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REGULATION OF LOCAL CONTENT ON THE DIGITAL PLATFORM

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A research report submitted to the Faculty of Management, University of the Witwatersrand, in 50% fulfilment of the requirements for the degree of Master of Management (in the field of Public Policy)

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Abstract

This study examines options for regulating local content in the digital environment, focusing on the DTT platform. Based on qualitative interviews and documentary analysis, it reflects on the impact of local content regulations in South Africa, as well as that of technology and market changes resulting from digital broadcasting.

The findings confirm that while demand for local programming has increased, its quality and diversity has not improved. Independent production companies derived limited benefit from the regulations. The Independent Communications Authority (ICASA) lacks capacity to enforce and to assess their impact. The regulations were found to be inadequate to regulate local content in a digital environment.

The study suggests interventions for addressing the above short comings and ensuring continued relevance of local content regulations. It also suggests ways of protecting broadcasters' revenues, required to sustain production local content for the digital multichannel environment.

From a practical perspective, it recommends that production funding be strengthened and better coordinated to ensure that the production sector meets the increased demand for local productions. Further, that African and regional content be considered as local content in order to achieve economies of scale required to sustain these productions.

Regulatory wise, the study recommends stringent regulation of competition to achieve regulatory parity with broadcast-like services and to protect incumbent free to air broadcasters' advertising revenues. It is proposes that local content quotas be reviewed and aggregated across channel bouquets, but also to accommodate niche and specialist channels. However, quotas are only effective as part of a broader well-coordinated system of regulating both the supply and demand of local content, supported by a strong monitoring and enforcement system. Likewise, traditional broadcasting business models, content acquisition strategies and the intellectual rights rules must be reviewed to suit the changed audience and media consumption patterns. Finally, it recommends an overhaul of the broadcasting policy in order to accommodate regulation of content in a converged environment, and by default the application of local content regulation on the DTT platform.

Declaration

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Master of Management (in the field of Public Policy) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

_____

Botlenyana Charity Mokhele

January 2015

Dedication

I dedicate this report to my aunt Hilda Pulane Mokhele.

Acknowledgments

I wish to thank my supervisor Charley Lewis, who has patiently guided me through this research.

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List of Acronyms and Abbreviations

ABC	Australian Broadcasting Corporation
ACMA	The Australian Communications and Media Authority
ACS	Australian Content Standard
ACTSA	Association of Community Television –South Africa
AMERU	The African Microeconomic Research Umbrella
AMPS	All Media and Product Survey
BBC	British Broadcasting Corporation
BDM	Broadcasting Digital Migration
BFI	British Film Institute
CAJ	Creativity Avriljoffe
CA	Conditional Access
CCD	Canadian Content Development
CER	Closer Economic Relations Trade Agreement
CIGS	Cultural Industries Growth Strategy
CMF	Canada Media Fund
CPE	Canadian Programming Expenditure
CPTC	Canadian Film and Video Production Tax Credit
CRTC	Canadian Radio-television Telecommunications
CTS	Children's Television Standards
DAC	Department of Arts and Culture
DACST	Department of Arts, Culture, Science and Technology[1]
DBV-T	Digital Video Broadcasting –Terrestrial
DCDE	Department of Broadband, Communications and the
DCGH	Digital Content Generation Hubs
DCMS	Department for Culture, Media and Sport
DEC	Department of Economic Development
DMWG	Digital Migration Working Group
DoC	The Department of Communications
DRM	Digital Rights Management
DTCAG	Digital Television Content Advisory Group
dti	The Department of Trade and Industry
DTT	Digital Terrestrial Television
ECS	Electronic Communications Service
EPG	Electronic Programming Guide
FTA	Free-to-Air
GATS	General Agreement on Trade in Services
IBA	The Independent Broadcasting Authority
ICASA	The Independent Communications Authority of South Africa
ICT	Information and Communications Technologies

[1] On 1 August 2002 the Department of Arts, Culture, Science & Technology (DACST) was divided into separate Departments: Department of Arts & Culture: (DAC) and Department of Science & Technology (DST)

IDC	Industrial Development Corporation
IPAP	Industrial Policy Action Plan
IPTV	Internet Protocol Television
ISDB	Integrated Services Digital Broadcasting
ISP	Internet Service Provider
ITU	International Telecommunication Union
LPIF	Local Programming Improvement Fund
LSM	Living Standards Measure
MFN	Most Favoured Nation
MMP	Media Monitoring Project
MMA	Media Monitoring Africa
MUX	Multiplex
NAB	National Association of Broadcasters
NAFTA	North American Free Trade Association
NFVF	National Film and Video Foundation
NIPF	National Industrial Policy Framework
Ofcom	Office of Communications
PBS	Public Broadcasting Service
PNI	Programming of National Interest
RFP	Request- For-Proposals
RIA	Regulatory Impact Assessment
SAARF	The South African Audience Research Foundation
SABC	The South African Broadcasting Corporation
SACF	South African Communications Forum
SADC	Southern African Development Community
SADIBA	Southern Africa Digital Broadcasting Association
SAFI	South African Film Industry
SARS	South African Revenue Service
SASFED	South African Screen Federation
SIC	Standard Industry Classification
SOS Coalition	Save our SABC Coalition
Stats SA	Statistics South Africa
SIC	Standard Industry Classification
STB	Set - Top –Box
UK	United Kingdom
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VoD	Video on Demand
WTO	The World Trade Organisation

National Policy must help prepare the country for this multi-channel environment so that all sectors of the broadcasting industry should bear their fair share of responsibility for promoting South African culture and the national identity.

DoC, 1998, White Paper on Broadcasting

1. CHAPTER 1: REGULATION OF LOCAL CONTENT IN A MULTICHANNEL ENVIRONMENT

1.1 Introduction

This chapter introduces this study on regulating local content on the digital platform. It commences with the rationale for imposing local content regulations. It then proceeds to provide a market and policy context. It charts the course of digital migration in South Africa and considers the impact of digital migration on local content regulation. It highlights the challenges associated with this migration and outlines the research and purpose statements of this study. The chapter concludes with an outline of this report.

The regulation of local content forms a key aspect of furthering public interest goals associated with broadcasting. Local content is regulated for ideological, economic and moral reasons. The ideological reasons for regulating local content include "promoting national and collective identity, protecting cultural sovereignty, promoting national cohesion, engendering a culture of tolerance through pluralism in opinion and choice, and fostering democracy and democratic values." The economic reasons include "promoting economic activity in the local production sector, and skills and technology transfer from developed to developing countries." Moral reasons include "protecting the public against negative content that incites public disorder, offends public decency and good taste, or is culturally/ ethnically inflammatory" (Kariithi, 2003, p. 165).

In South Africa, this derives from the public interest mandate of the Independent Communications Authority of South Africa (ICASA). The predecessor to ICASA, the Independent Broadcasting Authority (IBA), indicates in its Triple Inquiry Report that regulation of local content is associated with the IBA's public interest mandate. Accordingly, the IBA was expected to regulate the broadcasting sector in a manner that ensured that this sector was economically viable, representative, diverse and pluralistic in terms of services, ownership structures, language, and content (IBA, 1995, pp.25-26, 82).

1.2 Local Content Regulations

Local content regulations are intended to further the public interest by promoting South African identity and cultural diversity, developing the local content market, protecting minority cultures, promoting access to marginalised languages and by growing the local production industry (IBA, 1995, p. 82; ICASA, 2002, p. 6).

The system that is used to regulate local content in South Africa comprises of minimum percentages (quotas), financial incentives and subsidies. These are supported by restrictions on foreign ownership and control and incorporated into ICASA's licence conditions, policy position papers and regulations (ICASA, 2002. p 47). Through the regulations on local content, ICASA imposes a number of requirements on licensees.

The regulations specify a minimum weekly average measured over a year, varying across the three categories of broadcasting licences.

- ≥ Public and community television licensees are expected to flight 55 % local content spread reasonably evenly on each of their channels over the performance period.
- ≥ Commercial television licensees, including public, commercial channels, are expected to flight a 35% minimum weekly average local content on each channel over the performance period.
- ≥ Subscription television licensees are expected to flight a 10% minimum weekly average, which can be broadcast on dedicated channels or across its bouquet (ICASA, 2002, pp. 20-32).

They further outline incentives used to encourage quality programming; investment in more expensive and neglected genres (such as arts programming); production (rather than dubbing) of programmes in minority languages; and commissioning of producers from outside the major centres (ICASA, 2002, p. 10).

These incentives are based on format factors that specify the method of scoring local content quotas across programming genres. Points are scored by multiplying the format factor with the duration of the programme (hours weekly).

The system limits the extent that repeat of programmes contribute local content quotas. Therefore, the first time a programme is repeated, it will only count 50 % of the value of the first screening and further repeats will not count towards the content quotas (ICASA, 2002, pp. 10 -11).

The regulations also require all television broadcasting licensees to source a minimum of 40% of their South African television content programming from independent television producers (ICASA, 2002, p. 9).

Finally, the regulations require subscription television to spend a specified sum of money (or minimum percentage) of their gross revenue on South African television content. In addition, satellite-based services must ensure that a minimum of 10 % of their channel acquisition budget is spent on channels with South African television content (ICASA, 2002, pp. 10 -11). These requirements are summarised in table 1 below.

Table 1.1: Local Content Requirements

Quotas	License Categories			
	Public	Community	Commercial FTA	Subscription (pay-tv)
General	55%	55%	35%	10 % channel acquisition budget
Drama	35%	-	20%	2% of SA drama
Current affairs	80%	-	50%	-
Documentary	50%	-	30%	-
Informal Knowledge Building	50%	-	30%	-
Educational	60%	-	-	-
Children's	55%	-	25%	-

Source: ICASA, 2002, pp. 30-32

Kariithi indicates that limited broadcaster resources, capacity and market competition pose a challenge to implementing local content regulations (2003, pp.162-166). However, based on the high ranking of South African productions on the All Media and Product Survey (AMPS, 2013), it can also be argued that local content regulations have relatively contributed towards promoting demand for local content.

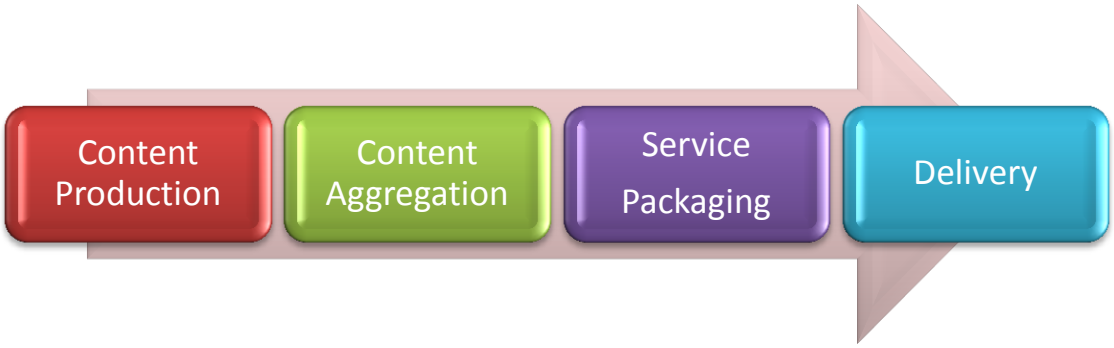
1.3 The Local Content Market in South Africa

The local content regulations discussed in paragraph 1.2, should not be regarded in isolation, as it is but one of the components towards achieving the ideological, economic and moral objectives discussed earlier.

The strategies adopted in regulating local content take place within what O'Reagan and Goldsmith describe as the "cultural industries ecology". Accordingly, television broadcasting forms part of a larger audio-visual sector, covering a wide range of industries including film, television, book publishing and music industry commercial sector (2006, p.69). The NFVF estimates this sector (including pre-production, production, post-production and distribution) in South Africa to be valued at over R1.26 billion (NFVF, 2013, p. 4).

The broadcasting value chain is depicted below. It comprises six broad stages, namely pre-production, acquisition (commissioning) and production, post production, distribution, transmission and end -user reception (SADIBA,2002, pp.7-8).

Figure 1: 1 Television Value Chain



These stages relate to the origination, sourcing, packaging, distribution and consumption of local broadcasting content. In this context, the two main stakeholders driving supply and demand are the production sector and circulation and audience consumption links (AMERU and CAJ, 2008, p. 57).

The production sector caters for local broadcast demand and international filming logistics, as well as post production facilities and requirements of the industry. The circulation, delivery and audience consumption links include television channels, theatrical distribution and cinema exhibition. The SABC commissions the largest share of local content (Joffe and Newton, 2008, pp. 3-5).

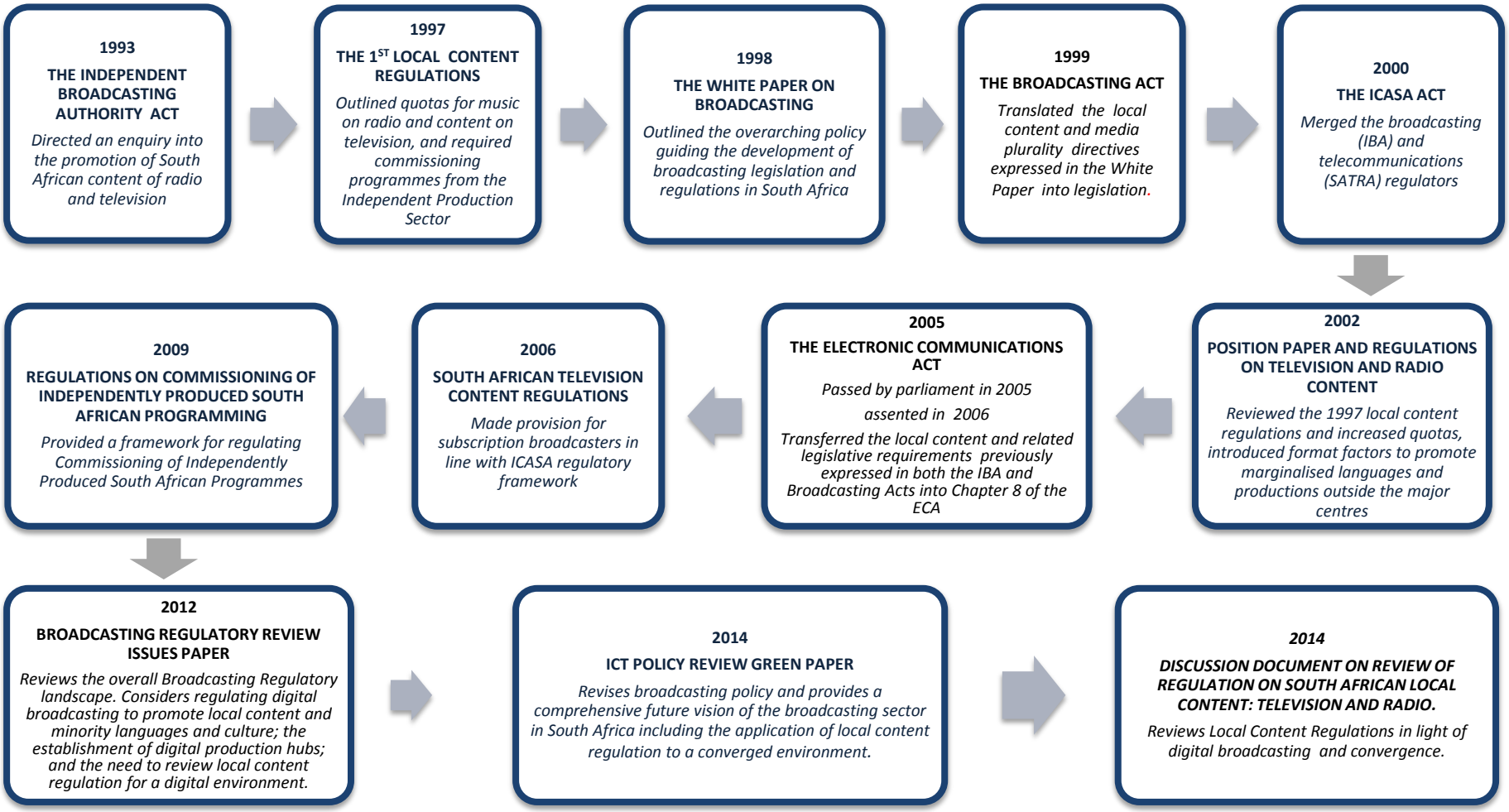
1.4 The Cultural and Broadcasting Policy Environment

The system that is used to regulate local content in South Africa intervenes at all the above stages of the value chain and addresses both supply and demand aspects of local content. It is, therefore, important to examine the policy environment regulating this value chain beyond ICASA's regulations, which are limited to enforcing production and broadcasting quotas.

1.4.1 ICASA Regulations

Within the regulatory ecosystem, local content regulations form part of a broader system of regulation that ICASA uses to regulate the broadcasting sector. This system includes its empowering legislation, regulatory policies, regulations, license conditions and industry codes. These should be seen as reinforcing and supporting implementation of the Constitutional rights. These are depicted below indicating a timeline and contribution of ICASA's key documents to the development of local content regulations. In addition, a detailed table is attached as Appendix A.

