charter, and the development of policies by the SABC, compliance of which shall be monitored by ICASA, similarly the Broadcasting Act is not

[29] Section 285 of the Communications Act
[30] Section 61(1) of the ECA.

prescriptive on the need for the SABC to develop a code for the commissioning of independently produced content. The UK Communications Act specifically outlines the following guidelines for the development of the codes:

> (a) that a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
>
> (b) that there is what appears to OFCOM to be sufficient clarity, when an independent production is about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production that are being disposed of;
>
> (c) that there is what appears to OFCOM to be sufficient transparency about the amounts to be paid in respect of each category of rights;
>
> (d) that what appear to OFCOM to be satisfactory arrangements are made about the duration and exclusivity of those rights;
>
> (e) that procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it;
>
> (f) that those procedures include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;
>
> (g) that provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to OFCOM to be appropriate. (UK, 2003)

The NFVF, in its submission to ICASA's Discussion Document on the Commissioning of Independently Produced South African Content (ICASA, 2008b, p. 26), was of the view that ICASA has a role to play in creating an enabling environment that is mutually beneficial to all parties involved for the exercise of IP rights. To this end, the NFVF was of the view that:

> Film industry organisations, including the South African Screen Federation and the NFVF, have criticised the soft approach that was taken by ICASA on the regulation of this [IP] area….In the draft regulations, ICASA indicated its adoption of self-regulation as the preferred regulatory approach but noted it will still regulate necessary issues as the commissioning practices and protocols (NFVF, 2010, pp. 39, 40)

In line with Annexure A of the regulations, the commissioning protocols of both the SABC and e.tv outline the various types of content commissioning and acquisition practices they have adopted. The SABC submitted an amendment to its protocol to ICASA in 2016. In its Commissioning Protocol for Independently Produced SA Programming, e.tv (2010 p. 4) outlines three content commissioning practices, namely: content commissioned according to a brief, content based on unsolicited proposals, and advertiser-funded programming. According to the e.tv Commissioning Protocol, e.tv finances the production of all content it commissions and retains all primary and secondary rights in the content (e.tv, 2010, p. 12). (Primary rights are exclusive rights that the TV broadcaster reserves to broadcast content on its traditional TV broadcasting platform, while secondary rights are rights to broadcast the content on other platforms such as VOD and DVD.)

Unlike e.tv, the SABC's commissioning practices and rights ownership regime are more flexible. While the SABC owns both primary and secondary rights in content commissioned and fully paid for by it, the SABC allows producers an opportunity to submit written requests for approval to "commercially exploit secondary rights of the production" should the independent producers wish to do so. The terms and conditions of such an approval if granted are outlined in a separate exploitation agreement (SABC, 2016a, p. 8). According to the SABC Intellectual Property Policy (IP policy) (SABC, 2012, p. 4), where permission has been granted to exploit secondary rights, the independent producer receives 15 percent of net profits derived from the exploitation of the broadcast secondary rights as a whole to third parties anywhere in the world, and a further 10 percent of net profit as a finder's fee where the independent producer secures sale of the commissioned work to a third party (SABC, 2012).

Amendments to the Copyright Act (RSA, 1978) were introduced in Parliament in 2015. Prior to its amendment the Copyright Act gave full ownership of IP rights to the TV broadcaster who commissions and fully pays for the production of content. The amendments introduce a contracting regime whereby ownership of any copyright in the audio-visual work commissioned by a third party would be governed by a written agreement between the concerned parties (RSA, 2017). Further, where the agreement between the producer and the TV broadcaster is silent on who owns the work, the TV broadcaster shall have limited ownership of the copyright work, allowing the producer to enjoy certain rights, such as secondary rights. (DTI, 2019a). The status of the Amendment Bill was uncertain at the time of writing this research report in mid-2020, as the President returned the Bill to Parliament in June 2020 for re-consideration of the provisions pertaining to fair use and general exceptions to copyright protection (sections 12A, 12B, 12C, 12D), and provisions dealing with general exceptions on computer programs (sections 19B and 19C). The President was of the view that these provisions ran the risk of being declared unconstitutional (BusinessTech, 2020).

4.3.4 Funding of independently produced content

Government has created institutions aimed at providing funding and financial incentives to help promote the production of local film and TV productions, at national level (through the IDC, the DTI and the NFVF) at provincial level (through film commissions and development agencies) and at municipal level (through film offices) (NFVF, 2010, p. 12). The primary objective for the establishment of these funding initiatives is to correct the imbalances caused by the apartheid regime and to create opportunities for HDIs.

The DTI, through its Film and TV Production Incentive Scheme, funds four key areas of content production, namely: foreign film/TV production and post-production in South Africa; South African film and TV production; and co-productions, and, emerging black South African filmmakers (DTI, 2018a, p. 78). According to the DTI Annual Incentive Report for 2018-19 financial year, the DTI financed 102 projects through the incentive scheme (from 51 projects approved in the financial year 2017-18), in the amount of ZAR996.9 million (up from ZAR181.9 million in the financial year 2017/18) (DTI, 2018a, p. 50). The DTI notes that in the period 2018-19, feature films and TV miniseries were the most common formats funded (DTI, 2019b). The IDC, through its Media and Audio-visual Strategic Business Unit (SBU), is responsible for providing bridging finance, venture capital or rebate incentives for the production of "locally relevant and internationally palatable content, with emphasis on feature films, animation as well as television series" (IDC, 2018). In its 2019 Annual Report, the IDC records having made funding allocations of ZAR1.2 billion to the tourism, media and ICT sectors, with 49 percent of this funding (approximately ZAR588 million) going to the media industry (IDC, 2019, p. 51).

The NFVF is a statutory body established in terms of the NFVF Act (RSA, 1997b) to ensure equitable growth of South Africa's film and video industry, with particular focus on developing industry participation by HDIs. It provides funding for the development, production, marketing and distribution of films, video (audio-visual TV content) as well as funding the training of filmmakers. In carrying out its mandate, the NFVF has introduced slate funding for developing small emerging production companies, by giving them operating funds for a period of up to three years. Other NFVF slate projects are earmarked for female and youth film and TV producers (NFVF, 2018a). (Slate funding is a structure established to support funding proposals to produce various genres of film and television broadcasting content). Each financial year, the NFVF has three approval cycles for content production applications in the mentioned slates. According to its annual report, in the financial year 2017-18 the

NFVF approved 79 production projects in the three mentioned slates, and a total of R10 million was disbursed for the funding of these projects (NFVF, 2018b).

Respondent 4 (2020) from the SABC called for an overarching policy from the various government departments (the DCDT, DSAC and the DTIC) to coordinate and bring clarity to the various functions performed by the funding bodies. The respondent stated that “policy should be able to clarify how funding should occur and what the role of all the players is in terms of encouraging development of independent production of content”. It was further suggested by the NFVF that there needs to be intergovernmental cooperative governance to ensure coordination amongst the various government entities with policies and legislations governing the independent production industry (NFVF, 2010, p. 54).