Figure 1:2Timeline of local content regulations



1.4.2 Aligning Supply-Side Interventions

It is also important to adopt a holistic view of the policy and regulatory strategies regulating local content in South Africa. Therefore ICASA's local content regulations should be considered within the context of developing the film and cultural industries in South Africa. These regulations are mutually supportive of the policies and legislation of government departments and agencies charged with developing cultural and film industries. These are summarised below.

Table 1:2 South African cultural industries and policy environment

DEPARTMENT/ AGENCY	POLICY	RELEVANCE
DACS, 1998	*Cultural Industries Growth Strategy (CIGS)*	*The CIGS identified the cultural industries as having the potential to drive the new economy by generating innovative and creative human capital.*
DTI 2002	*Micro Reform Strategy*	*Identified five sectors of the economy (which includes film) that have considerable potential for increased employment creation, to receive focused attention from the state.*
DTI, SARS, DOC & DAC 2003	*Strategy for the Development of Content Industries*	*Strategy for the Development of content industries including film, broadcasting and multi-media in South Africa (The Content Industries Strategy)*
DTI 2004	*The Large Budget Film and Television Production Rebate Scheme now the Film and Television Production Incentives after 2008 revision*	*Film and television production incentive for local and co-productions and foreign location incentive.*
DTI 2007	*National Industrial Policy Framework (NIPF)*	*Facilitate the diversification of the economy from the traditional reliance on minerals and focuses on the service and manufacturing sectors.*
DOC 2009	*Local and Digital Content Development Strategy*	*Strategy for content development in South Africa in a Multi-channel environment presented by digital migration.*
DTI 2010	*Industrial Policy Action Plan (IPAP)*	
D E D 2010	*New Growth Plan*	*A tool for government to provide strategies to create millions of new jobs for South Africa. The cultural industries have been identified as one of the avenues for job creation*
DOC 2011	*Digital Broadcasting Migration Policy for South Africa*	*Strategy for Migration of Broadcasting services from analogue to digital*
DAC, 2012	*Mzansi's Golden Economy*	*Considers the contribution of the Arts, Culture and Heritage Sector to the New Growth Path and reposition the cultural industries in South Africa*

Source: Adapted from NFVF, 2010, pp. 12-14

Therefore, in reviewing local content regulations, the study considers the strategic links between the above departments/ agencies and their related policy instruments. These were however, conceived in an analogue environment, and do not fully take into account the impact of changes in technology on consumer behaviours, market structure and content/ culture industries. These changes are discussed in the section 1.5.

1.5 Digital Terrestrial Television Migration in South Africa

The migration of broadcasting services to the DTT platform, also known as Broadcasting Digital Migration (BDM), has an impact on the effectiveness of local content regulations. It results from a decision by the International Telecommunication Union (ITU) Regional Radio Conference 2006 (RRC-06) to cease protecting analogue assignments in the ITU Region 1 by 2015 (DoC, 2008, p.13).

This process is conceived to take place over three phases; digital switch-on, when digital transmission commences; the dual illumination period, during which broadcasters broadcast in analogue and digital format simultaneously; and analogue switch-off, when analogue services are terminated. The last stage normally occurs when a sufficient number of audiences have migrated onto the DTT platform.

The final form that BDM takes in South Africa is largely determined by a combination of factors, as well as the key policy and regulatory positions adopted by the country, as reflected in the following documents;

- The National BDM policy (DoC, 2008, amended in 2012);
- The accompanying National DTT Frequency Plan (ICASA, 2009);
- The Digital Migration Regulations (ICASA, 2011); and
- The Promotion of Diversity and Competition on Digital Terrestrial Television Regulations (ICASA, 2014).

The Digital Migration Policy set the technical and socio-economic implementation framework and reiterates the public value of broadcasting. It emphasises harnessing

Digital Television services for socio-economic development and promoting South African programming content and languages.

This document specifically advocates harnessing the migration process to faclitate development of the creative industries. It submits that ICASA should use the licensing and channels authorisation process to achieve the legislated diversity, minority languages rights and access, and specifies that local content quotas must be reviewed in light of the change to a multi-channel environment (DoC, 2008, p. 13).

ICASA's DTT Regulations outline licensing processes and prescribe conditions for allocating multiplexors for digital migration. ICASA has at this stage opted to migrate existing broadcasting services in their current form (ICASA, 2010, p.4). However, broadcasters are still expected to comply with South African content regulations, except in instances where they are inconsistent with the Electronic Communications Act (RSA, 2005; ICASA, 2010, p.16).

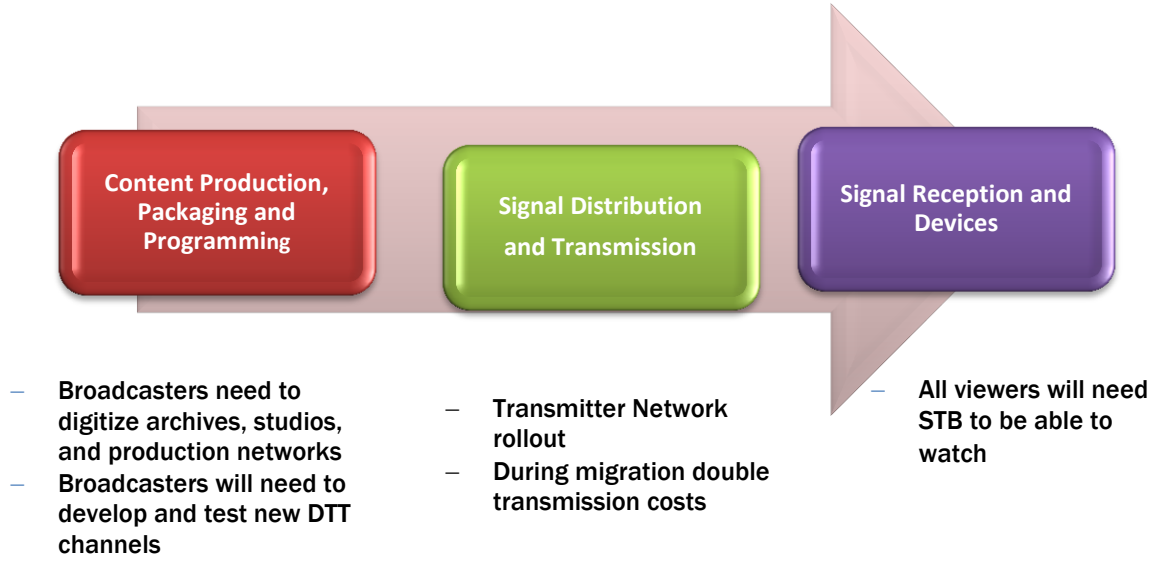
The 2008 Digital Migration Policy envisaged digital migration in South Africa to take place over a three-year period, from 2008 to 2011 (DoC, 2008, p.7). However, this process has stalled. These delays are attributed to a number of factors, including; delays in concluding the digital migration frequency plan and commecement of the DTT transmitter rollout ; delays in confirming technical standard[2]; and, disagreement amongs broadcasters regarding the inclusion of Conditional Access (CA) to the government subsidised STBs (Berger, 2010, pp. 34-35).

1.6 The impact of Digital Terrestrial Television Migration

The technical, market and regulatory aspects of broadcasting are set to change significantly with the migratiuon of broadcasting services the DTT platform. This process involves all elements of the traditional broadcasting value chain, including content, signal distribution and reception devices. Some of these impacts are depicted below indicating the manner in which DTT migration will affect various stakeholders along the broadcasting value chain.

[2] In 2010 the DoC attempted to change the originally agreed standard (Digital Video Broadcasting –Terrestrial (DBV-T)) to the Integrated Services Digital Broadcasting (ISDB) standard. However, the country finally settled for the DBVT-2 standard.

Figure 1: 3 Impact of Digital Migration



Source: SOS Coalition, 2010

Digital compression technology results in an abundance of spectrum that not only does away with the technology and spectrum interference rationale for regulating broadcasting content but, by creating multiple channels, also has the potential to disturb the economic basis of local content regulation.

Firstly, the creation of multiple channels fragments audiences and advertising revenue between these channels. This reduces the economies of scale required to incentivise the production sector to produce local programmes, and therefore undermines the strategy of using of quotas to create the demand for local content. As demand for content to fill these channels increases, production and programming acquisition cost increase. This in turn affects the sustainability of local content regulation on digital platforms. (Bosland, 2007, pp. 7010, 21; Berger, 2010, p. 13).

Secondly, by facilitating multiple reception platforms, interactivity, niche channels and user generated content, digital broadcasting creates direct competition between traditional broadcasting platforms and other platforms, which do not necessarily have the same regulatory requirements. However, convergence has a more complex impact and traditional services tend to retain their audiences, while new media platforms serve to complement traditional services (the Australian Broadcasting Corporation (ABC), 2007, p7).

The above developments imply that a new set of local content regulations are required to regulate local content on digital platforms. This fact is also acknowledged by policy makers and regulators internationally. Australia and the United Kingdom are examples of countries that have reviewed their local content regulations as part of reviews of their broader ICT policy reviews.[3]

1.7 Problem Statement

The research problem is that the current local content regulations do not fully address the regulation of local content on digital multichannel platforms. Local content regulations in South Africa were conceived in an analogue environment and limit application of their requirements on multiple channels to subscription services. Subscription services are lightly regulated and their commercial viability emphasised over the public interest. In this regard, ICASA aggregates local content requirements across bouquets of channels and provides for payment-in-kind alternatives (2002, pp. 54-55).

DTT migration, with its multiple channels, is set to change the technical and market conditions of the broadcasting sector and will impact broadcasting services across all licensing categories (Public, community and commercial). Some of these services like the public broadcasting and community broadcasting services have public service obligations and consequently more stringent local content requirements as compared to subscription services.

Furthermore, broadcasting is conceived as a public good and audiences cannot be denied access to these services on the basis of subscription fees. Therefore, it is argued that more comprehensive regulations, covering all broadcasting categories, are required to regulate local content over digital multi-channel platforms in South Africa.

[3] Examples include the 2011 Department for Culture, Media and Sport (DCMS) Communications Review (DCMS, 2011, United Kingdom) and the Department of Broadband, Communications and Digital Economy (dbcde) Convergence Review (dbcde, 2012, Australia)

1.8 Purpose Statement

The purpose of this study is to examine options for regulating local content in the digital environment, focusing on the DTT platform. It further examines strategies that can be implemented to ensure that the public interest objectives associated with broadcasting and local content regulations are retained in this environment.

1.9 Summary

The study consists of six chapters. Chapter 1 provides the market and policy context for local content regulation and the impact of digital television migration. It highlights the challenges associated with this migration and outlines the research and purpose statements of this study.

Chapter 2 reviews the academic and industry literature on public interest theory, local content and digital broadcasting. The academic literature sets the theoretical basis for analysing local content regulation in South Africa. It is supplemented with industry and regulators reports, used to compare local content regulatory strategies applied in Australia, Canada, South Africa and the United Kingdom. The literature review provides the basis for researching and analysing potential regulatory strategies for the DTT environment.

Chapter 3 outlines the research question based on the research purpose statements outlined in Chapter 1. It also presents the methodology used to investigate the main research question. In this regard, a qualitative approach is adopted using qualitative semi-structure interviews and documentary analysis as the main data gathering techniques.

This is followed by Chapter 4, presenting the findings of this study. Chapter 5 provides an analysis of the data collected through qualitative interviews, policy documents and stakeholder submissions. It summarises the findings of the research and highlights the main themes that emerged from the literature review, qualitative interviews and the stakeholder's submissions to local content and digital broadcasting related policy processes. Finally, Chapter 6 concludes the report with recommendations and areas for further research.

2. CHAPTER 2: PUBLIC INTEREST AND THE REGULATION LOCAL CONTENT IN A DIGITAL BROADCASTING ENVIRONMENT

2.1 Introduction

This chapter provides a review of the academic and industry literature sources on local content and digital broadcasting. The academic literature is used to set the theoretical basis for analysing local content and to highlight issues associated with local content regulation. Industry reports are used to compare local content regulatory strategies, their enforcement and implementation issues for consideration in the digital broadcasting environment. The topic of the study is a very practical one. The available literature tends to focus on the practical aspects of implementing DTT and regulating local content. Therefore, limited academic literature is available on the subject. This literature is supplemented with industry reports.

2.2 Justification for regulating local content

2.2.1 Public Interest

The regulation of broadcasting services and local content has its basis in the public trustee model of broadcasting, rooted in public interest theory. Proponents of public interest theory maintain that industries are regulated in order to achieve public interest related objectives, as opposed group, sector or individual interests; and that public interest goals cannot be attained through market or economic forces. They argue, further, that by virtue of their independence, regulators are best mandated and capacitated to correct failures of the market and to maximise social welfare (Madhya, 2006, p. 2; Reynolds and Baldwin, 1999, pp. 20-21).

According to this view broadcasting these services are afforded special treatment because they are considered to be a public good whose political, social and cultural significance is valued over economic efficiency. They are, therefore, regulated to secure public interest as market forces are neither inclined nor capacitated to cater for the type and range required in public interest programming.

This view, further, maintains that market forces cannot be relied on to ensure equitable allocation of the frequency spectrum. Regulation of broadcasting services is based on the scarcity and public ownership of the frequency spectrum. It ensures public interest in broadcasting by affording broadcasters access to the spectrum through licensing, while at the same time imposing conditions and regulations specifying, amongst others, local content and diversity quotas and requirements. (Marsden, 2005, p. 14; Krotoszynski, 1997, p. 2010)

The public interest informs the rationale and form of local content regulations, which are seen as having a cultural, economic and social basis. The literature indicates the manner in which local content regulations further these aspects of public interest.

- ≥ According to Bhattacharjee and Mendel local content regulations are intended to protect and to promote national identity, culture and character (2001, p. 120).
- ≥ Bosland (2007) and Bernier (1990) argue that local content quotas serve to protect audio-visual markets and to ensure that the broadcasting markets produces and disseminates sufficient local content to meet public social and economic objectives of smaller less developed markets (Bosland, 2007, p.4; Bernier, 1990, p. 3).
- ≥ Finally, Kupe indicates that quotas are used to transfer economic benefits and skills development to the local production industry (Kupe, 2001, pp. 168-171).

2.2.2 Democracy and Media Freedom

A related argument for regulating broadcasting content is based on its pervasive nature and the role that broadcasting services play in fostering public participation and self-expression. Theories of democracy and media, and recently "digital democracy", mainly concern the public value of programming and highlight the role that local content and access to media play in advancing public participation, democracy and national development.

The literature emphasises the fact that broadcasting promotes diversity and public participation by providing citizens with access to a wide range of independent opinion and analysis (Hacker and Van Dyk 2000, pp. 184-187; Catinat, 200).

Catinat in particular emphasises the importance of ensuring that the source of such information remains relatively independent from commercial and other interest (2000, pp. 184-189). Likewise, Keane indicates that the free media provides a platform for freedom of expression and critical thinking which are important to representative democracy and public participation, and enables citizens to hold governments accountable (1991, p 21).

Both Catinat and Keane further emphasise the importance of media services operating in a diverse and pluralistic market. According to Catinat such a market should comprise a number of services and broadcasting formats, which serve to promote a diverse broadcasting market and therefore facilitated multiple views and forms of expression (Catinat, 2000, pp. 184-189).

The above arguments assume a link between programming pluralism and diversity of broadcasting market structures (number and format of services available in a broadcasting market), restrictions on ownership of these services, as well as the nature, source and platform used in disseminating this content. This link is highlighted by amongst others Napoli (2003) and Marsden (2005).

The former is referred to as internal pluralism while the later external pluralism. The arguments associated with this form of regulation are captured succinctly by Klimkiewicz, who indicates, that pluralism is seen to contribute towards democracy by virtue of structural conditions created by regulation in the market,

> *… where diverse, independent media entities exist within a system and are arranged together in a particular way. A normative layer would be manifested in a belief that such a condition is socially desirable and beneficial for the sake of democracy…. (Klimkiewics, 2010, p.2)*

She also indicates that regulation played an important role in ensuring this, as it creates an environment where this can be achieved (2010, p2)

This is applicable to local content regulation as the nature and level of local quotas adopted are influenced by the broadcasting market structure, supply and demand. They are also informed and supported to the individual countries market regulation instruments such as licensing.

For example, Australian quotas, as indicated by Bosland, are sustained by the "quid pro quo" approach to regulation; where broadcasters are granted rights to the spectrum and protection against market entry and there secured advertising revenue in return for them fulfilling Australian content quotas obligations (2007, p1).

Similarly in South Africa local content regulations are complementary to market structure and licensing intervention and different policy goals are emphasised based on the nature and market served by various licensees and the responsibility is shared across services (ICASA, 2005).

2.2.3 Justification for continued regulation in a digital environment

As can be seen above public interest is used to justify the imposition of local content regulations. Broadcasting of local content is seen as a public good that should be protected through regulations. The same applies on digital broadcasting platforms, despite the spectrum scarcity argument for regulating broadcasting being obviated by digital compression technologies.

The literature argues for continued regulation of local content over digital platforms. It provides socio-political, cultural and linguistic rights as well as the economic disparities in international media markets between developed and underdeveloped markets as justification (Graham, 2005, pp. 86-89; Kariithi, 2003, pp. 168-171). However, it also highlights features of digital broadcasting influencing the success of the regulating local content on the digital platform.

Digital broadcasting is thought to erode the traditional broadcasting services' revenue base by fragmenting audiences and advertising revenue. It also creates direct competition between traditional services and new broadcast-like services to supplement their revenue with value added services such as banking (Carey, 1997, p.19). This changes the traditional broadcasting value chain and business models,

and necessitates a change to regulations governing, amongst others, competition between broadcasting services.

Digital broadcasting over multiple platforms facilitates broadcasting of content to international audiences and undermines key features of traditional broadcasting relevant to localisation of content such as geography, shared culture and social networks (Napoli, 2003, pp. 220, 224 and 209). This implies that mechanisms used to regulate local content such as quotas and license conditions must be reviewed to suit the digital broadcasting environment.

However, given the far reaching impacts of digital broadcasting on market structures, business models and audience consumption patterns, it is instructive for the revision of the local content regulations to occur within a revision of the broader broadcasting policy framework informing the digital broadcasting in general.

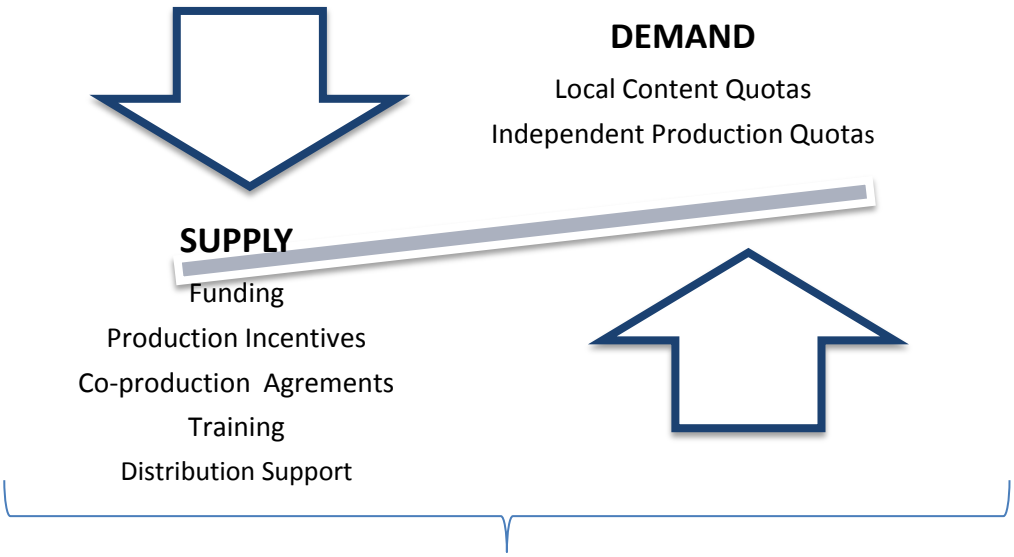
Berger relates this within the DTT migration policies required to guide the course of migration, policy priorities and implementation in South Africa. Accordingly, he argues that the DTT policy framework "must set out the rationale and objectives of the transition, and deal with a diverse interest and actors involved, the resources required and the responsibilities entailed, and time frames." The policy will also inform and implementation strategy and priorities including those impacting on local content (Berger, 2010, p. 26).

2.3. Strategies for local content regulation

There is limited academic literature on the strategies used to implement local content regulation. Therefore the researcher supplemented the academic literature with industry reports. The reports indicate that complementary strategies are used to implement local content regulations, including quotas, tax incentives and government subsidies to local producers. Governments also support these incentives through co-production treaties, education and training initiatives and distribution platforms (Bhattacharjee and Mendel, 2001, p. 1).

These strategies address intervention in the supply and demand aspects of local content, and are depicted below, highlighting the balance required between these two aspects of local content regulation.

Figure 2: 1 Demand and Supply Interventions



Local content and independent production quotas are used to stimulate demand for local content production, while funding, production incentives, co-production agreements, training and distribution support stimulate supply. It is also important that the above interventions are supported by a strong and effective monitoring and enforcement system, in order to monitor the tools implemented and to enforce compliance to the system by the relevant stakeholders. Therefore, this study also considers literature on monitoring and enforcement strategies.

Accordingly, a comparison of the literature on demand, supply and enforcement strategies used in Australia, Canada and the United Kingdom is conducted to assess the effectiveness of those applied in South Africa, as well as to highlight issues for further consideration in relation to their application on digital platforms. These countries were selected based on the similarities between their regulatory system and the system applied to regulate broadcasting in South Africa. The research could not establish any benefit in using case studies from developing countries. South Africa has comparatively a more comprehensive system of regulating local content.

2.3.1 Quotas

Several of the sources covered in the literature review highlight local content quotas as a key mechanism of enforcing local content and promoting programming diversity. Quotas can take several forms, however the literature surveyed highlight programming and independent production quotas (Karithi, 2003; Bhattacharjee and Mendel, 2001; Bosland, 2007). The literature further highlights those features of programming quotas, designed to stimulate demand for local content.

- ≥ According to Kariithi, quotas serve to stimulate and develop the local production industry and economic activity in general (2003, p. 162).
- ≥ Bhattacharjee and Mendel also highlight quotas as an important mechanism of sourcing finance for production (by imposing payment requirements on licensees) and creating professional skills for local content production. They also ensure the adequate supply of local audio-visual content on local broadcasting outlets (2001, p.7).
- ≥ Bosland indicates that, by enforcing percentages for local content, quotas protect local markets from cheaper foreign material. (2001, pp. 2-4).

The literature is also used to gauge the format and design of the quotas and how these serve to protect and promote the regulation of local content. The sources considered indicate that local content quotas are usually contained in regulations or programming standards. These instruments define the scope of local content regulations as well as measures used to monitor and enforce adherence to quotas (Bhattacharjee, 2001, p.6; Karithi, 2003, p179).

The above mentioned enforcement measures stipulate airtime devoted to local content, usually over a set performance period. Karithi indicates that these measures are further informed by the broadcaster programming mandate (whether commercial or public interest) and are shaped by cultural, linguistic, gender, demographic and other related values.

Therefore, different broadcast licences and licence conditions are subject to different quotas with the public service broadcaster generally being allocated higher quotas than commercial broadcasters (Karithi, 2003, pp. 171, 173, 180).

A comparison of industry and regulatory reports on Australian, Canadian and South African local content quotas systems provides practical application of the above mentioned measures. In this regard, monitoring and compliance reports produced by the countries' regulators including ACMA (Australia), CRTC (Canada), Ofcom (United Kingdom) and ICASA (South Africa)

These reports indicate that quotas are measured over a given period (hourly, weekly and annually). For example, South African quotas are measured as a percentage of airtime allocated while the Australian system utilises both percentages and hours. The following similarities are also noted between the Australian, United Kingdom and South African quotas:

- ≥ Variable quotas are applied for different types of broadcasting and programming, with certain categories such as children's programming and documentary programming having more stringent requirements than others. These served to encourage investment in these programming genres
- ≥ A point system is applied to incentivise local programming in neglected genres, which are comparatively allocated more points towards the overall compliance total.
- ≥ The points are also applied to encourage quality programming as well as investment in more expensive genres, neglected genres (such as arts programming), production of programmes in minority languages and commissioning of producers from outside the major centres. All three of the countries compared have an element of format factors (ACMA, 2005; Ofcom, 2010; ICASA, 2002, pp. 14-26).[4]

The system is designed to progressively increase quotas over time for broadcasters to increase their local content production over time. Bhattacharjee and Mendel indicate that quotas are reviewed and amended periodically taking into the account the effect quotas on broadcasters' changes in their environment

[4] In Australia these are applied to drama, children's programing and documentaries (ACMA, 2005). In the UK certain genres of programming are considered to be priority tiers for promotion, requiring Ofcom to set quotas and include news, current affairs, and originated productions (Ofcom, n.d.). In South Africa, these are also applied to address programming targeted at minorities and promoting neglected languages (ICASA, 2002, pp. 14-26).

such as local production capacity (Bhattacharjee and Mendel, (2001, p.7). In this regard, the comparison noted the following developments:

- ≥ In South Africa, ICASA regulations make provision for review of the regulations in order to assess the effectiveness of the quota, increasing the levels, and improving the basis for calculating the quota (2002, pg. 8).
- ≥ Similarly, Australia recently reviewed its quotas based on the Convergence Review Panel Report. The new quotas and conditions are reflected in Broadcasting Legislation Amendment- Convergence Review and Other Measures Act (Australia, 2013, section 121 (G) (2)).[5]

2.3.2 Financial Incentives

The multichannel digital environment, by virtue of the increased broadcasting capacity increases demand for productions. Furthermore, changes to traditional broadcasting business models, indicated in sections 1.6 above, require new approaches to funding productions. In this regard, industry reports were reviewed in order to assess the nature of financial incentives used to stimulate local productions in Australia, Canada and the United Kingdom. These were used to evaluate their application in the South African film and production environment.

As illustrated in figure 2.1 above, quotas are meant to stimulate demand for local content and are supplemented by measures intended to support the production sector and, therefore, stimulate the supply of local production to meet the demand.

Financial incentives in the form of direct government funding, subsidies, tax relief and financial contribution by licensees form part of these supply-side interventions.

Closs provides practical examples of how financial incentives are applied. Financial incentives are applied either as financial guarantees, financial transfers, or leveraging legal requirements for licensees to fund productions.

[5] These include progressive increase in the airtime afforded to Australian content a period of three years; from 730 hours in 2013; to 1095 hours in 2014; and 1460 hours from 2015 onwards. As a trade-off broadcasting services are afforded greater flexibility in fulfilling Australian content sub-quotas such as for Australian drama, documentary and children's programmes, and are allowed to select programme types that contribute to the overall sub-quota score

Financial guarantees are used to offset risks associated with investment in production, while financial transfers are used to ensure the transfer of resources e.g. television to production, practical support for filming through film commissions, organising film promotion platforms such as festivals. Finally, legal and economic measures are used to encourage co-operation with economic players from other countries (Closs, 2004, pg. 5). The incentive schemes applied in South Africa are tabulated below.

Table 2: 0:1 Funding and Incentive Schemes

DEPARTMENT/ INSTITUTION	INCENTIVE/ FUNDING SCHEME	THE NATURE OF THE SCHEME
Department of Trade and Industry	**Incentives** ≥ The South African Film and Television Production and Co-production Incentive ≥ The Foreign Film and Television Production Incentive	≥ Foreign Film & Television Production Incentive, to attract foreign-based film productions to South African locations ≥ The South African Film and Television Production and Co-production Incentive to fund local productions.
Industrial Development Corporation	≥ **Equity investment,** commercial loans and debt financing	≥ Equity Investment, involving direct investment into a project in the form of ordinary and/or preference equity ownership and participation of up to 49% (minority interest) ≥ Commercial Loan/Debt Finance. The scheme requires. Owners' contribution for adequate financial structuring of the project. ≥ Venture Loans (quasi-equity) provides for minority interest in high-risk ventures with high financial returns and developmental impact.
National Film and Video Foundation	**Repayable loans and grants** ≥ South African and Co-productions ≥ Funding mainly for documentaries, feature films, short and specialised film and video productions, pilot of a television series with broadcast commitment or animation and multimedia projects with an audio-visual component	≥ Funding is primarily as an investment and the foundation recoups its expenditure on delivery of the finished product. ≥ In the case of a co-production, recoupment applies only to the South African distribution component
South African Revenue Service	**Tax Rebate**	Tax Rebate

Source: Gauteng Film Commission, n. d.

In order to establish international best practice in applying financial incentives, the study considered industry literature on the source of the funds, their administration and coordination between the various funding agencies and the regulatory bodies charged with regulating local content.

This comparison is illustrated in the table below.

Table 2: 0:2 Comparisons of production funds

	Australia	Canada`	UK	South Africa
SOURCE OF FUNDS				
Direct government funding	✓	✓	✓	✓
Contribution by pay TV licensees	✓	✓	✓	✓
Tax rebates	✓	✓	✓	✓
ADMINISTRATION				
Funding Bodies	Screen Australia	Canadian Media Fund	British Film Institute	NFVF DTI IDC
Overarching Administrating Body	Screen Australia	Canadian Media Fund	British Film Institute	☒
Coordination with related bodies	☒	Department of Canadian Heritage.	☒	☒

Source: (Screen Australia, 2011, p.6; Cassels Brocks Lawyers, 2012; CRTC, 2010; KPMG, 2012)

This comparison illustrates a common approach in sourcing production funds. These take the form of direct funding, tax incentives/ rebates and financial contribution by licensees.

- ≥ Examples of direct funding include the NFVF (South Africa), ABC and Screen Australia (Australia), the Canadian Media Fund (CMF) (Canada) and British Film Institute (BFI) (United Kingdom.
- ≥ Examples of tax incentives and rebates include the Canadian Film or Video Production Tax Credit (CPTC) and Film or Video Production Services Tax Credit (PSTC).
- ≥ Examples of financial contribution, especially by Pay TV operators were noted in Australia, Canada and South Africa.

In Australia this amounts to at least 10% of annual total program expenditure on eligible drama programmes during a financial year. In Canada large broadcasting groups (Bell Media, Shaw and Rogers) o are required to spend 30% of their revenues on Canadian Programming Expenditures (CPEs), and 5% on Programs of National Interest (PNI).

Furthermore, 75% of these programmes must be sourced from programming must come from Canadian independent producers (Screen Australia, 2011, p.27); KPMG, 2012, pp. 586-588; Cassels Brocks Lawyers, 2012; CRTC, 2010).

The only best practice noted by the literature is in the administration of the Canadian Media Fund, where this fund coordinated production funding directly with the Department of Canadian Heritage, and this relationship is managed through a formal agreement (Cassels Brocks Lawyers, 2012).

2.3.3 International Agreements

International agreements serve to support local production industries by protecting them from foreign content. The literature considers the impact of local content regulations in the context of global economics, and notes the challenges faced by governments in protecting their local markets, while expanding markets in order to import their audio-visual products internationally.

The literature indicates that this tension is a result of the special role the audio visual industry plays in reflecting countries' cultural and political sovereignty. Bhattacharjee and Mendel argue that cultural significance of broadcasting content placed it above other goods and that local broadcasting content quotas and tariffs are one of the few exceptions to trade barrier regulation in international trade. This is mainly because local content regulations remain important instruments for preserving distinct cultural expression in the film, radio and television sectors (Bhattacharjee and Mendel (2001, pp. 2-4.).

In addition to the above mentioned cultural significance, Bernier considers the role of local content regulation in protecting audio-visual markets. He argues that, while the regulations serve to promote pluralism and to enhance national identity and cultural serenity, they are primarily intended to redress global imbalances in trade in cultural

goods, services and intellectual property. This relates to economies of scale and access to both local and foreign markets (Bernier, 1990, pp. 1-6).

Bernier further cites examples of international and regional agreements used to deal with trade in such as The General Agreement on Trade and Tariffs (GATT) and European Union and the North American Free Trade Association (NAFTA) to illustrate the use of trade agreements are used to regulate trade in audio-visual material.

These include tariffs on a wide range of specified locally produced products, and to desist from engaging in trade protectionist policies such as export compensation, production subsidies or express market quota allocations (Bernier, 1990, pp. 1-6).

Based on the above arguments, it can be argued that the main challenge facing policy makers is balancing protection of local markets and honouring trade agreements which allow importation of goods including media and entertainment goods. This challenges governments or regulators to reconcile two conflicting goals, that is, the creation of large, internationally competitive media companies and the preservation of pluralism and diversity (Brown , 2005, p. 46).

2.3.4 Monitoring and Enforcement

The success of local content regulation rests upon a strong monitoring and enforcement system, which also sets the basis for measuring long-term impact of such regulations. Regulatory reports from ACMA (Australia), CRTC (Canada), Ofcom (United Kingdom) and ICASA (South Africa) were considered in order to establish international best practice in enforcing local content regulations.

These reports indicate that, although the three countries compared have similar approaches to South Africa in monitoring compliance to local content, they differed in the level of detail and the structure of compliance reporting.

The similarities between these countries and South Africa are illustrated below, highlighting areas that the ICASA enforcement can be improved.