Chapter 5: Analysis

The data analysis was conducted in terms of Hanna's analytical framework and is structured according to the three pillars selected, as outlined in chapters 1 to 3, from Hanna (2010), outlined in Hanna's digital transformation framework: industry, human capital and policy. In the analysis of policy, consideration was also given to the UK context as guided by the work of Doyle (2010; 2016; 2018a; 2018b).

5.1 Current state of the South African independent TV production industry

As gathered from findings in chapter 4, there exists conflicting evidence on the level of transformation within the industry. Evidence points to the fact that transformation is predominantly lacking within the small independent production companies, while there is a satisfactory amount of transformation at the level of large independent production companies. This is supported by the NFVF's submission that, in order to ensure that all production companies comply with B-BBEE regardless of their size, the DTI is developing a B-BBEE policy framework for the film and TV production industry. The contributing factor to the lack of transformation in the small entities is partly due to the exemptions offered to SMMEs by the B-BBEE Code of Good Practice. As alluded to in chapter 4, in terms of the B-BBEE Code, SMMEs that have an annual turnover of ZAR10 million or less are exempted from complying with empowerment elements of the B-BBEE Code of Good Practice and are automatically granted a B-BBEE level 4 status. Of great concern is that the B-BBEE Code does not appear to encourage improvement by SMMEs as no penalties are imposed on an SMME that does not comply with the B-BBEE Code. As observed in chapter 4, in contrast, large entities that default are penalized by a downgrade of their B-BBEE rating, until they are compliant in the area in which they had lagged behind. Evidence presented by the BRC November 2019 audience measurements reveal a level of improvement in the demographics of the leading companies, as the most-watched TV shows on the FTA TV broadcasters' platforms cited in the BRC audience measurement report are produced by HDI-run South African production companies. The IPO further confirmed that most large production companies are HDI owned.

The views expressed in chapter 4 by several respondents suggested that industry bodies have not contributed to the overall growth and transformation of the industry but appear to be used as platforms to advance the interests of office bearers of these industry bodies, who are mostly independent producers themselves, overlooking the overall interests of non-office-holding members. As stated in chapter 4 of this research report, according to the NFVF, due to there being a plethora of policies and legislation (such as the Copyright Act, the Film and Publication Act 64 of 1996 as amended, and the ECA) that govern the industry, it is difficult to regulate the industry. In order to address this lacuna, the findings in chapter 4 of this research report reveal that the NFVF advocates for inter-governmental cooperative governance among the many government departments, including ICASA.

5.2 Human capital in the South African independent TV production industry

It seems evident from chapter 4, from the inputs emanating from a variety of respondents, that human capital training and development remains a key challenge in the industry. It was observed that, even though over the past 25 years the film and TV independent production industry has become accessible to young black filmmakers and TV producers, it has been a challenge for some black entrants to flourish in the industry. It can further be observed from chapter 4 that even the most seasoned producers often do not have a formal academic qualification and have learned their TV production skills while working. They get jobs via referrals and other industry connections. It was further observed in chapter 4 that HDI personnel within the industry is focused mainly on earning a living, rather than attaining an academic qualification. Consequently, there are vacant critical positions within the industry, which are hard to fill, due to the lack of skilled personnel to take up these roles.

When it comes to the quality of education offered by institutions of higher learning, as observed from chapter 4, respondents stated that generally, they find it difficult to employ graduates fresh from school, as in their view, institutions of higher learning do not produce job-ready graduates, as the production companies have to spend time training them. A respondent in chapter 4 revealed that the experience is different with internship learners from private universities such as AFDA, as their graduates go through a more advanced training on TV productions and have a broader understanding of "the business of digital content".

Several respondents were of the view that a longer training period of at least three to four years towards a degree equips learners with fundamental principles of TV broadcasting and production as opposed to short courses. It was also felt that in addition to theoretical training, graduates should be exposed to networking experiences with seasoned industry players, and to the technical workplace environment via internships.

5.3 Policy linked to the South African independent TV production industry

5.3.1 Policies

As seen in chapter 4, the 1998 Broadcasting White Paper, which laid a foundation for the formation of the policy framework for the broadcasting industry, was conceived in the analogue era. As a step towards building on the policy framework laid in the 1998 White Paper, the ICT Policy Review Panel in 2015 published the National Integrated ICT Policy Review Report. This report was followed by the publication of the National Integrated ICT White Paper. Both the 2015 Report and the 2016 White Paper recognised that the prescripts of the 1998 Broadcasting Policy White Paper were premised on the needs of analogue terrestrial television, and emphasised the need to re-visit the White Paper to align it with the digital environment. As evidenced in chapter 4, Chapter 5 of the Report was dedicated to audio and audio-visual content services, and reflected, amongst other things, on the provisions of the 1998 White Paper pertaining to the need for TV broadcasters to promote local TV content and to broadcast content produced by the independent South African production industry. The 2015 Report and the 2016 White Paper did not evaluate whether the objectives set out in the 1995 Triple Inquiry Report and the 1998 White Paper—both of which advocated for the creation of SA local TV content by independent producers—had been substantially achieved. However, ICASA, in its 2013 Final Study Report leading to the 2015 review of the local content regulations, concluded that TV broadcasters across all tiers were exceeding the minimum required overall local content quotas, meaning that the local content objectives laid out by the 1995 Triple Inquiry Report and the 1998 White Paper were being achieved (ICASA, 2013, p. 189). Furthermore, inputs documented in the 2015 ICASA Findings Document on local content (ICASA, 2015b) confirmed that the objectives were being met. For example, e.tv, in its Written Submission to ICASA's Discussion Document on the Review of Regulations on South African Local Content: Radio and Television, concurred that local content policy objectives were being met (e.tv, 2014, p. 5). The NAB stated, in its written submission to the ICASA Discussion Document, that the South African Local Content Regulations were an example of a well-functioning and effective regulatory intervention (NAB, 2014, p. 18).

Chapter 5 of the 2015 National Integrated ICT Policy Review Report advocated for the introduction of pay-or-play principles, with the view to stimulating the independent production industry, which would require a TV broadcaster to plough back part of its independent production budget into an initiative that is intended to develop the independent production industry.

In addition to the process commenced by the DTPS in developing the National Integrated ICT White Paper, the DoC in 2014 published Written Proposals on Broadcasting Policy Review for public comment. As outlined in chapter 4, the notice solicited written inputs on the content of local and national interest, the development of language through broadcasting services, and the broadcasting landscape beyond BDM, amongst others. A further development emerged when, in its medium-term strategic plan, the DoC committed to reviewing the 1998 White Paper. This, the department indicated, it would achieve by developing the Audio-Visual Digital Content Act during the 2016-17 financial year. According to the department, it would follow a Green Paper and White Paper process, followed by the publication of a Bill. Yet it was only after a period of almost five years of no developments, that the DCDT announced that, on 9 September 2020, Cabinet approved the draft White Paper on Audio and Audio-visual Content Services Policy Framework: A New Vision for South Africa 2020 for public comment. As explained in chapter 4, since this draft White Paper was only released after completion of this research report's data collection, data analysis, and initial drafting, the White Paper's `contents are only discussed in the final chapter, chapter 6, of this report.