Table 2:3 Monitoring and Enforcement

Enforcement Element	Australia	Canada	UK	South Africa
THE SCOPE OF ENFORCEMENT				
Annual Compliance	✓	✓	✓	✓
RECORDS				
Audited Financial Statements	✓	✓	✓	✓
Programming Logs	✓	✓	✓	✓
Programme Recordings	✓	✓	✓	✓
REPORTING				
Compliance Reports	✓	✓	✓	✓
Industry Stats and Information	✓	✓	✓	☒
Programming Expenditure	✓	☒	✓	☒
Independent verification/ Auditing	✓	✓	✓	☒

Source: (ACMA, 2005; CRTC, 2010 ; Ofcom, 2010 ; ICASA, 2011)

Similar to South Africa, the three countries (Australia, Canada and the United Kingdom) measured compliance over an annual period, requiring broadcasters to keep programming logs and recordings over a given number of days. All the countries required licensees to submit audited financial statements. However, Australia, Canada and the United Kingdom also require additional reporting on programming expenditure.

In addition, Australia, Canada and the United Kingdom have implemented a system of independently verifying information and reports received from licensees. These countries also collected sector information, which can be used to conduct regulatory impact assessment. Therefore, in addition to monitoring adherence to regulations, this data is used to monitor the industry's performance and the overall effectiveness of these regulator's frameworks. The information is published annually and is critical to measuring the impact of the regulations. This approach can be used to improve ICASA's ability to enforce and to monitor long term impact of local content regulations.

2.4 The policy impact of digital broadcasting

Local content regulation forms part of a broader broadcasting content policy and regulatory environment. In reviewing the application of local content regulations on digital platforms it important to also consider various countries policies toward digital broadcasting. Accordingly, this study considered the Australian and United Kingdom's approaches to regulating digital broadcasting. The outcome highlighted the fact that unique political and market structures which prevail in each country, regardless of technology dictated these countries' approach to digital television and local content.

In Australia local content is based on a quid pro quo approach, where generally Australian content quotas are imposed on licensees as a condition of accessing broadcasting markets. In this instance, the regulator limited entry of new licensee in the market to ensure sufficient audience and advertisement share for free-to–air broadcasters in exchange for quality and diverse Australian content.

In the United Kingdom there are no specific local content regulations, and the BBC Charter and programming obligations are leveraged to encourage investment in local production.[6] Technology wise these two countries also opted for different approaches in implementing DTT migration, which in turn influenced their approach to digital broadcasting services. Australia focused on limiting DTT licensees to maintain the audience to programming ratios, while the United Kingdom licensed more operators to revive the television market and to encourage competition against the incumbent subscription service.

Australia's approach is supported by the decision to utilise the extra spectrum for High Definition Television, while the UK's choice is facilitated by having larger audiences and a well- funded and supported Public Service Broadcaster (Bosland, 2007, p.21).

[6] Section 277 of the Communications Act (United Kingdom, 2003) requires public service broadcasters to source at least 25% of their content from independent production companies and section 309 applies a 10% quota to all other licensed digital television programme services. The Act further identifies certain genres of programming as priority tiers for promotion. In line with this Ofcom has set rules for the amount of "original content" which must be aired in these genres. It further has a specific requirement to promote news and current affairs, including ensuring production of local and regional news.

In terms of regulating local content on digital platforms Australia opted for a phased increase to Australian content quotas and expanding requirements to digital platforms (DBCD, 2012, p xi). More importantly this revision of Australian content occurred within a broader Convergence Policy Review, which is discussed in detail in section 2.6.1 below.

Bosland argues that the approach adopted by Australia is intended to secure the quid pro quo regulation in the context of market structure, revenues and audience changes resulting from multichannel broadcasting. Quid quo pro is based on granting broadcasting licensing in exchange to providing Australian content. Multichannel broadcasting fragments audience and advertising revenue and encourages consolidation of broadcasting licensees. It therefore threatens the balance achieved in the analogue environment.

In this instance the main challenge concerns accommodating content quota requirements in a fragmented, multichannel environment, where the market structure changes and economic benefits of local content might not be realised. The question facing policy makers is therefore whether to relax the quota requirements or adopt alternative regulatory measures (Bosland, 2007, pp. 4-5, p.21).

The above arguments highlight the challenges in developing appropriate mechanisms for regulating local content in a digital environment. The Australian example, in particular, highlights the key role played by competition, market structures and business models in developing a local content regulatory framework for the digital environment.

2.4.1 The Australian Convergence Review

The Australian Convergence Review was instituted by the Australian government in 2011 to consider the implications of convergence and digitisation on the country's overarching regulatory framework for communications. This review culminated in recommendations on restructuring the broadcasting regulatory framework in Australia, concerning the structure, licensing and approach to content regulation.

In relation to Australian content the Convergence Review Committee recommended implementing a 'uniform content scheme' across all platforms including, Australian content requirements on new media or broadcast-like services.

It proposed that content service enterprises deriving significant revenues from television-like content, to invest a percentage of their revenue in Australian drama, documentary and children's programs; and for these to contribute a percentage of their revenue to a 'converged content production fund' for reinvestment in traditional and innovative Australian content (DBCD, 2012, p xi).

The Convergence Review Report also proposed transitional measures to facilitate challenges associated with producing Australian content while the details of the uniform content scheme are still being determined. This facilitated the inclusion of multi-channel broadcasting compliance, enabling them to count Australian content shown on the digital multichannel towards meeting the expanded sub-quota obligations. Furthermore, these measures extend the current subscription television 10 % minimum expenditure requirement on eligible drama channels to children's and documentary channels (DBCD, 2012, pg. xi)

The above Convergence Review Report formed the basis for the Australian Broadcasting Amendment Act (Australia, 2013) [7]which introduced several changes to the manner in which local content is regulated. These changes translated into a more stringent approach to the regulation of Australian content. The Australian content standard was extended to new media services. There is also a progressive increase of Australian content airtime, which is counterbalanced by a more flexible incentive and point system in order to facilitate compliance.

2.5 Summary

The literature review is used to set a theoretical basis for analysing local content regulation in South Africa and to highlight issues associated with local content regulation as well as strategies employed to undertake such regulation.

[7] Australia (2013) Broadcasting Legislation Amendment (Convergence Review and Other Measures) Canberra. The Commonwealth of Australia.

The academic literature outlines public interest and media and democracy theories as the basis for regulating local content. In summary, it argues that the socio-political, cultural and linguistic rights associated with broadcasting services as well as the economic disparities in international media markets between developed and underdeveloped markets warranted continued local content regulation over digital platforms.

This literature is supplemented with industry and regulator reports which provide a comparison of the regulatory strategies used to implement and enforce local content in Australia, Canada and the United Kingdom. This chapter also considered the impact of digital broadcasting and convergence on local content regulations. The Australian Convergence Review serves as an example of reviewing local content regulation to accommodate digital broadcasting.

Finally, this literature review informed the research questions outlined in Chapter 3.

3. CHAPTER 3 WHY QUALITATIVE RESEARCH IS IDEAL FOR POLICY RESEARCH

3.1 Introduction

This chapter outlines the research question and the methodology applied in conducting this study. The study adopts a qualitative approach with document analysis and semi-structured interviews as complementary research methods. The primary research question has seven sub questions, structured to reflect the three themes framing the analytical framework. This is discussed in detail in section 3.4.2 below.

3.2 Research Questions

The purpose of this study is to examine options for the regulation of local content in the digital environment, focusing on the DTT Platform. It further examines strategies that can be implemented to ensure that the public interest objectives associated with broadcasting and local content regulation are retained in the DTT environment.

3.2.1 Primary Question

The primary research question for this study is: To what extent is local content regulation of continued relevance to the digital television environment in South Africa? The primary research question has seven sub questions structured to reflect the three themes which the analytical framework is structured.

3.2.2 Secondary Questions

The secondary questions are structured to reflect the studies analytical framework. This framework is discussed in detail in section 3.4.2 below.

3.3 The Qualitative Approach

The research underway concerns policy impacts and calls for a comprehensive analysis of ICASA's policies. Policy impacts cannot be quantified but require interpretation and detailed analysis. It is important that the theoretical lens and methodology adopted reflect this requirement

A qualitative approach to research is based on interpretative social science (or the social constructivist paradigm). This approach emphasises the socially constructed nature of reality (Neumann, 1997, p. 87). In this instance, the key goal of social sciences is to understand the manner in which people "construct and make sense of their life world." To explore this, qualitative research focuses on "behaviours, interactions, feelings and symbols to uncover the meaning embedded within them" (Kalof, Dan & Dietz, 2008, p.80) and considers "the social actor's reasons and the context of the action" (Neumann, 1997, p.88).

The interpretative approach is one of three frameworks used in social science research. According to Neumann the other two are the positivist and critical social theory approaches. The interpretative approach is ideal for the research at hand as interweaves theory and empirical investigation. This approach is closer to the critical social approach which "emphasises combating surface level distortions, multiple levels of reality and value-based activism for human empowerment". It contrasts with the positivist approach which considers causal laws, empirical observation and value-free research (Bryman, 1997, pp. 81, 94).

The main differences in social research are between the interpretative/ social constructivist paradigm and the positivist approach, and are reflected in the qualitative versus quantitative approach to research. These are tabulated in table 6 below indicating their theoretical framework, research design, methods, the nature of data and the analytical approach adopted in the research.

Table 3:0:1Difference between Qualitative and Quantitative Research

	QUANTITATIVE	QUALITATIVE
The role of the research	Preparatory	Explores participants ' interpretation
Relationship between theory and concepts and research	Confirmation	Emergent
Research Strategy	Structured	Unstructured
Scope of the Findings	Nomothetic	Ideographic
Image of Social Reality	Static and external to actor	Processual and Socially constructed actor
Nature of the data	Hard, reliable	Rich, deep

Source: Bryman, 1997, p. 94

Qualitative research, unlike quantitative research, which relies on quantitative techniques such as sampling, employs planned and purposefully selected respondents, documents and instruments to gather and analyse data. It therefore relies on the data quality and in-depth analysis to establish reliability of the data, as opposed to generalising data based on a representative sample (Ambert, 995, p. 880).

Furthermore, the interpretative nature of qualitative research facilitates in-depth of analysis of complex issues addressed by the study at hand. This approach places the policy in its social context and accommodates the social and cultural change of the period when policy was formulated and the current context in which it is applicable (Olsen, 2004, pp. 11-12).

It is ideal for policy research as its reflective nature facilitates the complex and contextual nature of policies. In this regard, qualitative methods accommodate the contextual idiosyncrasies and details influencing the regulatory options adopted (Paton 2002, p.94). Its reflexive nature accommodates the underlying rationale for policy formulation as well as specific nuances influencing the outcome of the regulations.

Given the uncertain, multifaceted and evolving nature of policy, it is important that the researcher considers policy outcomes from a wider holistic perspective. This accommodates wide variety of views and opinions expressed, that can sometimes appear contradictory, in the policy environment. According to Descombe, the qualitative approach facilitates this by “reflection of the social reality being investigated". It draws on the interpretative skills of the researcher and, therefore, allows for more than one explanation being valid. It further allows and for different researchers to arrive at different conclusions despite applying the same methodology (Descombe, 1998, p. 3120).

The major shortcoming with qualitative research lies in its reliance on the data/ results to inform the theoretical framework, which can be seen as deficient. According to Bryman, qualitative research relies on "elucidation of a theoretical framework subsequent (rather than during) the data collection phase and lack of theoretical and analytical framework". He proposes that this problem might be addressed through analytic induction (Bryman, 1997, pp. 85, 91).

The induction analysis designs begin with specific observations and build towards general patterns. This comprises of a broad framework devised at the inception, to guide the research process. The framework is constantly revised based on critical themes that emerge out of the data as analysis proceeds (Patton, 1987, p.15; Ambert 1995, p. 885; Jensen and Jankowski, 1991, p.68).

Another notable weakness of qualitative methodology is the fact that the results obtained from qualitative research are not generalizable. In the context of this study it would be difficult to apply the findings and recommendations to other environments, mainly because of the unique South African broadcasting environment and the manner in which local content regulations are applied is unique to the policy goals of the country.

3.4 Methods and Techniques

3.4.1 Semi-structured Interviews

Interviews are an ideal method for policy research in the sense that they facilitate insight, depth of information and respondents opinions and ideas. Descombe argues interviews are valuable for topics that require depth and detail. They also afford the respondents an opportunity to expand ideas, explain their views and identify important factors to be considered by the research (1998, p. 202).

Flexibility is the mainstay of semi-structured interviews. According to Hoepfl (1997), the advantages of semi-structured qualitative interviews lie in its flexibility that facilitates in-depth information and probing which in turn allows exploration of themes that emerge as the interview proceeds. Descombe adds that this method enables the interviewer to address the core research areas but also allows flexibility in terms of the order of topics followed. This further allows the respondent to develop ideas and speak more widely on the issues raised during the interview (Descombe, 1998, p.176).

For the study at hand Semi-Structured Interviews were conducted eighteen key figures involved with broadcasting policy development and regulation. The interviews included face-to-face, Skype and telephonic interviews. The majority of the interviews (eleven) were conducted face-to-face.

The interviews were based on an interview guide and recorded using notes and voice note recorder. The interview guide improved the accuracy of the data captured and facilitated interaction with respondents and further exploration of the issues framing the interview questions. The guide is based on open-ended questions and outlined broad areas for discussion. The analytical framework and the manner it relates to the interview guide are tabulated in section 3.4.2 below.

3.4.2 The Interview Guide

The interview guide is based on open-ended questions outlining broad areas for discussion will be developed to guide the above qualitative interviews. A copy of the interview protocol is attached to this report as Appendix B.

The guide contains twelve questions based on main research question, the secondary questions and themes emerging from the secondary questions. These will be in used as a framework for analysing the research problem. The core themes and questions covered in the guide are illustrated in the below.

Table 3:2 Analytical Frameworks

THEME	SECONDARY QUESTION	INTERVIEW GUIDE QUESTIONS
1. Definition and Scope of local content	• What is meant by local television content and how should it be defined? • To what extent and for what reasons should local content be regulated on DTT platform?	• What do you understand by the concept of local content in the context of public interest programming for television broadcasting? Please explain. • To what extent should local television content be protected and promoted? Please give reasons for your answer. • What sorts of mechanisms do you believe should be implemented to protect and promote local television content? Please explain.
2. Impact of local content regulations	• How effective has the regulation of local television content been thus far?	• What are your views on the nature of local content regulations and their implementation to date? • How effective do you believe the regulation of local television content has been to date?

THEME	SECONDARY QUESTION	INTERVIEW GUIDE QUESTIONS
3. Revision of Local Content Regulation	• To what extend does the introduction of DTT present a challenge to the current local content regulation regime? • To what extend do local content regulation issues differ with respect to DTT as opposed to other television platforms (i.e. analogue, digital satellite television etc.) • What mechanisms are appropriate to promote the production and consumption to regulate local content in the DTT environment? • What changes if any are required to the current local content regulations to cater for DTT?	• What sorts of challenges do you see the introduction of DTT presenting to the current local content regulation regime? Can you elaborate? • What would say are the main issues concerning production and distribution of local content in South Africa? • To what extent, if at all, do the issues affecting the regulation of local content differ with respect to the DTT as opposed to other television platforms (i.e. analogue, Digital Satellite Television etc.)? • The current local content regulations were initially conceived an analogue environment. South Africa is in the process of migrating to a Digital Terrestrial Television (DTT) platform. To what extent - if any - do you believe that the promotion of local content through regulation should continue on the Digital Terrestrial Television (DTT) platform? Please explain your answer. • What regulatory mechanisms would you say are appropriate to promote the production and consumption of local content in the DTT environment? • What changes - if any - would you recommend to the current local content regulations to cater for DTT? Please explain. • Are there any mechanisms other than regulation that need to be adopted to protect and promote local content on the DTT platform? Can you explain?

The guide was initially piloted using the first two respondents to test the clarity of the questions and their relevance to the main research question. However, no changes were introduced to the guide, based on the feedback received from these two respondents.

The only major issue raised in the pilot was whether the research should also consider the impact the regulations had on transforming the independent production sector in terms of Broad Based Black and demographic representation of the country. This recommendation is, however, not directly relevant to the main research question, which is to establish how local content should be regulated on the DTT platform.

3.4.3 Purposive Sampling

The researcher used purposive sampling to select respondents based on their areas of expertise and value-add to the project. According to Descombe traditional probability sampling, is inappropriate for conducting qualitative research. He indicates that this mainly because probability sampling does not guarantee that appropriate/ relevant or a wide enough variety respondents would. He argues that this could be remedied by purposive sampling where respondents are selected based on their value add to the project i.e. on their relevance to the topic being investigated and their likelihood to produce the most valuable data. This type of sampling also facilitates a wide variety of views (Descombe, 1998, pp. 17, 29).

This study's respondents were selected based on this sampling methodology. They consisted of academics, broadcasting industry stakeholders, independent producers, civil society and regulatory affairs executives. They were also selected based on their vantage point and their views on impact local content regulation on their respective sectors.

Therefore, while broadcasting services might be concerned about the cost and operational implications of implementing local content requirements, the independent production sector might be more concerned about the funding and support received by this sector towards fulfilling the demand for local content. Approaching respondents from various sectors provides a comprehensive picture on the impact and possible application of local content regulations on the DTT platform.

A cross section of respondents is tabulated below indicating their demographic information, expertise and representation of a variety of interest groups within the broadcasting and cultural industries sector.

Table 3:3 Respondents

#	RACE AND GENDER	EXPERTISE	SECTOR
1	White Male	Broadcasting Policy Expert	Broadcasting Industry Association
2	White Male	Broadcasting Policy Expert	Cultural Industries Consulting
3	Black Female	Broadcasting Policy Expert	Cultural Industries Foundation
4	White Male	Broadcasting Policy Expert	Media Monitoring NGO
5	White Female	Broadcasting Policy Expert	Broadcasting Lobby Group
6	Black Female	Broadcasting Policy and Regulatory Affairs	Industry Association Head
7	White Male	Broadcasting Policy and Regulatory Affairs	Community Television Head
8	Black Male	Broadcasting Policy and Regulatory Affairs	Subscription television
9	Black Male	Broadcasting Policy and Regulatory Affairs	Public Broadcaster Regulatory Affairs Head
10	White Female	Broadcasting Policy and Regulatory Affairs	Free to Air Broadcaster Regulatory Affairs Head
11	Black Male	Media Specialist	Community Media
12	Black Male	Media Specialist	Media and Broadcasting
13	White Female	Media Specialist	Academic
14	Black Male	Media Specialist	Academic
15	Black Female	Media Specialist	Commissioning Head
16	Black Male	Community Media Specialist	Statutory Agency
17	Black Male	ICT Policy Expert	Consulting
18	White Male	Independent Producer	Independent Production Sector

The researcher contacted the interviews directly. Of the respondents approached, only one did not honour their commitment and none refused to be interviewed. Initially, the researcher intended to interview only fifteen respondents but was concerned that the views being expressed were skewed towards one sector of the industry and conducted three more interviews to obtain a more balanced view.

3.4.4 Document Analysis

This method comprises locating, identifying, retrieving and analysing documents. The benefits of this method include cost-effectiveness, accessibility and transparency. However, this is based the nature of the data sought and accessibility of the related documents. Descombe argues that documents can also be treated as a source of data in their right and that they provide alternatives to questionnaires, interviews and observation (1998, pp. 224,227).

He adds, however, documentary sources should not be accepted at face value, and their validity should constantly be evaluated for authenticity a (genuine article), credibility (free from bias and errors) and representatively (account for all vantage points). This includes considering the purpose for producing the document, the author's vantage point, the nature of the events covered, whether they constituted first-hand information and contextualising the information contained in the document (Descombe, 1998, p. 232).

For the purposes of this research documentary analysis is used to uncover the rationale and history behind ICASA's policies and regulatory approach, and to highlight the key issues to be covered in the research. This method is also used to expand on themes emerging from qualitative interviews. This method will therefore be used in two ways, to gain a better understanding of principal policy issues behind ICASA regulation of local content, and to supplement the themes arising from the qualitative interviews with stakeholders.

The documentary analysis is based on final legislative and policy documents as well as written submissions and presentations towards a number of public policy processes related to local content. Examples of final documents include amongst others;

- ≥ The Triple Inquiry Report (IBA, 1995);
- ≥ The White Paper on Broadcasting (DoC, 1998); and
- ≥ The Position Paper on South Africa Content of Television and Radio (ICASA, 2002).

Examples of policy process used include, amongst others;

- ≥ The Broadcasting Regulatory Review (ICASA, 2010); and
- ≥ The ICT Policy Review Green Paper (DoC, 2014).

The secondary documentaries sources used were in the form of final legislative and policy documents, articles and academic literature.

Harris (2001) recommends that secondary sources be used to address information gaps and bias that may arise from primary sources. In this study, primary information obtained from the stakeholder interviews is corroborated through independent opinions obtained from documentary analysis. Both the interviews and documentary analysis are used as a form triangulation, which entails using a number of methods to validate the results of the initial method applied.

Cauley indicates that the information obtained from document resources can be used to inform the type of questions that are used in interviews, and these qualitative interviews can in turn be used to probe and follow-up ideas and underlying motives behind the policies documented (1983, p. 25). The information from the above primary and secondary resources is therefore used to frame the questions posed in the interview.

3.5 Challenges and Limitations of the Study

According to Hoepfl (1997) reliability of findings remains a major weakness of qualitative methods. This argument is based on the lack of statistical methods for verifying findings and a reliance on the researcher's judgments about usefulness and credibility of the data.

In terms of this research, the use of the eighteen respondents who are prominent and thus vocal stakeholders could introduce an element of bias, in the sense that they might be expressing views that might not be representative of the rest of South African regulatory stakeholders.

This together with the prevailing political environment and governance dynamics in the South African broadcasting industry could have introduced bias the research findings. At the time of this research there were a number of policy review and public consultation processes in progress, which had a fundamental impact on the broadcasting and cultural policy environment. Examples of these included a review of ICT policies instituted by the Ministry of Communications in 2012.

Triangulation of research methods is used to overcome these weaknesses. According to Ambert (1995, p. 885) and Jensen (1991, p.68) this involves using more than two methods to validate the results of the initial method applied. This is used to confirm results, by using various methods to the research subject. The contrast between the different methods serves to illuminate both self-evident evidence and underlying meanings (Olsen 2004, p. 3- 4).

According to Descombe, this is achieved by corroborating or interrogating findings by comparing data produced by different methods. Furthermore, findings can be complemented by information obtained from various methods (1998, p. 135).

The advantage of triangulation lies in applying secondary methods to augment primary sources. Triangulation will strengthen the findings and providing a comprehensive analysis of the results. It also provides for alternative or additional pathways for analysis, should findings from different methodologies not corroborate (Jensen, 1991, p. 68; Neumann, 1997, p. 149-150).

In sum, the advantages of triangulation are improved accuracy and providing a comprehensive picture. It is a means of validation, in that it provides validation of the findings in terms of their accuracy and reliability with alternative methods confirming the data obtained corroborating the findings. It also produces comprehensive data which enhances the completeness of the findings (Descombe, 1998, p. 138).

The main methods utilised in the study are document analysis using both primary and secondary sources and qualitative interviews. The primary sources and literature review were used to establish the information and approach used in devising

ICASA's policies. This information is corroborated with secondary industry sources and in-depth interviews with key industry stakeholders.

3.6 Declaration of Interest

The researcher was at various points involved in both local content and DTT policy and regulatory processes, previously in her capacity as Broadcasting Policy Research and Development Manager at ICASA, and recently as a part of the team consulting for ICASA on the review of local content regulations study concluded in 2014.

This may have introduced an element of bias to this research. However, the research topic and questions were conceived in 2010, ahead of the recent ICASA review which was only concluded in 2014. Furthermore the literature review and the bulk of the fieldwork were conducted in 2012 and early 2013, before the ICASA study took place. The researcher was also aware of the potential bias her involvement in policy and regulatory processes might introduce to the outcome of the study. The two processes were kept separate, and therefore, the researcher put her studies in abeyance until the ICASA study was concluded. The researcher also retained an open and transparent approach, the research questions and analytic framework were kept as open as possible so that the responses received could dictate the findings and the outcome of the research. Finally, the researcher deliberately limited the documentary analysis to documents that were in the public domain.

3.7 Summary

This chapter outlined the research question and the methodology applied in conducting this study. A qualitative research approach is adopted, and the study conducted through a documentary analysis of the regulations and policies supporting the local content regulatory regime as well as in-depth interviews with key industry stakeholders. The results of the study are discussed in the next chapter outlining the findings of the stakeholder interviews and the documentary analysis.

4. CHAPTER 4: THE IMPACT OF LOCAL CONTENT REGULATION

4.1 Introduction

This chapter presents the research findings based on qualitative interviews and analysis of local content related policy documents. The semi-structured interviews address stakeholders' perceptions of the local content regulations, their impact on the market, the benefits and challenges associated with the regulations and recommendations regarding the regulating of local content on the DTT platform. These interviews reflect their views on the nature of local content regulations, their underlying policy goals, shortcomings in their implementation, and potential strategies of ensuring the continued relevance of the local content regulations.

Policy documents and stakeholder submissions place the regulations and respondents views in the broader broadcasting policy context. These documents supplement the themes emerging from the qualitative interviews, and are discussed in detail in the ensuing analysis chapter (Chapter 5).

4.2 Stakeholder Interviews

This section summarises the results obtained from eighteen interviews conducted with industry stakeholders. The interviews were conducted in a semi-structured format, and comprised of face-to-face, Skype as well as telephonic interviews. The majority of the interviews (eleven) were conducted face-to-face. The sampling method used to select these respondents, the process of constructing the interview guide and the analytical framework for this study are outlined in Chapter 3 of this report. In addition, the interview guide is attached to this report as Appendix B.

The findings below are structured around the eleven questions contained in this guide. The eleven questions are based on the three main themes of the research and the interview guide questions. Section 5.3 deals with the scope of local content regulations and public interest, and covers responses to questions 1 to 3 of the interview guide. Section 5.4 deals with the impact of local content regulations, and covers responses to questions 4 and 5 of the interview guide. This is followed by section 5.5 dealing with the revision of the local content regulation for the DTT environment, and covering questions 6 to 11 of the interview guide.

4.3 The Scope of Local Content Regulation and Public Interest

4.3.1 Question 1: What do you understand by the concept of local content in the context of public interest programming for television broadcasting? Please explain.

The intention of question 1 is to establish the extent that the respondents appreciated the link between local content and public interest. The responses reflected this connection, and highlighted cultural and the socio-economic dimensions of public interest. The majority of the respondents associated public interest with ensuring that broadcasting services reflected a uniquely South African identity, preserving South African cultural and language diversity and fostering social cohesion.

A number of respondents felt that local content programmes should specifically focus on promoting minority languages, cultures and traditions. They also felt that local content programmes should be based on the country's socio-economic realities. However, some indicated that the notion of South African culture should not be narrowly defined and inward looking, and that culture should reflect the complexity and diversity of voice of "those who are residing in South Africa including those from the African diaspora and the region" (Respondent 11, interview, 28 March 2014).

This complexity is described by respondent 16, who indicated local content should not be taken at face value.

> *It is what defines us as African and South Africans, inclusive of our belief system, DNA, values, customs and religion. It is, therefore, important that whoever produces such content appreciates the complexity of South African society and portrays them in an authentic manner that reflects their realities*
>
> (Respondent 16, interview, 05 May 2014)

The respondents also emphasised the importance of political ideology or "frame of reference" (Respondent 11, interview, 28 March 2014) in defining what constitutes local content. Respondent 11 referred to an "inclusive nationalism", as reflected in

the theories of amongst others, Neville Alexander[8] and John Tomlinson[9], to emphasise this point. According to these theories nationhood is seen as an inclusive social construct which recognises the impact of globalisation, while acknowledging "key aspects of national governance". In this context "national identity is much more complex and is bound to be but one of a multitude of identities that…. citizens embrace" and is constantly evolving to reflect the realities faced by citizens (Respondent 11, interview, 28 March 2014).

Respondents 12 and 18 added that a broader view of local content enhanced the depth and scope of the content, particularly if inputs are sought from the African continent and the Southern African Development Community (SADC) region. The two respondents argued that the language and cultural proximity facilitated the expansion of the market for South African originated content to its neighbouring countries and to the continent (Respondent12, interview, 01 April 2014; Respondent 18 telephonic interview, 22 April 2014).

> *… by expanding the definition beyond geographical boundaries, you also stand to expand the economies of scale for the production, gain access to a larger pool of talent and audiences for distribution.*
>
> (Respondent 12, interview, 01 April 2014)

A number of respondents also indicated that local content regulations fulfilled the public interest by encouraging socio-economic development. The regulations were seen as a means of encouraging economic activity in the production sector. This is further seen as justification for government intervention in cultural industries. The majority of the respondents argued that the development of local content could not be left to market forces, and that government should intervene in the market order to ensure that socio-economic development goals are achieved.

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[8] Alexander, N. 'Education, Education and the Struggle for National Liberation. Culture and the National Question', in Alexander, N. 1990. Johannesburg: Skotaville. As referenced in Duncan J. (2007) *Nation Building and Globalisation in The Visual Arts: A Case Study Of Art Projects of The Greater Johannesburg Metropolitan Council (GJMC*). Rhodes University

[9] Tomlinson, J. 'Globalisation and Cultural Identity', in Held, D. and McGrew, A. 2003. The Global Transformation Reader: An Introduction to the Globalisation Debate. Cambridge: Polity Press. As referenced in Duncan J. (2007) *Nation Building and Globalisation in The Visual Arts: A Case Study Of Art Projects of The Greater Johannesburg Metropolitan Council (GJMC*). Rhodes University

> *If these policy objectives are pursued in their purest form, they are not are considered to be commercially viable. Policy and regulations are therefore developed to empower South Africans to tell their own stories and reflect issues of national importance and public interest programming.*

(Respondent 2, interview, 11 March 2013)

Respondent 2 further argued that the regulations formed part of an industrial development strategy where the regulations were intended to stimulate demand for local content and therefore grow cultural industries as an economic sector.

However, some of the respondents also argued that the public interest must be balanced against the economic viability of the sector. They argued that while the regulations encouraged broadcasters to source local content, local content also affected ability to attract advertising revenue, and therefore sustainability of broadcasting services.

The respondents argued that this problem will be intensified in the digital broadcasting environment, where audiences and revenue will be fragmented across multiple DTT channels and other digital platforms. This means that broadcasters will have to compete for audiences and advertising revenue between themselves, as well as with other digital platforms. Therefore, the revenue required to fund local content will be diminished.

This point is also raised in relation to market changes introduced by digital broadcasting and will be expanded in section 4.5.3 below.

4.3.2 Question 2: To what extent should local television content be protected and promoted? Please give reasons for your answer.

Question 2 is intended to gauge respondents' views on the need for regulation to protect and promote local content. All the respondents agreed that local content regulations are necessary and serve to protect and promote local content. The responses also emphasised both the positive outcomes and shortcomings of the regulations.

Most of the respondents agreed that without the regulations the broadcasting industry would have not invested in the production of local content, especially given broadcasters' perception of foreign content as being comparably cheaper to source. Respondent 2 however, argued that foreign and local productions were not comparable, as local content has a bigger multiplier effect on the South African economy. He argued that the associated cost of producing local content should be seen as investing in the growth of cultural industries, rather than an expense (interview, 11 March 2013).

Some of the respondents also argued that foreign productions enjoyed protection and financial support in their countries and were, therefore, competing unfairly with local productions. Based on this, they felt that the regulation also served a market protection purpose "mitigating the threat of cheaper international content flooding the South African market" (Respondent 13, interview, 12 March 2013).

The majority of the respondents indicated that the regulations had cultivated an appetite for local content, and that broadcasters now perceived local content as being commercially valuable. For example, respondent 1 cited the SAARF (SAARF, 2011) which indicated that top ten programmes flighted on South African television were South African productions (Interview, 11 March 2013).

Conversely, the respondents also highlighted shortcomings of the regulations relating to their scope, implementation and enforcement. These shortcomings will be explored further in the sections below.

4.3.3 Question 3: What sorts of mechanisms do you believe should be implemented to protect and promote local television content? Please explain.

Questions 1 and 2 focused on the principles underlying the regulations on local content, while question 3 is intended to solicit information on the particular methods that could be applied.

The majority of the respondents recommended that a holistic approach, covering both supply and demand side interventions, be adopted. They suggested interventions spanning the broadcasting value chain; including, quotas, tax incentives, and more focused and coordinated production funding. They argued that this approach would

stimulate the supply side of local content. The respondents also highlighted the fact that monitoring and enforcement were critical to the success of the regulations. They recommended that ICASA be capacitated to improve these functions.

4.3.3.1 Quotas

Most of the respondents cited local content quotas as an important element of the regulations promoting local content. Respondent 12 argued that, despite audio-visual content from such markets dominating in other markets, quotas were still applied in the United Kingdom and Europe.

He suggested that these quotas are supported by trade treaties which served to protect these countries' audio-visual markets and local production industries, and that these countries' regulators played a significant role in enforcing local content quotas (Respondent 12, interview, 01 April 2013).

These countries considered the wider economic impact of local content regulation, and therefore went beyond just enforcement of quotas. They also adopted regulatory measures to develop and grow their audio-vision sector, such as funding. In the United Kingdom quotas were also supported by strong public broadcasting policies and regulations, to sustain their public broadcasting services, which were seen as the custodians of local content. (Respondent 12, interview, 01 April 2013)

However, respondent 11 also pointed out that policy and regulation must be supported compelling quality productions. He argued that policy must be balanced against market imperatives. He argued that policy created the space for the existence of local content, while "the parties charged with such productions must ensure that quality material is produced to be enjoyed by audiences." (Respondent 11, interview, 28 March 2014)

Most of the respondents indicated that the current quotas and their supporting mechanisms must be reviewed for the regulations to remain relevant in the digital environment. The respondents argued that the regulations should be relaxed to accommodate a multichannel environment, and that quotas must also factor regional and African content, and thus serve to expand the market for South African content to these markets.