From the promulgation of the 1998 White Paper to the time of conducting this research in 2020, the communications sector has had 11 different ministers. The split of the DoC in 2014 which led to the formation of the DoC and the DTPS, and then the subsequent convergence of the departments into the DCDT in 2019, has also apparently contributed to the inefficiencies within the department.

As seen in chapter 4, the BDM Policy recognised that with digital migration, the regulator ICASA would need to review the local content quotas to align the regulatory framework to the multi-channel digital era. Furthermore, as seen in chapter 4, the BDM Policy recognised the need for the establishment of Digital Content Generation Hubs which would be a catalyst for the acceleration of the production of digital content. By way of publishing a draft Local and Digital Content Development Strategy for public comment, the DoC sought to introduce the establishment of what the draft strategy termed content generation hubs and the Digital Content Fund, which was to be administered by the MDDA. This was in pursuance of the BDM Policy and the DoC's 2011-14 Strategic

Plan. The DoC 2011-14 Strategic Plan indicated that the development of the draft Strategy was one of its key projects to be developed over a period of four years. There are key issues of concern that arise from the development of the draft Local and Digital Content Development Strategy. The department identified the draft strategy as a key project which formed part of the six pillars of its turnaround strategy, yet the draft strategy was never completed in the envisaged timeframes and has to date not been finalised. The non-completion of the draft strategy has created a vacuum as key strategic initiatives such as the formation of DCGHs and the DCF envisaged in the draft strategy have not be implemented.

There appears to be a will within the department to support the growth and development of the creative industries, in particular the independent TV production industry, as the department's strategic objective was to support the growth and development of the creative industries sector by 2019, as envisaged in its 2019-20 to 2021-22 APP.

5.3.2 Laws

As observed in chapter 4, the Broadcasting Act mandates the public service arm of the SABC to commission content from the independent production industry, and provides for the establishment of the SABPAB, an advisory body to advise the minister on issues related to the production of the independently produced content. Further, it emerged in chapter 4 that the first SABPAB was established in 2001. Subsequent to that, almost every incoming minister has advertised an invitation for the appointment of persons to serve on the SABPAB, with no evidence of a concrete body being established throughout the ministers' terms. As observed in chapter 4, the DoC in 2014 briefed the Parliamentary Portfolio Committee on the establishment of the SABPAB. The DoC reported that once appointed, names of members of the SABPAB will be published in a government gazette The DoC highlighted challenges facing the independent production industry, which include skills shortages, the concentration of TV production activities in the urban areas, and the lack of support for emerging producers. To this end the DoC advised that the immediate task of the SABPAB would be to review the draft Local and Digital Content Development Strategy, which was developed in 2009, and not completed. The DCDT in its 2019-20 to 2021-22 APP reports to have received a report from the SABPAB for the period 2015-16/2017-18, on recommendations pertaining to audio-visual skills development as well as the need to explore other funding mechanisms for the industry. There is however no evidence that such a report has been made publicly available, and there is also no indication of whether the necessary consultations were made in finalising the report in line with the Broadcasting Act and the terms of reference.

One of the objectives of the B-BBEE Act of 2013 as amended was to establish a legislative framework for the promotion of economic empowerment. As evidenced in chapter 4, in response to the coming into force of the B-BBEE Act, the ECA was amended in 2012, to, among others, align the ECA with the B-BBEE Act. In the amendment process of the ECA, provisions of section 61 were not amended; in particular, the aforementioned definitions were not rewritten to align with section 2(h) of the ECA and the requirements of B-BBEE Act. In keeping with the spirit of B-BBEE, the 2014 amendment of the ECA ought to have added the B-BBEE component to the definitions of independent TV production and local content, rather than just restricting the provisions to the citizenship of the independent producers.

5.3.3 Regulations

As noted in chapter 4, there has been a push by TV broadcasters for the ICASA local TV content regulations to be amended to align with the multi-channel dispensation as the country and TV broadcasters are gearing to migrate to digital broadcasting, in line with the BDM Policy. It was further observed that ICASA indicated that the envisaged regulations would be forward-looking and applicable to the digital environment. The ICASA reasons document further indicated that the bouquet-based approach would be implemented on digital incentive channels which would be treated as a bouquet when introduced. This was further confirmed by regulation 8(1) of the 2016 ICASA Local Content Regulations which stipulates that the local content requirements shall be applied per bouquet and not per channel. The commencement date of the 2016 ICASA Local TV Content Regulations was 24 months after publication of the regulations in a *Government Gazette*, meaning the regulations came into effect in March 2018. The commencement date of March 2018 envisaged that, by then, TV broadcasters would have fully migrated to DTT.

As evidenced in chapter 4, according to the transitional provisions of the ICASA 2012 Digital Migration Regulations, ICASA will amend the existing licenses of TV broadcasters to cater for a multi-channel broadcasting regime. Should ICASA not amend the broadcasters' licenses, as envisaged, such TV broadcasters shall be deemed to be authorised to provide multi-channel broadcasting services. Furthermore, at the end of the dual-illumination period, ICASA will further amend all TV broadcasters' licenses to reflect that TV broadcasters have stopped broadcasting on the analogue radio frequency spectrum. During this transitional period, TV broadcasters will be expected to comply with the 2006 regulations on local content until the regulations have been amended or repealed. TV broadcasters are to apply for an exemption for sports, news and education channels. Meanwhile, as of 2020, ICASA had not amended any of the TV broadcasters' licences, in line with its commitment to do so upon the regulations coming into effect. Furthermore, although the 2012 regulations indicate that TV broadcasters shall be deemed to have been authorised to broadcast multi-channel services and are in the meanwhile to comply with the 2006 regulations until amended or repealed, the latest compliance reports by ICASA do not appear to report on a multi-channel environment but rather on single channel analogue services and are not based on the 2016 regulations despite them being effective as of March 2018.

In line with the 2012 Digital Migration Regulations, the new channels transmitted by both e.tv and SABC qualify as multi-channel services. In other words, the five new channels on the e.tv DTT platform, qualify as digital incentive channels broadcast on a multi-channel platform which should comply with regulations on local content.[31] On the other hand, there is no evidence that the SABC has applied for an exemption of its sport, education and 24-hour news channels broadcast on the DTT platform, as envisaged by the 2012 regulations.