Further, most of the respondents felt that while quotas forced broadcasters to produce local content, the regime did not protect intellectual property rights around such content. Respondent 4 felt that this development fed directly into the exploitative relationship between the SABC and film producers. He argued that the SABC dictated the terms of trade and therefore prevented the originators of content from fully exploiting their intellectual property (Respondent 4, interview, 12 March 2013).

4.3.3.2 Funding and Financial Incentives

The majority of the respondents argued, that in order to be effective, quotas must be supported by funding and financial incentives. They felt that the current funding and incentives schemes in South Africa were not coordinated, and therefore, the production does not derive maximum benefit from existing schemes. This lack of coordination is seen as hampering the supply side of the local content regime.

The respondents felt the incentive scheme administered by, among others, the dti and NFVF should be streamlined. They argued that funding resources and institutional mandates should be implemented in a coherent and coordinated fashion in order to maximise their benefit for the industry as a whole.

4.3.3.3 Monitoring and Enforcement

Most of the respondents indicated that ICASA is not sufficiently capacitated to carry out its mandate of enforcing the regulations. Some felt that the weakness is more of a management and skills shortcoming than an actual lack of resources. The respondents cited the lack of accuracy of ICASA's monitoring reports as an indication of ICASA's inability to enforce local content regulations. They also argued that the methodology applied by ICASA is too simplistic, checklist-based and quantitative, whereas it is meant to address a complex issue. They argued that methodology utilised by ICASA did not consider the impact and effectiveness of the regulations, and that the data obtained from the monitoring exercise could not be applied to conduct a RIA of these regulations.

The majority of the respondents also felt that this lack of a RIA made it difficult to assess the extent to which the regulations have been successful. The respondents felt that this lack of information meant that the current opinions of the success or failure

of local content regulations were based on anecdotal evidence and industry opinion. (Respondent 2, interview, 11 March 2013)

Furthermore, the respondents felt that the regulations were cumbersome. Respondent 6 specifically cited the numerous legislative requirements that production companies had to fulfil over and above local content requirements. (Respondent 6, Skype interview, 16 March 2013)

They suggested alternative methods that could be applied to achieve better results. Respondents 4 and 5 (interviews, 12 March 2013) suggested a matrix addressing all dimensions of local content regulations including quotas, genres, incentives, production costs, licensing, commissioning processes. This would result in a composite score that the regulator could use to measure and monitor implementation of all the elements of local content regulation.

Most of the respondents also felt that, given the cost of producing local content, the regulator should focus on incentivising the sector to contribute to local content rather than penalising them for non-compliance. Respondents 6 and 10 specifically argued that more emphasis should be placed on content acquisition, intellectual property and funding of productions. They argued that quotas in themselves did not guarantee diversity of content, and that focusing on the supply side of local content is a more effective way of promoting local content (Respondent 6, Skype interview, 16 March 2013; Respondent 10, telephonic interview, 17 March 2013).

4.4 The impact of Local Content Regulation

4.4.1 Question 4: What are your views on the nature of local content regulations and their implementation to date?

Question 4 is intended to gauge the respondents' perceptions of the impact that the structure of the regulation had on their effectiveness.

The majority of the respondents indicated the main shortcoming of the regulations results from implementation rather that the structure of the regulations. The respondents argued that ICASA did not effectively monitor and enforce these regulations, and that the methods it used in this regard were deficient. They cited the

fact that it lacked independent mechanisms of verify monitoring information, as well as the inability to conduct a RIA on the long-term effectiveness of regulations, as examples of this weakness.

Most of the respondents argued that these deficiencies, as well as changes that would be brought about by digital broadcasting, warranted a review of local content regulations. This, however, could only be done in the context of a proper policy review addressing the fundamental technology, market and policy issues affecting the broadcasting industry as a whole.

Most of the respondents felt that a proper policy review would not only address the weaknesses in the regulator, but would also lead to implementation of a revised framework that would, amongst others, ensure a fully functional public broadcaster and align the country's cultural industries' policies and strategies.

Respondent 5 indicated that a policy review would articulate the country's vision of digital broadcasting and address the shortcoming in the current broadcasting value chain, including lack of coordination and policy coherence. The revised framework would also inform sustainable funding models for DTT broadcasting.

In particular this framework will inform a forward-looking public broadcasting services strategy, and will ensure its financial sustainability and independence so as to properly dispense its public interest mandate (Respondent 5, interview, 12 March 2013; Respondent 4 interview, 12 March 2013; Respondent 7, interview, 13 March 2013).

This need for a broadcasting policy review is also raised in relation to remedies that could be applied to improve regulation of local content on the DTT platform, and is expanded in the relevant section below.

4.4.2 Question 5: How effective do you believe the regulation of local television content to date?

Question 5 is intended to gauge the respondents' perceptions of the effectiveness of regulations. Most of the respondents were of the opinion that the regulations had been effective and served to stimulate demand for local productions. They indicated

however that this demand is limited to certain genres, like soap operas, which were easy and cheap to produce.

The respondents argued that as a result of this development local content regulations have not achieved diversity in programming. Some of the respondents attribute this development to broadcasters' programming preferences being dictated by audience ratings (Respondent 5, interview, 12 March 2014; Respondent 11, interview, 28 March 2014).

Most of the respondents also felt that the supply side interventions must be supported by more stringent regulation of intellectual property, focused funding and encouraging other methods of sourcing content such as licensing, co-production, bartering. The majority of the respondents were especially critical of Commissioning[10] which remained a dominant model of acquiring content. They argued that this method of sourcing content is skewed in favour of broadcasters and does not empower originators of content to exploit it across other platforms.

4.5 Revision of Local Content Regulation

This section addresses two questions relating to the challenges presented by the introduction of DTT to the current local content regime, and issues concerning the production and distribution of local content in the digital environment.

4.5.1 Question 6: What sorts of challenges do you see the introduction of DTT presenting to the current local content regulation regime? Can you elaborate?

[10] Commissioning is essentially a procurement method used by broadcasters to source content from producers, predominantly independent producers. ICASA list the following five commonly used methods:

- Commissioning of pre-existing programmes, where broadcasters acquire pre-exiting programmes that they can alter/ edit and acquire IP based on contractual agreements with the originator of the programme;
- Solicited bids (open and closed) where producers respond to programming briefs from broadcasters;
- Unsolicited bids where producers approach broadcasters with programming ideas;
- Adapted programmes where broadcasters license internationally sourced programmes and adapt them for local conditions. IP is then shared between the local broadcasters and the international source, depending on the legislation of the respective jurisdictions.
- Re-commissioning of previously commissioned programmes. (ICASA, 2009)

Question 6 a): What would say are the main issues concerning production and distribution of local content in South Africa?

The main challenges in this regard were succinctly captured by respondent 18, identified four challenges relating to the implementation of local content regulations on the DTT platform, of which most of the respondents agreed with:

> ≥ *Changes in the structure and operation of the market as a result of increased channels and convergence;*
> ≥ *Availability of compelling content to fill the DTT multiplexor capacity,*
> ≥ *Consumer uptake of DTT services and the broadcasters' ability to afford compelling content in the face of competition from subscription services; and*
> ≥ *Challenges posed by restrictive legislation.*
>
> (Respondent 18, telephonic interview, 22 April 2014)

4.5.1.1 Structure of the market

The majority of the respondents indicated that digital broadcasting is set to change the nature of the broadcasting market fundamentally. These changes relate to the manner in which services are consumed, and revenue and competition in this market.

The respondents indicated digital broadcasting services are more interactive and allow users to generate their own content. This means that the regulations must accommodate interactivity and user-generated content. They also indicated that revenue and audiences will be fragmented across the multiple channels on the DTT platform, and between traditional broadcasting services and converged platforms.

This means that traditional broadcasting services will not only be competing amongst themselves, but also with broadcasting services provided over other platforms such as the Internet. An added complication is the creation of niche channels, which focus on the programming preferences of their particular audiences.

Respondent 12 argued that niche channels eroded the economies of scale required to support local content production. This also works against the social cohesion and nation building values associated with local content, as more lucrative audiences

might concentrate on niche channels, as "people would watch only content they are interested in " (Respondent 12, interview, 01 April 2014).

These developments led to some of respondents to question the effectiveness of using quotas as a means of regulating local content over digital broadcasting platforms. Respondent 12 argues that "…. with DTT there will be more channels the question then becomes what do you fill the capacity with; and does not follow that these channels would provide local content" (Respondent 12, interview, 01 April 2014).

4.5.1.2 Availability of content

Some of the respondents also argued that audience and revenue fragmentation adversely affected the production sector and decreased of revenue available to invest in productions. They also cited this development as justification for increased and focused funding for local productions.

Respondent 11 cited the digital content fund proposed by the Australian Convergence Review, and suggested it as a means of addressing the production of local digital content (Respondent 11, Interview, 31 March 2014).

In this review the Department of Broadband, Communications and the Digital Economy (DCDE) proposed that, since content is produced for multiple platforms, Internet Service Providers (ISPs) should also be required contribute into the fund, which can then be used to promote innovative ways of producing Australian content including content distributed over Internet Protocol Television (IPTV) and Video-on-Demand (VOD) Services (DBCD, 2012, p. 83)

4.5.1.3 Uptake of DTT Services

The majority of the respondents emphasised the fact that the public broadcaster, as a key driver for public interest programming, should drive the uptake of DTT services, and consequently local content programming on this platform. However, some argued the public broadcasters would have to be reconceptualised to achieve this mandate.

> *Of importance is the critical role that the public broadcaster plays in this space and measures that should be implemented to strengthen it ensure that is caries out this role properly. There therefore needs to be a more coherent funding strategy developed for the SABC to ensure quality public interest programming, and to ensure that the PBS retains its independence from political and commercial control while it dispenses its mandate.*
>
> (Respondent 5, interview, 12 March 2013)

Respondent 11 (interview, 28 March 2014) argued that the public broadcaster can be seen as a curator or publisher of public interest content, aggregating or publishing both traditional broadcasting as well as digital, interactive and user-generated content. She argues that, this way it carries its public interest mandate into a digital and converged broadcasting environment.

Some of the respondents argued that SABC as a public broadcaster is, however, not up to the task. A number of the respondents, including respondent 4 (interview, 16 March 2013), attributed the instability in the production sector to the crisis within the SABC. Most of the respondents proposed that more coherent content acquisition strategies and a revision of the broadcasters' business models to ensure that broadcasters and the production industry are able to produce the volume and quality productions required to fill channels on the DTT platform.

4.5.1.4 Regulatory Challenges

The majority of respondents maintained that there should be a review of the local content regulations, and advocated a content regulation regime that is sophisticated enough for the market complexities of a multichannel environment. In sum, the respondents highlighted some of the challenges to regulating local content on DTT as being;

- ≥ The effectiveness of quotas;
- ≥ Lack of coordination in the supply side of the local content regime;
- ≥ Lack of competition and regulatory parity; and
- ≥ Deficient intellectual property protection laws.

In relation to the research question, this translated to how to translate the analogue requirements into a digital environment in a way that carries through the public interest gains realised in the analogue environment.

Firstly, the most of the respondents felt that the current quotas were channel-based, that is, they were imposed on individual channels. They were, therefore, ineffective for regulating multichannel broadcasting services. They felt that audience patterns and viewing habits had changed, and warranted a flexible approach, where local content quotas could be aggregated across a bouquet of channels or shifted between the channels.

Respondent 13 argued that the regulations should be "relaxed and quotas applied across the bouquet leaving it up to the broadcaster to make editorial and financial decisions."(Respondent 13, telephonic interview, 12 March 2013)

Secondly, most of the respondents raised a concern with the lack of coordination of supply-side measures such as tax incentives and production funding. Some, like respondent 13, argued for a broader market regulation addressing market failure and encouraging direct investment in cultural industries.

Respondent 5 recommended that supply should be strengthened and coordinated to ensure that enough local content is generated to meet the content demands of a multichannel environment. (Respondent 5, interview, 12 March 2013)

Thirdly, the respondents argued for more stringent competition regulation in the sector. They argued for government intervention in order to ensure the creation of policies and regulations that create a fair competitive environment.

The areas suggested for such intervention included expanding of the scope of the regulations to accommodate Africa and regional content and implementing regulatory parity to address competition faced by traditional broadcasting services from new broadcast like services (Respondent 13, telephonic interview, 12 March 2013).

Respondent 5 (interview, 12 March 2013) argued that the current lack of competition in the broadcasting sector impacted on the diversity of the content. She argued that a competitive broadcasting environment should be created to lessen the production sector's dependence on the SABC for their livelihood. A number of the respondents also called for more government intervention in encouraging fair content acquisition practices in the industry.

The fourth and last point raised by respondents in relation to regulatory challenges posed by DTT is that of protection of intellectual property. The respondents argued that programme rights are even more important in the digital age. Respondent 9 presented an interesting argument vis-a-vis digital migration.

He argued that:

> *Migration is happening because the SABC is meant to be off-loading spectrum for use by telecommunications concerns. Once the digitalisation project is completed, local content will no longer be protected and will benefit commercial entities, and originators' rights will now be lost to capital. Furthermore, the government would have forfeited its right to protect local content. The public broadcasters would also have forfeited its role as a public broadcaster.*

*(*Respondent 9, telephonic interview, 18 March 2014)

Most of the respondents argued that the current intellectual property arrangements in the sector must be reviewed. This argument is advanced by a number of respondents, including respondents 9 (telephonic interview, 18 March 2014) and 10 (telephonic interview, 17 March 2014) who highlighted the importance of a comprehensive rights regime to secure originators' rights.

They further argued that the new rights regime should secure joint ownership of intellectual property. Respondent 10 argued that this regime should maximise the value of production rights, and the revenue derived from multiple distribution platforms and foreign markets could in turn be used to sustain the local production industry.

4.5.1.5 Implementation and Monitoring Challenges

The majority of the respondents highlight implementation and enforcement as a major challenge to the success of the local content regime. They largely attribute this to ICASA's lack of capacity to monitor and enforce regulations. They argue that these challenges will be even more pronounced in the digital environment.

Respondent 6 argued that broadcasters are likely to cite audience fragmentation and reduced revenue as justification for a reduction of local content quotas. He argued that this could further be justified by the fact that increased demand for programming could increase the cost of productions.

He argued that the initial investment that goes into productions could not be recouped in distribution as South Africa audience numbers were relatively small and it would be difficult to use economies of scale to recoup the cost of production (Respondent 6, Skype interview, 16 March 2013).

Some respondents also raised a concern that local content regulations could be more onerous in the digital environment.

This is highlighted by respondent 8 who argued:

> *The first point is the licensing of the DTT bouquets, which makes provision for locally produced content. How do you apply the same requirements for other channels? How do you translate the current analogue quotas to the digital environment? How do you introduce new quotas to the new environment; would you apply these as an average quota or to individual channels?*
>
> (Respondent 8, Skype interview, 17 March 2013)

However they also recognised that DTT presented opportunities for more innovation in regulation, and for ensuring equitable sharing the financial benefits of a production, especially given the availability of cheaper and more accessible technology, which also facilitates interactive and user generated content.

4.5.2 Question 7 : To what extent, if at all, do the issues affecting the regulation of local content differ with respect to the DTT as opposed to other television platforms (i.e. analogue, Digital Satellite Television etc.)?

Question 7 seeks to establish respondents' views on whether it is justifiable for services on the DTT platform to be more tightly regulated as compared to those on the satellite platform.

The respondents differed on the extent that local content regulations should be relaxed on the DTT platform. Some felt that DTT requirements should be stringent, while others argued that there should not be any difference between DTT and satellite. The latter further argued that light touch regulation of satellite services is not justifiable.

Respondent 1 maintained that both services would be competing for the same audiences and advertising revenue, and therefore should ideally have the same regulatory requirements. However, given the fact that DTT will also carry free-to-air services, it follows that the requirements on DTT should be more stringent (Respondent 1, interview, 11 March 2013).

Respondent 6 also indicated that ideally regulation should be the same across all platforms. He argued that programming obligations should be more stringent for DTT because they utilised terrestrial spectrum, covered a national scope, the DTT network is cheaper to deploy as opposed to satellite.

> *DTT replicates the analogue market but on a digital platform therefore public interest programing obligations should apply in a similar fashion.*
>
> (Respondent 6, Skype interview, 16 March 2013)

The respondents with the alternative view argued that DTT with its multiple channels is similar to subscription satellite. Respondent 13 (telephonic interview, 12 March 2013) argued that when it comes to competition for audiences and advertising revenue the incumbent satellite services had a foothold in the market. Given the nature of advertisers who would prefer more established platforms it would be difficult to convince them to advertise on the newly established DTT platforms.

Furthermore since free-to-air broadcasters relied solely of advertising revenue they would need to have a critical mass and quality audiences to attract sufficient revenue for them to be sustainable.

Respondents 11 (interview, 28 March 2014) and 12 (interview, 01 April 2014) felt that there is actually a problem with the notion that satellite should be subject to lighter touch regulation compared to free- to- air. She argued that the light touch approach adopted towards satellite subscription services tended to skew the market their favour. This in turn has the effect of decreasing the level of investment into quality programming for the PBS and therefore a decline in its audiences.