As observed in chapter 4, the latest annual compliance report published by ICASA for e.tv is dated March 2020. At the publication of this annual compliance report (which focused on the period 2018-19), the 2016 ICASA Local TV Content Regulations were in force. ICASA further states in the e.tv 2020 compliance report that the 2016 Regulations came into effect in March 2018. Yet the e.tv annual compliance report is based on the 2006 ICASA Local TV Content Regulations. Neither e.tv nor ICASA provides a reason why the TV broadcaster is submitting its compliance reports in line with the 2006 regulations and not the 2016 regulations. Further the 2012 regulations indicate that during the transitional period, TV broadcasters are to comply with the 2006 regulations until such time that the regulations are amended or repealed. In other words, TV broadcasters are then to start complying with, and reporting on, their compliance with the 2016 regulations.

Additionally, in ensuring the continuous production of locally produced content during the transitional period, while the country has not fully migrated to DTT, the 2012 regulations recognise the establishment of the DTCAG. The DTCAG must comprise key role players in the independent production industry.[32] The function of DTCAG would be to advise ICASA on the effective means of guaranteeing the supply of digital TV content which would encourage the uptake of DTT services by end-users, as well as the monitoring and compliance with local content

[31] The five channels broadcast by e.tv on the DTT platform are e.HD, e.movies, e.movies EXTRA, e.extra and e.toonz+.
[32] Representatives from ICASA, TV broadcasters, the independent production industry, consumer protection organisations and civil society organisations.

obligations. Since the inception of the 2012 regulations, ICASA has established the DTCAG, led by various councillors. (There is no information in the public domain on the outputs of the DTCAG.)

Based on the human resources challenges at ICASA, as highlighted in chapter 4, in relation to the limited capacity in the Compliance and Consumer Affairs division, which incorporates the broadcasting compliance function of ICASA, as observed in chapter 4, a respondent from ICASA indicated that as a result of the constraints, ICASA does not actively monitor SABC TV services, but rather does spot checks on the said services. There is also concern on the quality of the annual monitoring reports for other TV broadcasters, who are monitored on an annual basis. As seen in chapter 4, ICASA has noted its shortcomings on its current monitoring of compliance with local content regulations by TV broadcasters and undertook to make a decision on the most efficient method on improvements. The undertaking by ICASA was not backed by a commitment to a timeline according to which ICASA intends to make the decision.

A close comparison of the e.tv 2020 annual compliance report to that of the previous year raises clear concerns. Most sections of both reports are identical. Specifically, there is an identical mention in both reports that during the period under review, the TV broadcaster procured local content from "more than 20 independent production companies".

As observed in chapter 4, the 2016 Regulations uphold the principles of the empowerment of HDIs and are pro-transformation. The provisions of regulation 7(2) of the regulations require all TV broadcasters to set aside 50 percent of their annual independently produced content budget for commissioning of content from previously marginalised local African languages or on content commissioned from regions outside of the Durban, Cape Town and Johannesburg metros. This has been solidified through incentivising TV broadcasters for diversity in commissioning, by awarding points to content commissioned from HDIs, in marginalised languages, and from marginalised areas. On the other hand, based on the SABC 2019 annual report, and the e.tv 2020 annual monitoring report, it appears that commissioning from marginalised provinces remains a challenge for the said FTA TV broadcasters. The SABC 2019 annual report depicts that in as much as the SABC was able to surpass its annual target by commissioning 14 programmes from marginalised provinces, the SABC was still not able to commission content from Limpopo and Mpumalanga. Citing its lack of cash, the SABC further recorded a non-achievement in the broadcast of content in a variety of marginalised languages.

As evidenced from chapter 4, the independent production industry had the expectation that through the promulgation of the Regulations on the Commissioning of Independently Produced South African Programming in 2009, ICASA would intervene in the bottlenecks created by the Copyright Act in relation to the copyright ownership. However, by virtue of copyright issues falling under the DTIC, ICASA elected to maintain an arm's length approach to copyright related matters but recognised the need to intervene on issues affecting the relationship between TV broadcasters and producers and formulated a regulatory framework on commissioning protocols. An analysis of the contents of Annexure A of the ICASA regulations reveals that, even though ICASA may not necessarily have a legislative backing to mandate the TV broadcasters to develop industry negotiated codes on commissioning protocols (as is the case with the UK regime), through the 2009 regulations, ICASA has provided the necessary intervention, as the model it followed in developing its guidelines is similar to that followed in the UK.

The resultant commissioning protocols developed by the SABC and e.tv, however, do not reflect the intent of the regulations on commissioning protocols, which is to ensure that commissioning protocols of TV broadcasters are fair, transparent and non-discriminatory. The commissioning protocols of the two TV broadcasters reflect the status quo in relation to their commissioning practices, and do not appear to leave a negotiating opportunity at industry level by production companies. As seen in chapter 2, based on the writings of Doyle (2016) the reason for the establishment of negotiated ToTs by the UK Communications Act was to address the power that TV broadcasters had in the market, which weakened the position of the independent production industry. To this end the intervention of PACT to negotiate suitable ToTs on behalf of the independent production industry assisted in ensuring that the collective interests of the independent producers are catered for in the ToTs.

5.3.4 Funding support for independently produced TV content

As evidenced in chapter 4, one of the objectives for the establishment of funding institutions and incentive schemes offered by institutions such as the NFVF, the IDC and the DTIC was to ensure that HDIs are afforded opportunities to participate in the independent production industry, with the view of correcting inequities created by the apartheid era. The challenge facing these government funding institutions is that although their mandates are different, they receive their budget allocations from the same source, National Treasury, and the risk is, in the wake of the economic downturn, the funding to these funding entities is likely to be affected. It has been suggested in a submission by SOS Coalition, that in addition to government funding by the DTIC, NFVF and the IDC, and assistance from film commissions and film offices, the TV broadcasters' contributions to the MDDA be channeled towards funding independent TV productions. This however would require the amendment of the MDDA Act to incorporate such a mandate. Furthermore, a respondent from the SABC called for an overarching policy coordination and institutional reform by the various government departments responsible for funding film and TV production. Currently, the NFVF derives its mandate from the NFVF Act. The DTIC also has its own funding policies that guides its funding focus. The IDC on other hand is a government owned national development institution, under the ambit of the DTIC.

It was further observed in chapter 4 that government aspired to establish content generation hubs and a Digital Content Fund, through the BDM Policy and the draft Local and Digital Content Development Strategy, respectively. One of the benefits of a Digital Content Fund, if created, would be to alleviate the high dependence of independent producers on funding from the existing funding sources, namely the NFVF, the IDC and the DTI as well as from TV broadcasters (through commissions). Further, in order to alleviate copyright and exploitation of rights challenges faced by the independent production industry around the ownership of content commissioned and 100 percent-paid-for by TV broadcasters, such a fund could be used to support producer contributions of funds to broadcaster-commissioned productions and, in turn, participation in a proportionate risk and rights-sharing regime for such productions. There is a symbiotic relationship between broadcasters and independent producers. Producers point to the fact that they contribute to the success of programmes through their creativity, while the TV broadcasters' view is that they deserve exclusive ownership of rights because, in providing percent of the funding for a production, they carry the project's full financial risk.

Chapter 6: Conclusions and Recommendations: Independently Produced South African FTA TV Local Content in the Digital Environment

As explained in the opening chapters of this report, the overarching research question for the study, grounded in the three selected pillars from Hanna (2010), was: What are the industry, human capital and policy requirements in support of independently produced South African FTA TV local content in the digital environment? Accordingly, what follows in this chapter are conclusions and recommendations aimed at addressing the needs of the South African independent production industry in the digital environment.

6.1 B-BBEE

As demonstrated in this report, large independent production companies have been found to be compliant with B-BBEE imperatives and the transformation agenda. On the other hand, by virtue of their exemption, B-BBEE compliance by small independent production companies is not monitored for compliance with the seven transformation elements that entities are supposed to meet, namely: management and control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development and ownership.

Unlike other industries that have developed their own sector-specific charters, the independent TV production industry applies the B-BBEE Codes of Good Practice, which are generic in nature. According to the DTIC, the B-BBEE Act recognises two types of sector-specific charters: those established in terms of section 9 of the B-BBEE Act and those established in terms of section 12 of the Act. A charter developed in terms of section 9 of has to be published in a *Government Gazette* by the Minister for public input for a period of 60 days, hence potentially attracting substantial public participation and input, while a charter developed in terms of section 12 only requires inputs by the industry seeking to develop it. The advantages of both charters over the generic codes are that they are developed and agreed to by stakeholders within a particular industry and are binding on businesses operating in the particular industry (DTIC, n.d). The charters are in line with the objects of the B-BBEE, and since they are developed by the industry, they can be tailor-made to address specific issues within the industry. In the instance of the independent production industry, an industry-negotiated sector-specific charter is recommended, so as to address specific shortcomings within the industry such as ownership, control and staffing of SMMEs, and skills development, which appear to still remain a challenge.

6.2 ECA

As shown in this report, one of the key issues affecting the industry is transformation through the empowerment of black South Africans. The ECA, which was promulgated prior to the promulgation of the B-BBEE Act, was subsequently amended in 2014 to align its objectives and certain of its provisions to the objects of the B-BBEE Act. In the process of amending the ECA, two terms, both critical to the independent production industry, were not amended in alignment with the imperatives of B-BBEE. As indicated in chapters 4 and 5, in its current form the definition of local TV content, as contained in the ECA, does not specifically promote the involvement of black South Africans in the production of local content. Similarly, the ECA's definition of independent TV production does not mandate the involvement of black directors, shareholders and employees in an independent production company.

It is my view, based on the findings from this research, that the ECA should be amended to include provisions explicitly fostering ownership and control of independent production companies by black South Africans, and the employment and empowerment of black people in independent production companies, in line with the objectives of the B-BBEE Act. Among other things, since it has been observed that SMMEs in the independent production industry are exempted from the B-BBEE Code of Good Practice, the proposed amendments to the definition of local TV content and independent TV production could assist in boosting transformation within SMME enterprises in the industry. ICASA should, through powers granted by legislation in terms of section 3(9) of the ECA (which empowers ICASA to make recommendations to the minister on policy matters), propose legislative amendments of the said definitions to the minister, who could then introduce these to Parliament.

6.3 Funding

As seen in chapters 4 and 5 of this report, the sector's funding institutions appear to work in silos as they administer their respective initiatives. In confirming the multiplicity of government departments having overlapping policy mandates over the industry, the NFVF made a recommendation for cooperative intergovernmental relations to ensure policy coordination. This principle should apply in relation to the key government departments responsible for the funding of the creatives industries, namely the DTIC, the DSAC and the DCDT, and any other entity whose mission is to fund the development of TV local content, so as to form a collaborative approach towards funding. (As is discussed below in sub-section 6.11, this matter has been taken up in the Draft White Paper of October 2020). The Draft White Paper makes similar observations to those made by the NFVF in relation to the myriad entities responsible for funding independently produced content, and it calls for a national policy and institutional review which will establish an institutional framework that supports the optimum funding of audiovisual content at national, provincial and local level in the country. (DCDT, 2020, p.134).

Additionally, to ensure the long-term sustainability of film commissions and film offices, and to ensure equitable allocation of recourses to the industry, regard must be given to establishing film commissions in more provinces, so as to decentralise this model beyond the key metros where production activities are currently concentrated. This would allow for easier access to funding opportunities and production facilities by fledgling independent producers beyond Gauteng, the Western Cape, and KZN. (Currently, the provincial film commissions are the Gauteng Film Commission, the Cape Film Commission, and the KZN Film Commission.) Additionally, provincial governments should consider providing access to funding through film commissions. Provincial governments should not just regard the film and TV production industry as a mere entertainment industry but rather as a strategic enabler of economic growth.

6.4 South African Broadcast Production Advisory Body

Apart from its focus being on the public broadcaster, one of the critical deliverables set by the Broadcasting Act of 1999 in relation to the independent production industry is the establishment of the SABPAB. As observed in the previous chapters, even though various ministers of communications have acted on their legislative mandate to appoint members of the SABPAB—by publishing invitations for persons to serve on the body—there is very little evidence in the public domain of the SABPAB being operational.

A presentation made by the DoC to the Parliamentary Portfolio Committee on Communications in 2014 provided an overview of the formation of the SABPAB, but no publicly available evidence was provided to the committee that there was an effective SABPAB in existence. The DoC, in that presentation, highlighted challenges the independent TV production industry faces, and advised that once established, the SABPAB would work towards finalising the draft Local and Digital Content Development Strategy, which had been initiated in 2009 by the department. If and when appointments to the SABPAB were made, ministers should ordinarily have published names of members in a *Government Gazette*, and the DoC highlighted this in its presentation to the portfolio committee. However, there is no evidence that this happened, and furthermore, the draft Local and Digital Content Development Strategy still has not, as of late 2020, been finalised by the department.

Even though the department reported that, in the period 2015-16 to 2017-18, it received a report from the SABPAB, there is no evidence as to whether such a report was made publicly available; whether the necessary consultations with the NFVF, the broadcasting industry and the Minister of Sports Arts and Culture were conducted; and whether the report's recommendations were implemented, as envisaged by the Broadcasting Act. As a public body with a public interest mandate and in line with the terms of reference governing the SABPAB, the body's reports should be made public after receipt and approval by the minister.

It is therefore recommended that the department take steps to make SABPAB a fully functioning entity whose reports become part of the public record, as the body can play an important advisory role to the minister in identifying means to fill gaps with regard to the production of independently produced TV content. It is further recommended that government prioritise finalisation of the draft Local and Digital Content Development Strategy, as the objectives espoused by the draft strategy can go a long way in stimulating the growth of the independent production industry.