She cited the developments in Ireland as indicative of how the migration to DTT can undermine the quality of public interest programming. She argued that in South Africa light touch regulation has led to dominance by DStv in the market.

This allowed it to lock down lucrative audiences and premium content ahead of the DTT transition. It also enabled DSTV to use non-traditional platforms to cross subsidise other platforms, "reversion of content across multiple platforms". She expressed a concern that this could have the effect of turning the DTT platform into "poor man's television" (Respondent 11, interview, 28 March 2014).

Respondent 11 further argued that while multiple channels theoretically created the possibility of more content, "in reality we could default to the Ireland situation where content was replaced with repeats and therefore a flight of commercially viable audiences to subscription services". (Respondent 11, interview, 28 March 2013)

She argued that this development is exacerbated by limited resources available to the PBS to develop or acquire content. The remains the case despite the PBS being allocated more multiplexes than other market players based on the expectations for the PBS drive uptake of DTT services.

Respondent 12 argued that regulation should actually be technology neutral and driven by the content and that technology only comes to play if it poses a limitation to regulation. He added that while satellite has always been approached through light touch regulation, developments in the market warranted satellite to be regulated "as you would any other technology".

He argued that satellite provided access to the same audience and is similarly expected to provide the same programming diversity and local content as other platforms (Respondent 12, interview, 01 April 2014).

The respondent argued that the principle of using regulations to promote and protect local content remains the same regardless of platform. What differs in South Africa is the kind of services that the requirements could be applied regardless of their platform. Therefore the requirements might be less for subscription services and higher for the PBS and community because of their public programming obligations (Respondent 12, interview, 01 April 2014).

4.5.2 Question 8: The current local content regulations were initially conceived an analogue environment. South Africa is in the process of migrating to a Digital Terrestrial Television (DTT) platform. To what extent - if any - do you believe that the promotion of local content through regulation should continue on the Digital Terrestrial Television (DTT) platform? Please explain your answer.

Question 8 is intended to establish the respondents' opinions on whether local content regulations, which were originally conceived in an analogue environment, should continue on the DTT platform.

The majority of the respondents interviewed indicated that regulation should continue, but felt that the current regulations are not appropriate for the digital environment. They, however, also felt that the light touch and aggregation of quota requirements across the bouquet (as currently applied for subscription satellite) would not advance local content public interest objectives. They argued that the DTT environment called for specific measures to be implemented to retain these objectives.

For example respondent 12 felt that regulation of local content should not be reduced to technology. Instead a more strategic approach, aimed at creating conducive regulatory and market conditions for local production to thrive, should be adopted. He argued that currently there is not enough being done to grow this sector and regardless the platform used to distribute content. "Forget the DTT environment, the

issue that there is not enough local content in an analogue environment anyway" (Respondent 12, interview, 28 March 2014).

Similar to a number of other respondents he recommended that focus should be on supporting the production sector and that coordination of activities and mandates of these institutions. He also emphasised the need to develop the skills and the production environment which would produce the amount of content required in a multichannel environment (Respondent 12, interview, 28 March 2014).

Most of the respondents also felt that the entire policy environment and approach to content regulations must be overhauled in order to ensure that the regulations remain relevant and serve the purpose of protecting and promoting local content in a digital and converged environment pre-empted by the migration to DTT.

More importantly, the respondents argued that the current broadcasters' business models must be reviewed. They argued that the current advertising revenue funding model is inappropriate for a multichannel environment. Audience and advertising revenue fragmentation are the main arguments advanced against business models based on advertising revenue. They argued that this not only meant that existing and new broadcasters would not be sustainable but also that production budgets dedicated to local content would be diminished.

Respondents 1 and 13 felt that the impact of digital broadcasting would be higher on existing and new free-to- air broadcasters, as, unlike subscription broadcasters, did not have access to subscription revenue (Respondents 1, interview 11, March 2013; Respondent 13, telephonic interview, 12 March 2013).

Respondent 13 added that this could result in the public broadcaster cannibalising its own audience across the existing three and additional public broadcasting channels. Respondents 13 indicated that this was already happening with current competition for audience between SABC 1 and SABC3. She argued that this will intensify with the migration to the DTT environment. Audiences will also be fragmented cross other broadcasters channels (Respondent 13, telephonic interview, 12 March 2013).

In addition new broadcasters faced the challenge of producing compelling programming offerings to stand up to the competition by incumbent operators. The respondent argued that the licensing regime contemplated by the 2009 DTT licensing regulations did not assist the situation. She argued that the fact that incentive channels did not make provision for local content indicated that ICASA did not consider the impact that forced migration could have on budgets allocated for local content.

These developments called for a complete paradigm shift in relation to marketing and market positioning and branding of the television channels. Broadcasters' business models must change to suit the changed market conditions. Broadcasters would have to be more agile and develop more innovative ways to operate. Key was reducing content costs and diversifying sources revenues.

Respondent 10 (suggested alternative business models, including sharing risk and funding with producers. He argued that this would lead to new products, profit sharing and in turn reduce the broadcasters' dependence on advertising revenue. (Respondent 10, telephonic interview, 17 March 2014)

Most of the respondents argued that these innovations must be supported with comparable policies and regulations and also suggested methods and incentives that could be applied in this regard. Respondents 1, 13, 12, 17 and 18 suggested for example, applying tax rebates across the industry as well as commercial support for production, broadcasters and the whole industry (Respondents 1, interview, 11 March 2013; Respondent 13, telephonic interview, 12 March 2013; Respondent 17, interview, 22 April 2014; Respondent 18, telephonic interview, 22 April 2014).

While most of the respondents appeared to make a case for a more relaxed approach to regulating local content in the digital environment Respondents 9 and 11 felt that regulations needed to be intensified to ensure that the public interest gains made in the analogue environment are not lost. (Respondent 9, telephonic interview, 18 March 2014; Respondent 11, interview, 28 March 2014)

Respondent 11 indicated that it is "important that the myth of digital environment requiring a light touch approach be debunked." She argued that there was strong

argument to be made for increased regulation in this environment, as the challenges that have led to regulations become even more in the digital environment.

She mentioned the following to support her argument:

- ≥ *There is an increased threat of cultural imperialism where content can be imported at a cheaper rate and therefore pose a threat to content to local content and cultural diversity.*
- ≥ *Content is the new area of scarcity that in a way has replaced spectrum in the digital environment. It is where battles are being fought over digital rights.*
- ≥ *There is still a need to protect local identities in the digital environment.*
- ≥ *There are also new forms of market failures that needs to be addresses. Digital media tends to focus on more lucrative audiences and neglect poorer ones and therefore would not address their needs in the absence of regulation compelling them to do so.*

*(*Respondent 11, interview, 28 March 2014)

The majority of the respondents also argued that methods of regulation must also change to meet the level of complexity posed by the market in a digital environment. This meant that traditional methods of regulation such as licensing and channel authorisation will no longer be relevant.

The respondents added that based on this, foreign companies should also be required to contribute towards local content by virtue of having access to local audiences. The respondent indicated that satellite service providers' business models were based on being able to extract revenue from South African audiences "and they should therefore contribute to local content (Respondent 11, interview, 28 March 2014).

Considering the scale of the required changes to the policy and regulatory environment, most of the respondents expressed concern that there is no coherent policy and regulatory environment to support the migration and to provide direction for South Africa's migration to digital. They indicated that this lack of policy leadership and regulatory certainty coupled with the lack of transparency in the application of the regulations did not encourage the type of investment required to support local content in a DTT environment.

In sum, the majority of the respondents indicated that the need to regulate local content is even more heightened in a multichannel environment. It was argued that the increase in channels will not necessarily lead to more local content. This increase must be matched by increased diversity and of local programming, as well as coherent policies and regulations to secure public interest on the DTT platform.

4.5.3 Question 9: What regulatory mechanisms would you say are appropriate to promote the production and consumption of local content in the DTT environment?

Question 9 is intended to establish the respondents' views on appropriate regulatory mechanisms for the DTT environment.

The majority of the respondents focused on the shortcoming of the current local content regime and the appropriateness of the regulations for the DTT environment. They thus did not offer specific mechanisms that could be applied to promote local content, but merely highlighted principles that should underpin the revised regulations.

4.5.3.1 Revision of Quotas

The respondents acknowledged that quotas form the basis of the regulations. They argued that quotas should continue but be supported by tax incentives and funding. The focus should, therefore, be on measures to stimulate demand including, quotas, funds, tax breaks. In addition, there has to be a political will to comply with the regulations and a conscious preference for local content. However, there were also some that felt that quotas were inappropriate for commercial and subscription services and should only be applied to PBS services.

4.5.3.2 Regulatory Impact Assessment

Respondents also felt measures for the DTT environment must be evidence-based and revised periodically. Respondent 13 indicated that in the past ICASA's predecessor, the IBA, used to review its regulations every three years (Respondent 13, telephonic interview, 12 March 2013).

The respondents also maintained that the regulations must be supported by appropriate enforcement and monitoring measures. Most of the respondents advocated that the regulator implements a comprehensive monitoring system to ensure the effectiveness of the regulations. Some of the respondents including respondent 4, 5, 8 and 11 recommended specific methodologies (Respondent 4, interview, 12 March 2013; Respondent 5, interview, 12 March 2013; Respondent 8, Skype interview, 17 March 2013; Respondent 11, interview, 28 March 2014).

They argued that while it is important for the regulations to be aggressively implemented, they must also be fairly applied and their impact must be assessed. It is also important that such implementation is informed by market research assessing the relevance of the regulations during the dual illumination period and post migration.

Respondent 13 also argued that the regulations must be relevant to the operational environment within which broadcasters operate. She further argued that it should address the entire production value chain, and customised to the unique needs of the broadcaster, and not applied as with the "one size fits all solution approach" currently being implemented. She added that with a multichannel environment there are more opportunities for niche programming as opposed to similar but multiple channels. This development, therefore, calls for a more complex approach (Respondent 13, telephonic interview, 12 March 2013).

4.5.4 Question 10: What changes - if any - would you recommend to the current local content regulations to cater for DTT? Please explain.

Question 11: Are there any mechanisms other than regulation that need to be adopted to protect and promote local content on the DTT platform? Can you explain?

Questions 10 and 11 were intended to establish the changes required to the regulations to ensure that the regulations are appropriate to the DTT environment.

Similar to the responses obtained to question 9 there were no specific mechanisms volunteered. However, they highlighted areas in the local content that must be changed based on the deficiencies identified in section 4.4 above.

4.5.3.1 Regulatory Impact Assessment

The majority of the respondents indicated that these changes should be realistic and informed by a proper RIA of the regulations and related mechanisms. The respondents felt that ICASA should conduct base research to inform the review of local content regulations. This would establish base data and point out areas that need to be reviewed. Some respondent suggested this review of the local content regulatory regime should also include areas that are seen to be outside the scope of ICASA's regulation such as copyright and funding.

4.5.3.2 Protecting the integrity of existing services

Respondent 12 maintains that the DTT Switchover had both technology and content dimensions. The migration means that free-to-air stations would be operating from a different technology platform. The programming will be different, and the broadcasting environment will also be different. Both Respondents 12 and 2 argued that special measures should be implemented to ensure that the existing services to retain their prominence. For example, Respondent 2 suggested that regulation of the Electronic Programming Guide (EPG) could serve this purpose (Respondent2, interview, 11 March 2013).

The majority of the respondents also perceived the PBS as the driver of DTT service uptake and custodian of public interest programming. They argued that it should drive local content. The revised regulation must however be based on a RIA to determine the relevance and economic viability of the regulations.

Respondent 7 also felt that the PBS should have a more structured and economic approach to compliance to these regulations. The PBS should be able to account like the BBC does on the financial investment that it has made towards local content development.

He referred to the British Broadcasting Corporation (BBC) reporting approach, where their mandate is reviewed and quotas are allocated based on the amount of investment required in relation to certain genres, as well as on the impact of such investments. Therefore, the mechanisms applied to enforce regulation should not be

mechanical but should consider resources as well as broadcasters' investments into local content (Respondent 7, interview, 13 March 2013).

According to Respondent 6 considering the resources and investment required approach would lead to an increase in the quality of programming. It will also encourage broadcasters to change their approach to funding programmes. He argued that it would also encourage them to consider producers sharing the financial risks of the initial investment in the production, in exchange for the right to exploit other distribution platforms (Respondent 6, Skype interview, 16 March 2014).

The majority of the respondents also perceived the PBS as the driver of DTT service uptake and custodian of public interest programming. They argued that it should drive local content. The revised regulation must, however, be based on a RIA, and therefore, determine the relevance and economic viability of the regulations.

4.5.3.3 Policy and Regulatory Overhaul

Most of the respondents interviewed argued that DTT and digital broadcasting presented a fundamentally different environment and therefore must be informed by coherent policy and regulatory review. The revised regime should articulate the countries vision on content regulation including production and broadcasting industries, and therefore how local content regulations should be applied over digital platforms.

Respondent 2 argued that the freelance nature of the industry must be understood and the regulations must be crafted in a way that supported South Africa's cultural sovereignty, while at the same time leveraging production activities to create business opportunities (Respondent 2, interview, 11 March 2013).

> *We need to find a balance between regulation and attracting investment and therefore sustain the sector. It is risky to without sustainable companies*
>
> (Respondent 2, interview, 11 March 2013)

Most of the respondents however felt that this weakness in regulation and enforcement could be addressed by an overhaul of ICT policies. This would provide policy direction on how content should be regulated in a converged environment, and by default applications of local content regulation on the DTT platform. Such a policy framework would not only articulate the approach to content regulation but would also provide an integrated policy and strategy toward the development of cultural industries , and therefore supply and demand measures that would sustain local content in a converged environment.

Some of respondents argued that the creation of an appropriate regime for DTT also presented an opportunity to consult all the stakeholders on appropriate mechanisms that could be applied in the DTT environment. Respondent 5 indicated that it is essential for ICASA to gain the stakeholders trust and to incentivise their compliance. She recommended that the new system should include AMPS-like system which incorporates audience feedback (Respondent 5, interview, 12 March 2013).

4.5.3.4 An integrated approach to local content regulation

The majority of respondents advocated an interdisciplinary approach, as local content is a "national issue" Respondent 7 noted that with the broadcasting policy review there might be a need to review the three tiers of broadcasting, as the lines have now become blurred in a digital environment. He argued that it is important for the regulator create an enabling environment for existing players to be able to migrate to the DTT environment and to continue to thrive (Respondent 7, interview, 13 March 2013).

Most of the respondents also emphasised that given the nature and scale of resources required to meet the demands of the digital environment, stakeholders should be incentivised to provide local content. For example, Respondent 8 advocated a score-card approach with points allocated to local productions. Other incentives could be allocating more capacity on the DTT multiplexor to those broadcasters producing more local content. He argued that this would also encourage local content across other platforms, including mobile (Respondent 8, Skype interview, 17 March 2013).

Respondent 12 also supported an incentive approach, indicating that other means other than regulations to implement other means, other than regulation which appear to be more score card based. He compared funding incentives to seed funding. These will serve to encourage the growth of the local production industry, beyond just meeting the quotas.

> *Regulations and quotas are a form of social engineering, but it is more about striking a balance between these mechanisms and the desire to produce local content.*
>
> (Respondent 12, interview, 01 April 2014)

4.6 Documentary Analysis

4.6.1 Introduction

It is essential to place local content regulation within the broader broadcasting policy context, and this study analyses local content related pronouncements made in selected broadcasting policy documents. The approaches advanced in these documents are considered in relation to the scope of local content and public interest, the impact of local content regulations and revision of local content regulations to suit the DTT environment.

These documents were selected based on their relevance to both DTT migration and local content regulation. A comprehensive list of South African policy documents relevant to local content and DTT migration is depicted in figure 1.2 above, in Chapter1 and detailed in Appendix A.

These illustrate the development of local content regulations overtime, and further indicate their relevance to the study at hand. However, as documents detailed in Chapter 2 do not address issues beyond what is already covered in the following documents, the documentary analysis is limited to the following pertinent documents.

- ≥ The Triple Inquiry Report (IBA, 1995);
- ≥ The White Paper on Broadcasting (Doc, 1998);

- ≥ The South African Television and Music Content Review Position Paper (ICASA, 2002);
- ≥ Broadcasting Regulatory Review Issues Paper (ICASA, 2012); and
- ≥ The Green Paper on ICT Policy Review (DoC, 2014) ;

The Triple Inquiry Report proposed a comprehensive framework for regulating South African Television Content and South African Music and the White Paper on Broadcasting (The White Paper) provided a policy framework for broadcasting in South Africa. They both set the tone for the public interest objectives behind broadcasting and local content regulations. They also set the key parameters for defining local content and its implementation mechanisms such as quotas and license obligations.

The South African Television and Music Content Position Paper and Regulations (The Position Paper) provides a comprehensive review of the key elements of local content regulation since the local content regulations were initially promulgated in 1997.