6.5 Copyright Act

The Copyright Act of 1978 is outdated, and as discussed in findings and analysis chapters of this report, the DTI (now the DTIC) has introduced legislative amendments to the Act. As outlined, the amendments include an effort to address the plight of independent producers, by amending section 21 of the Act. Among other elements, the Bill advocates for the introduction of a compulsory contracting regime between parties for the ownership of copyright in any audio-visual work commissioned by a third party (RSA, 2017). The Bill further provides for the referral of disputes related to copyright ownership to the Copyright Tribunal for adjudication.

The shortcoming of the section 21 amendment is that it still leaves the negotiation of rights to the TV broadcaster and the producer, without prescribing guiding principles to be observed when so negotiating. The amendment further adds an administrative and financial burden on the producers—who are already in a disadvantaged position in relation to TV broadcasters, who have greater financial resources—by mandating referral of disputes to the Copyright Tribunal. (As is explained in the next sub-section, it can be argued that ICASA needs to play a greater role in guiding terms of trade between TV broadcasters and independent producers.)

6.6 ICASA commissioning regulations and TV broadcasters' commissioning protocols

As observed in this research report, the independent production industry had anticipated that through the promulgation of the 2009 Regulations on the Commissioning of Independently Produced South African Programming, ICASA would intervene to a greater extent in the IP rights challenges the industry faces in its relations with TV broadcasters. According to the independent producers, their industry is unable to effectively negotiate and leverage on rights to content commissioned and procured by TV broadcasters. As observed in chapter 4, e.tv retains all rights in content it commissions and fully pays for from the independent production industry. Furthermore, e. tv's commissioning protocols do not leave room for negotiation on secondary rights. This is notwithstanding the provisions of Annexure A of the 2009 ICASA independent production content commissioning regulations, which aim to eliminate unfair commissioning practices by TV broadcasters.

Meanwhile, as seen in the preceding chapters of this research report, although the SABC also retains all rights in content that it fully commissions, it avails an opportunity for producers to commercially exploit secondary rights to their productions, subject to a written request being made to the SABC to that effect. This still poses challenges for independent producers as they must still motivate for why they should be afforded access to the secondary rights. It would seem ICASA neglected an important step in developing Annexure A of the regulations. Annexure A ought to have prescribed a requirement for the commissioning protocols to be negotiated between TV broadcasters and the independent production industry, and not be unilaterally formulated by TV broadcasters (as is currently the case).

In the UK, the regulator Ofcom is empowered by the Communications Act of 2003 to oversee the formulation of Codes of Practice for commissioning from independent producers by the public TV broadcasters. The UK independent producer organisation PACT has been in the forefront of negotiating the code with broadcasters on behalf of producers. We have seen in this report that in the South African context, neither the ECA nor the Broadcasting Act empowers ICASA to prescribe such a code. However, despite the lack of a clear mandate to do so, ICASA has, by way of Annexure A to its 2009 regulations, introduced interventions to address unfair commissioning practices by TV broadcasters by providing a guideline on their development of the commissioning protocols. It thus follows from my analysis that, building on the Annexure A, ICASA should amend the 2009 regulations to provide for the development of a negotiated industry code for the commissioning of independently produced content, negotiated by SASFED as the industry body. The industry-negotiated code could address principle issues such as the ownership and licensing of rights as well as revenue-sharing models.

6.7 ICASA Local Content Regulations and DTT digital incentive channels

As evidenced in this report, the ICASA 2016 regulations have, in line with the BDM policy, adopted a bouquet-based approach to TV broadcasters' compliance with local content quotas in the multi-channel dispensation. This bouquet approach is evidenced in the provisions of section 8(1) of the regulations. The effectiveness of the 2016 regulations, however, remains to be seen, as despite their effective date being March 2018, the latest available ICASA compliance reports for SABC and e.tv are still based on the 2006 regulations. This is partly because ICASA's most recent compliance reports are based on TV broadcasters' license terms and conditions, which

Licences came into effect in 2008 under the 2006 regulations (when ICASA converted all TV broadcasters' licenses in line with the ECA). Furthermore, as of late 2020, the SABC and e.tv. have not fully migrated to DTT and are still dual-illuminating on both analogue and DTT platforms—because the roll-out of DTT receivers to low-income TV households has still not reached the level where the DCDT can mandate analogue switch-off. In the multi-channel era, ICASA will monitor local content quotas based on bouquets, including new digital incentive channels provided by broadcasters. As evidenced from chapter 4 and 5, when passing the 2016 regulations, ICASA envisaged that TV broadcasters would have migrated to DTT by 2018.

According to the 2020 SABC Annual Report, the 2020 eMedia Annual Report and ICASA, SABC TV currently broadcasts all its existing terrestrial channels, its parliamentary channel, its sports channel, its 24-hour news channel, its Encore channel, and a recently added education channel as additional channels on its DTT platform. In the case of e.tv, in addition to its single terrestrial channel, it broadcasts five more channels, namely e. HD, e. movies, e. movies EXTRA, e.extra and e.toonz+ on its DTT platform. Seeing that the new services SABC broadcasts on its DTT platform do not, with the exception of the repeats on the Encore channel, seem to be carrying local content (as defined by the 2016 regulations), it can be argued that the SABC will not be able report on the content of these channels for purposes of compliance with local content regulations, and seeing that some of e.tv's DTT channels are movie channels, it can be argued that those channels are also not subject to local content regulations as they focused on international content.

Given that ICASA compliance reports are based on existing license terms and conditions of TV broadcasters' licenses, it may be that TV broadcasters will only meaningfully report on their DTT services once they have fully migrated to DTT and after their existing 15-year licenses have been renewed in 2023, incorporating new license terms and conditions focusing on the multi-channel dispensation. This would accord with ICASA's apparent assumption that by the time the 2016 regulations came into effect in 2018, TV broadcasters would have fully migrated to DTT. It is recommended that ICASA publishes an amendment to the 2016 local content regulations, providing an extended effective date that will be aligned to the eventual analogue switch-off period.

6.8 ICASA Compliance and Consumer Affairs Division

As evidenced by its shortcomings outlined in chapters 4 and 5, the ICASA Compliance and Consumer Affairs division, which incorporates the broadcasting compliance function, is under-resourced and understaffed. This has led to, among other things, all TV broadcasting services of the SABC not being actively monitored for compliance purposes. Instead, ICASA conducts spot checks on these services. One of the reasons cited for this is that due to the detailed nature of the SABC TV services' license terms and conditions, it is difficult for ICASA to monitor all three TV services. Concerns were raised by MMA about not only the quality of compliance reports produced by ICASA, but also the quality and accuracy of compliance reports submitted by TV broadcasters to ICASA.

Given the limited resources ICASA has, it is questionable whether ICASA has the capacity to fully verify contents of compliance reports submitted by TV broadcasters. In order to address the challenges within the ICASA compliance unit, particularly for monitoring SABC TV services, the unit's staff members will need training on monitoring compliance in a multichannel environment (in addition to more staff members being employed to capacitate the unit). In the 2016 reasons document for the local TV content regulations, ICASA committed itself to finding ways to improve its monitoring and compliance, but it has yet to make any pronouncement on this matter.

It is recommended that before the national analogue switch-off, ICASA capacitates its consumer affairs division with specialised skills dedicated to monitoring compliance with the pertinent regulations pertaining to promotion of the growth and development of the independent production industry. These regulations are the 2016 local regulations and the 2009 regulations on commissioning independent production, (particularly Annexure A of the 2009 regulations). As seen in the next sub-section, I also recommend the inclusion of the pay-or-play principle in local TV content regulations, and if this regulatory step is taken then there will need to be capacity at ICASA to ensure that where TV broadcasters opt to pay rather than broadcast locally produced content then such monies are received by ICASA. These capacity improvements should be implemented in conjunction with ICASA deploying fit-for-purpose monitoring technologies, in line with the country's move towards the fourth industrial revolution and its technological advances.

6.9 Pay-or-play

In addition to the push by the 2015 ICT Policy Review Report for local content quotas to be retained in the digital dispensation, that report further proposed inclusion of pay-or-play provisions, which would impose payments as an alternative for a TV broadcaster that cannot commission enough content to cater for the prescribed local content quotas. Adoption of the pay-or-play principle would benefit the independent production industry as an enhancement to the existing quota-based system. In addition, it would act as an additional funding mechanism for the production of independently commissioned content. For these reasons, I recommend that the pay-or-play principle be added to the local content regulations. The 2020 draft White Paper's position on pay-or-play is covered in the next sub-section.

6.10 The 2020 Draft White Paper

Even though it was published only after the data collection period of this research, it is important to highlight the recommendations of the 2020 Draft White Paper, since many of the recommendations are directly relevant to this research. The 2020 Draft White Paper was published by the DCDT in October 2020. The development of the paper took place without the planned publication of a Green Paper. Furthermore, the development of the paper largely occurred in a non-transparent fashion, in the sense that the department held no public consultation processes to keep stakeholders abreast of its plans.

The Draft White Paper acknowledges the need for a well-funded South African audio-visual content production industry in order to ensure the availability of content for the multi-channel dispensation. The paper also recognises the need for national policy and institutional review to ensure policy and institutional alignment (DCDT, 2020, p. 134). The paper points to the existence of the numerous government departments, ministries, public entities and film commissions that are responsible for funding the production of independent produced content (DCDT, 2020, p. 130) and observes that the disjointed approach by the said bodies creates some confusion for the industry. Accordingly, the paper recommends that:

> A national policy and institutional review [needs] to assess not only policy alignment but also the optimal institutional alignment of key entities involved in the industry. Greater coordination among strategic industry partners is critical. A clearly defined institutional framework for the coordination and management of the funding of audiovisual content nationally as well as provincially is required. (DCDT, 2020, p. 134)

With respect to the BDM Policy's call for the formation of Digital Content Generation Hubs (DCGHs), the 2020 Draft White Paper does not make mention of the DCGHs, but rather makes a proposal for the development of a Digital Development Fund (DDF). The DDF is intended to fund a variety of things, including the provision of accessibility services to person with disabilities to enable them to receive audio and audio-visual content (DCDT, 2020b, p. 121); the funding of media literacy initiatives (DCDT, 2020, p. 147); and the funding of annual media research (DCDT, 2020, p. 147). While the 2020 Draft White Paper recognises the need for independent producers to have access to funding, it does not make specific reference to the industry accessing funding through the DDF (DCDT, 2020, p. 121). Also, from the reading of the draft 2020 White Paper, it would seem the DDF has not been properly conceptualised, as the paper does not indicate the source for such funds.

Although, as evidenced in chapters 4 and 5, the department has consistently committed to finalising the draft Local and Digital Content Development Strategy, the 2020 Draft White Paper does not make mention of the strategy. Since the 2020 Draft White Paper is undergoing a public consultation process, it is hoped that its revised version will include policy initiatives such as the draft Local and Digital Development Content Strategy, among others, which can have a positive bearing on the independent production industry.

The 2020 Draft White Paper also supports the imposition of the pay-or-play principle (DCDT, 2020, p. 16). The paper confirms the position by government in its 2015 National Integrated ICT Policy Review Report that local content on a digital platform should be measured across the total bouquet of channels, but also states that should a broadcaster not be able to meet its local content obligations, such a broadcaster should pay a fee into a fund in support of the production of local audio and audiovisual content. I recommend that, among the matters that need to be addressed when the 2020 Draft White Paper is finalised is the determination of the qualifying criteria for access to the pay-or-play funds by members of the independent production industry. In the spirit of transformation, B-BBEE should be prioritised.

6.11 Impact of COVID-19

Although the data collection of this report took place between January and March 2020, before the COVID-19 National State of Disaster was declared in South Africa (RSA, 2020a), this report will be remiss if it did not point out that like any other industry, the independent TV production industry has been negatively impacted by COVID-19. Due to the need for social distancing and declaration of the level 5 national lockdown that took effect from midnight 25 March 2020 (level 5 is where only access to essential services such as food, medication and medical facilities is allowed), independent TV productions had to stop.

In order to mitigate the loss of income by production companies, actors and freelancers, several initiatives at national and provincial levels were undertaken to assist the industry. At national level, the DSAC established a COVID-19 relief fund of ZAR150 million to assist artists, athletes and any other person working in the ecosystem of the sports and creative industries. The department set out qualifying criteria and the maximum amount to be allocated to each recipient could not exceed ZAR20,000 (DSAC, 2020). The Western Cape Government created provincial relief measures to provide financial assistance to the cultural, creative and sports industries (SASFED, 2020). Then in terms of the 1 May 2020 Regulations Issued in terms of Section 27(2) of the Disaster Management Act (RSA, 2020b), which eased limitations imposed under level 5 lockdown to level 4 lockdown, TV productions were allowed to resume with effect from 4 May 2020, with the necessary hygiene precautions (SASFED, 2020).

On 6 April 2020, in response to the pandemic, ICASA published its ICT COVID–19 National Disaster Regulations (ICASA, 2020b). The regulations provided exceptions to TV broadcasters from complying with their local content quotas. The exemptions were to expire automatically three months after the termination of the

National State of Disaster. This National State of Disaster was still in place at the end of 2020 when the compilation of this report was completed.

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Appendices

Appendix I: Participant Information Sheet

Researcher: Dimakatso Qocha

Research Topic: Industry, human capital and policy dimensions of independently produced South African free-to-air TV local content in the digital environment

Dear prospective participant,

Hello, I am Dimakatso Qocha, a Master of ICT Policy and Regulation (MA ICTPR) student at Wits University. I am conducting research on South African independently produced free-to-air (FTA) TV local content in the digital environment.

Given your knowledge of the South African TV industry, I believe you are a suitable person to provide information that will assist this research. I therefore invite you to participate in the research by being interviewed.

If you agree to participate, via the attached Informed Consent Form, the interview will last approximately one hour. In order to ensure accuracy in reporting of my findings, I would like to make an audio-recording of the interview. The Informed Consent Form thus seeks your consent for me to audio-record the interview.

The responses you provide will be used for purposes of my Master's research report and also, potentially, for related scholarly publishing and capacity building outputs. Your words, inputs and personal details will be kept anonymous in all outputs, through my use of a naming convention rather than your actual name. Confidentiality will be observed with respect to any information you provide that you do not wish to be published. The data you provide will be stored, in anonymised form, in a password-protected computer.

Your participation is entirely voluntary. As far as I am aware, there are no risks or benefits, to you personally, associated with your participation in the study. Should you wish not to answer certain questions, you are free to do so, without fear of any prejudice, harm or penalty to yourself. Furthermore, should you wish to withdraw from the study at any time, you are free to do so without giving reasons and without fear of any prejudice or harm or penalty to yourself. Also, please note that this research project is designed for public benefit, not for any personal benefit to the participants.

Please feel free to ask questions for clarification. Also, please feel free to contact me or my research supervisor, Dr Chris Armstrong, via the contact details outlined below:

Researcher: Dimakatso Qocha

MA Student, University of the Witwatersrand (Wits), Johannesburg, South Africa

tel:

email:

Research Supervisor: Dr Chris Armstrong

Visiting Fellow, LINK Centre, University of the Witwatersrand (Wits), Johannesburg, South Africa

tel:

email:

If at any point you feel you have been harmed by the research, you may contact my supervisor Dr Armstrong via the contact details provided above.

Appendix II: Informed Consent Form

I hereby agree to participate in the research study, titled: **Industry, human capital and policy dimensions of independently produced South African free-to-air TV local content in the digital environment.** I will participate in the interview in which I will give my views on the industry, human capital and policy needs for South African free-to-air television local content in the digital environment.

The research has been explained to me and I understand the study. I have been informed of (i) the name and affiliation of the researcher; (ii) the purpose, content, objectives and potential benefits of the study; (iii) the fact that the content of my responses may be reported, anonymously, in the study's published outputs (e.g., research report, conference paper, journal article, book chapter, lecture); (iv) the study's procedures for storage and use of the data collected from the interview in a manner that ensures anonymity and confidentiality of the data; and (v) the steps I can take if I have questions or concerns or feel that I have been harmed by the research. I understand that this is a research project whose purpose is not to benefit me personally.

Please initial box

1. I confirm that I have read and understand the information sheet for the above study and have had the opportunity to ask questions.

2. I understand that my participation is voluntary, and that I am free to choose not to answer certain questions, or to withdraw from the study at any time, without giving a reason.

3. I understand that there are no risks or benefits, to me personally, associated with this study.

4. I understand that the research will not identify me by name or position in any publications using information obtained from this interview; that the data will be stored in a way that preserves confidentiality; and that any views I express will be kept confidential by the researcher where such confidentiality is required.

5. I understand that my name will not be stated in the report; that the data will be stored in a way that preserves confidentiality; and that any views I express will be kept confidential by the researcher where such confidentiality is required.

6. I agree to the interview being audio-recorded.

7. I agree to the use of anonymised quotes in any publications.

8. I agree that data gathered from me in this study may be stored (after it has been anonymised) and may be used for future research.

Name of Research Participant Date Signature

Name of Researcher Date Signature

Appendix III: Interview Protocol

Researcher: Dimakatso Qocha

Research Topic: Industry, human capital and policy dimensions of independently produced South African free-to-air TV local content in the digital environment

Overall research question

How should the industry, human capital and policy dimensions of independently produced South African free-to-air (FTA) TV local content be optimised for the digital environment?

Interview questions	**Follow-up questions (to be asked as necessary)**
1.What is your current role within your organisation/company?	
2. How long have you worked in the South African TV sector/industry?	
3. In which parts of the sector/industry have you worked?	Independent TV producer? FTA TV broadcaster? Pay-TV broadcaster? Regulator? Policymaker? State agency (e.g., IDC, NFVF?) Education and training provider? Other?

4. In what capacities have you worked in the sector/industry?	
5. How would you evaluate the current state of South Africa's independent TV production industry?	Ownership? Entry into the industry? Level of awareness/readiness by the industry to produce local content for the digital environment, especially for the FTA television broadcasting industry? Cost of South African local content production? Local content production value chain? Content ownership rights, exploitation of rights? Quantity of successful production companies? Successful companies beyond main metropoles of Gauteng, Cape Town and Durban? Advantageous commissioning deals with SABC and e.tv in terms of fees per minute? in terms of broadcast rights (domestic and international)? in terms of distribution rights (domestic and international)? Effectiveness of IPO, SASFED? Commissioning by SABC and e.tv in comparison to commissioning by M-NET and other pay-TV outlets?
6. How, if at all, do you feel South Africa's independent TV production industry could be improved in its ability to cater to the digital environment?	
7. How would you evaluate the current state of human capital in the South African independent TV production industry?	Requisite skills in various parts of the value chain? producing? financing? directing? writing?

	acting? digital production? digital post-production? Education and training, skills development? Adequate supply of experienced people? Length of time in the industry needed for an individual to acquire necessary experience? Pros and cons of being employed by a broadcaster or working as an independent producer? The role played by: SETAs? AFDA? Monash? NEMISA? INeSI? university programmes? any other institutions?
8. How, if at all, do you feel the human capital in South Africa's independent TV production industry could be improved in its ability to cater to the digital environment?	
9. How would you evaluate the current state of policy, law and regulation in respect of South Africa's independent TV production industry?	Local TV content quota system? Percentages/quotas in relation to independently produced local TV content vs in-house local content production? Incentives in relation "out of the metros" independently produced local TV content? Regulations on repeats? Broadcasters' compliance with local content regulations ICASA monitoring of compliance with local content regulations? Must carry regulations?

	Role of policy, law and regulation in shaping the independent TV production sector? Policy, law and regulations enabler or inhibitor of independent TV production sector? Role of policy, law and regulation in human capital in the independent TV production sector? What role has policy and regulation played in shaping/ spurring the demand for independently produced local content? Roles played by institutions: DoC? ICASA? SABC? e.tv? NFVF? DTI? IDC? SOS coalition Any other institutions?
10. How, if at all, do you feel policy, law and/or regulation connected to South Africa's independent TV production industry could be improved in respect of supporting the industry's delivery in the digital environment?	
11. Are there other thoughts you would like to add?	