While the Broadcasting Regulatory Review Issues Paper (The Issues Paper) is intended "to provide ICASA with an understanding of market developments and insight into the public and industry views in preparing for this environment and to strengthen its regulatory regime in this regard" (ICASA, 2012, pp.5- 6).

The positions articulated in the above documents will be significantly impacted by ICT Policy review process. The ICT Policy Green Paper (The ICT Policy Review Green Paper) is, therefore, also briefly considered in this analysis.

4.6.2 Local Content and Public Interest

The policy documents were reviewed to establish whether the South African broadcasting policy environment considered public interest as the underlying goal for regulating and promoting local content. The Triple Inquiry Report (IBA, 1995), the White Paper on Broadcasting (DoC, 1998) and the ICT Policy Review Green Paper (DoC, 2014) emphasise the fact that broadcasting is a public good and that it should be regulated to ensure the achievement of public interest.

Local content is seen as important to advancing the above mentioned goals. Both the Triple Inquiry Report and White Paper on Broadcasting set the tone for the public interest objectives behind broadcasting and local content regulations. They also set the key parameters for defining local content and its implementation mechanisms such as quotas and license obligations (The IBA, 1995, p.17; DoC, 1998, section 1.1.3).

These documents, therefore, highlight the role that that broadcasting plays in fostering democracy, a sense of nationhood, socio- economic development and cultural expression. In this regard the documents prioritise access to services, production and dissemination of uniquely South African content, encouraging diversity and protection of minority languages and culture (The IBA, 1995, p17; DoC, 1998, executive summary; DoC, 2014, p3).

These policy pronouncements are amplified in ICASA's local content regulatory policy. In this regard the South African Television and Music Content Review Position Paper (ICASA, 2002) provides detailed local content and independent production quotas, incentives to encourage production of neglected genres, and a system of monitoring and enforcing compliance to these requirements (ICASA, 2002, pp. 14-26).

The ICASA Broadcasting Policy Review Issues Paper indicates ICASA's consideration on developing appropriate regulations for the digital age, and makes specific mention of preserving the system of quotas and classification of different genres across various delivery platforms" (ICASA, 2012, pp. 66-67).

4.6.3 Protection and promotion of local television content

The policy documents reviewed further advocate the implementation of local content regulations as a means of promoting and protecting local television content (IBA, 1995, p; DoC, 1998, section 3.1; ICASA, 2002, p.27; ICASA, 2012, p. 67).

≥ The White Paper on Broadcasting reinforced the Triple Inquiry requirement for all broadcasting services across the licensing spectrum to have South African content obligations, and specifically provides for commercial broadcasters to contribute in promoting South African content (DoC, 1998, section 3.1).

- The South African Television and Music Content Review Position Paper recognise and provides for specific mechanisms such as local content quotas, production quotas, incentive points (to encourage production of neglected genres) and funding. This document further highlights that content programming quotas "served merely as "benchmark progress and monitor compliance" (ICASA, 2002, pp. 14, 26, 27).
- The relevance of these tools, quotas in particular, is evaluated in the 2012 ICASA Policy Review Issues Paper, which solicited responses from stakeholders on the application of local content regulations on the DTT platform (ICASA, 2012, p. 67).

4.6.4 Mechanisms of promoting and protecting local television content.

The reviewed documents also acknowledge that various mechanisms are used to regulate local content including, quotas, financial incentives and subsidies. While the documents generally acknowledge this fact, some documents tend to emphasise certain mechanisms over others.

For example, the Triple Inquiry details local content quotas across licence categories and in relation to specify programming genres; however it does not provide the same level of detail in relation to independent production sector, merely indicating that broadcasters are encouraged to commission independent production companies which are owned/controlled by black South Africans and women, companies which are based in a range of different provinces and in non-metropolitan areas, and to commission new talent" (IBA, 1995, p.62).

On the contrary the White Paper on Broadcasting provides a comprehensive framework on protecting and promoting local content in both the analogue and multichannel environment. It provides a framework guiding contribution by all the sectors across the value chain towards these goals (DoC, 1998, executive summary).

4.6.4.1 Quotas

The documents emphasise quotas as a key mechanisms of implementing local content. For example, the White Paper leverages of licensing as a mechanism of setting local content quotas for commercial services on both terrestrial and

multichannel platforms to contribute towards local content. The document proposes that multichannel providers should not only carry local content channels and provide programming in regional languages but also to prioritise such channels (DoC, 1998, sections 3.5.1 and 7.4).

The documents also recognise that there should be sufficient content to meet the demand created by local content quotas requirements. They therefore either contemplate the promotion of the local production sector, or as in the case of the 2002 Position Paper set specific production targets to match the quotas. In this regard broadcasting services are required to source 40 percent of their content from independent producers (ICASA, 2002, pp. 29).

4.6.4.2 Production Incentives

Furthermore, this document also factors in elements intended to promote content production such as co-productions, terms of trade and commissioning practises.

With regards to co-productions, ICASA undertook to propose to Parliament to amend section 53(1) (a) (iv) of the IBA Act to reduce the requirement of 50 percent financial interest by South Africans to 20 percent, in order to align this to Article III (1) of the Audio-visual Co-production Agreement between the government of Canada and South Africa, and to facilitate the arrangements of the co-production agreement.

In addition, ICASA removed clauses in current regulations stipulating that post-production should be wholly done in South Africa and that the key personnel are South African (ICASA, 2002, p. 29).

In terms of commissioning practices and the related terms of trade between broadcasters and producers, ICASA expressed a concern that these could undermining the purpose of independent production quota, and proposed the establishment of a forum, chaired by ICASA, to address weaknesses in Commissioning practices (ICASA, 2002, p. 37).

The documents also recognise that content and production quotas must be supported by financial incentives to fund the production of local content. The White Paper specifically provides for a South African Television and Radio Production Fund, where all services including multi-channel distribution licenses are required to contribute a portion of their revenue towards this fund (DoC, 1998, section 7.4).

4.6.5 The impact of Digital Migration.

The migration of broadcasting services to the Digital terrestrial platform will significantly change the broadcasting market and the manner in which it is regulated. The documents were reviewed to gauge the manner in which the policies anticipated these changes and the recommendations they made to mitigate the impact,

All of the reviewed documents were forward-thinking in their approach and acknowledge that the regulatory mechanisms mentioned in section 5.6.3 above may have to be reviewed for the regulations to remain relevant in a digital and converged environment.

Although the documents contemplated ways in which these could be altered for this environment, some like the Triple Inquiry Report and the White Paper placed emphasis on the rationale and principles that must be protected in the digital broadcasting environment. ICASA's first attempt to apply local content quotas was with the 2002 Position Paper, whilst the 2012 Issues Paper explicitly stated that quotas had to be reviewed for application across all platforms.

The Triple Inquiry highlighted that the policy environment should secure local content and that the public interest continue to be served by broadcasting services a multichannel environment. The document highlights content scarcity in the multichannel environment as justification for continued local content regulation (IBA, 1995, p.27).

Likewise, the Broadcasting White Paper and ICT Policy Review Green Paper emphasised diversity and the preservation for minority language and culture as justification (DoC, 1998, section 7.2, DoC, 2014, p.13).

However, the White Paper also contemplated specific ways in which the above principles could be promoted in a digital environment, including the licensing of multichannel distribution service providers (systems), and requiring them to have specific local and regional content quotas (Doc, 1998, section 7.1).

In applying local content quotas to the multichannel environment the 2002 Position Paper focused on commercial subscription services, to the exclusion of other services. At the time of its publication, these were the only licensed multichannel broadcasting services. In this regard, it provided for a lower quotas (8 percent), allowed for the quotas requirements to be aggregated across bouquets and for payment- in- kind alternatives (ICASA, 2002, pp. 54-55).

However, in the 2012 Issues Paper indicates that ICASA acknowledges the fact that local content regulations should be reviewed, for their continued relevance to the digital broadcasting environment. It specifically highlights issues for consideration in the digital environment, as being "the preservation of quotas, classification of different genres, and dissemination of local content on the various delivery platforms" (ICASA, 2012, p. 67).

4.6.6 Review of Local Content Regulations

As mentioned above, digital migration will have a significant impact on implementation of local content regulations. These should therefore be reviewed to suit this new environment. The policy documents were reviewed to gauge, firstly, to gauge whether these documents agree with the need to review the regulations and, secondly how the perceive such changes to take place.

The reviewed documents acknowledged the need to review policies and regulations to suit the digital broadcasting environment. The documents further acknowledged that public interest goals should be continued in the digital environment. (ICASA, 1995, p19) (DoC, 1998, executive summary) (ICASA, 2012, pp.66-67)

ICASA's predecessor, the IBA, made provision for periodic reviews of regulations in order to gauge their effectiveness and to ensure relevance. For example, the Triple Inquiry Report proposed a review of the local content every three years (IBA, 1995, p 30).

Likewise, the 2002 Position Paper made provision for their review in order to assess the effectiveness of the quota, increasing the levels, and improving the basis for calculating the quota. (2002, pg. 8) Furthermore, as indicated above, ICASA in 2012 published a Broadcasting Regulatory Review Issues Paper wherein, amongst other issues, it outlined the principles that it will consider in reviewing local content regulations (ICASA, 2012, pp. 66-67).

It is interesting to note that both the White Paper (1998) and the ICT Policy Review Green Paper (DoC, 2014, p.53) conceived policy direction around digital broadcasting to be articulated within a broader broadcasting policy.

The White Paper indicated that such policy should "provide certainty on the future direction and articulate a vision of what the broadcasting system should be as well as actions that should be undertaken towards attaining such goals."

In relation to reviewing and developing relevant local content regulations, the White Paper required the regulator to develop a regime and a strategy to "achieve a broadcasting system which is predominantly South African in content" and determine a timetable to achieve this within 10 years. It also conceived the continuation of these principles in a digital environment, indicating that multichannel broadcasting should advance the public interest by serving social goals, cost efficiency and effectiveness (DoC, 1998, sections 3.3.2, 7.2- 7.4, 7.6).

Amongst others, local content is conceived to contribute significantly towards the provision of universal access to broadcasting and multi-media services and "diversity in programme content and services in all official languages." Digital broadcasting is seen as contributing towards economic development by providing opportunities for employment, training and the development of the manufacturing industries (DoC, 1998, executive summary). The document states:

> *Government will wish to preserve, in a digital age, a similar policy framework that observed South Africa's cultural imperatives, including obligations relating to local content production, geographic coverage of services and the provision of a comprehensive range of services by public, private and community broadcasters.*

(DoC, 1998, section 7.6.8)

4.7 Summary

This chapter presented the findings of the research based on in depth interviews and documentary analysis of broadcasting sector's submissions to local content related policy and regulatory processes. The findings reflect a number of emerging issues including retaining the public interest motive behind regulating local content, reviewing broadcasting business models, funding of local content reviewing and developing appropriate regulatory mechanisms (including revision of quotas).

These will be discussed and analysed in detail in Chapter 5.

5. CHAPTER 5 APPLICATION OF LOCAL CONTENT REGULATIONS ON DIGITAL PLATFORMS

5.1 Introduction

This study assesses the current local content regulatory framework and implementation strategies in South Africa in the light of the multi-channel digital broadcasting environment, focusing on the DTT platform. It considers market, technology and other changes brought about by digital broadcasting and consequently policy and regulatory changes required, matching the changed environment. It further examines strategies that can be implemented to ensure that the public interest objectives associated with broadcasting and local content regulation are retained with the migration of television services to the DTT platform.

This chapter presents an analysis of the data collected through qualitative interviews, policy documents and stakeholder submissions. The semi-structured interviews served as a source of primary data while secondary data was derived from documentary analysis. These are analysed in relation to the research questions (outlined in Chapter 3) and the literature review.

5.2 Local content regulations and public interest

The current definition of local content emphasises origination, execution and ownership by South Africans, and is rooted in the public interest objectives for regulating broadcasting. The research question explores the scope and definition of local content, the extent and the reasons for regulating local content on the DTT platform. The analysis, therefore, considered the manner in which the interviews, the selected policy documents and stakeholder submissions highlighted the link between local content and public interest. It further considered the public interest motive behind local content regulation from three angles; exploring how local content furthers public interest; whether local content should be protected and promoted; and the mechanisms that should be applied to achieve this.

The respondents argued for government intervention in the market order to ensure that socio-economic and developmental goals associated with local content are achieved. Similar to what is expressed by the academic literature and broadcasting

policy documents, the respondents emphasised cultural identity, preservation of minority languages and culture, and the development of cultural industries as the main reasons for imposing local content regulations.

5.3 Mechanisms used to implement local content regulations

The literature surveyed further indicates that complementary strategies are used to implement local content regulations, including quotas, tax incentives and government subsidies. It indicated that these incentives were supported by co-production treaties, education and training initiatives, distribution and marketing of local productions (Bhattacharjee and Mendel, 2001, p. 1; NAB, 2001, p. 4).

5.3.1 Quotas

In South Africa, regulation of local content takes various forms across the broadcasting value chain, for example, production funding and incentives. Local content quotas are seen as an important component of this system. The international case studies that were conducted as part of the literature review confirmed the importance of quotas to this system and indicated that similar local content quotas in Australia, Canada, the United Kingdom and South Africa.

The study also confirmed that, in addition to quotas, Australia and South Africa applied incentive points to encourage production of neglected programme genres. Whereas these were applied to encourage children's programming and Australian drama in Australia, in South Africa these were used to encourage production of neglected genres, film destinations, as well as minority languages (ACMA, 2005; ICASA, 2002, pp. 14-26).

The majority of the respondents interviewed also recognised the importance of quotas. They however recommended a holistic approach, covering supply and demand side interventions, which also includes tax incentives as well as more focused and coordinated production funding. They argued that more coordinated and focused interventions will stimulate the supply of local content and that quotas should be used to incentivise the production of programmes rather than as a punitive measure to enforce compliance (Respondent 4 interview, 12 March 2013; Respondent 7, interview, 13 March 2013).

A broader and more coordinated approach is also supported by the local content policy submissions by stakeholders. For example, the NAB's submission to the 2002 South African Television and Music content Discussion Paper argued that quotas were effective only as part a broad system of regulation, which included; direct funding and subsidy schemes; tax incentives; co-production treaties; education and training. The submission also advocated government intervention and assistance in marketing and exhibiting local productions (NAB, 2002, p.4).

In sum, the literature review, interviews and documentary analysis emphasised the fact that quotas are only effective as part of a broader well-coordinated system of regulating both the supply and demand of local content, supported by a strong monitoring and enforcement system.

5.3.2 Funding and Financial Incentives

As indicated in section 6.3.1 above, stakeholders advocate a coordinated approach, including both supply and demand side regulatory interventions. The NFVF 10-year Review report also confirm that a number of strategies have been implemented towards the development of cultural industries in South Africa and that funding and financial incentives are a key component of such strategies. These schemes are administered by different entities, and governed by different legislation and administrative processes (NVFVF, 2010, pp. 12-14).

The international literature review conducted on incentives schemes applied internationally indicates that there are similarities between the above funding schemes and those applied in Australia, Canada and the United Kingdom. It found that only Canada had a concrete coordination agreement between the Department of Canadian Heritage and funding agencies (Cassels, Brock and Blackwell LLP, 2012).

In relation to South Africa the NFVH highlighted the lack of coordination and uniform funding criteria as main shortcoming with the South African schemes (NFVF, 2010, pp. 43-46).

A number of the respondents interviewed have argued that this lack of coordination worked against development and growth of the production industry (Respondent 3, interview, 11 March 2013).

This point is also conveyed in stakeholders' submissions, for example, NAB's submission to the 2002 ICASA Local Content Review. This submission raised the lack of coordinated funding as a weakness. It also suggested two mechanisms through which ICASA could leverage broadcasters' financial contributions towards the development of the production sector, by funding and promoting local production (NAB, 2002, p. 8).

Together the literature review, interviews and documentary analysis emphasise coordinated and focused funding and financial incentives, distribution as important elements contributing towards the effectiveness of supply side interventions aimed at the development local content.

5.3.3 International Agreements

International treaties by virtue of governing trade relations and incentives applied in the audio-visual market, emerged as an issue for consideration during the data analysis.

The literature review highlighted the Most Favoured Nation (MFN) treatment contained in General Agreement on Trade in Services (GATS) as an important tool that countries use to gain access to audio-visual markets. However, as South Africa is one of the countries that have abstained from making commitments regarding market access for the audio-visual sector. In terms of international trade, co-production agreements have comparatively a bigger impact, particularly in relation to funding, and support provided to the production sector of South Africa (Bernier 2004, p. 215).

The NFVF maintains that, despite relatively limited participation by historically disadvantaged individuals in co-productions, the South African production industry interests remain protected and that the domestic economy has benefited from co-productions. In its Ten-year Review Report, the NFVF argued that there had been an increase in a number of South African productions realised through co-production agreements. It maintains that this could be attributed to a number of factors including local technical skills, weather conditions, favourable rand /dollar exchange rate and highly professional cast and the production incentive. This has benefited both the

film industry and services industries, which served as a significant stimulus for economic activity in the major film centres (NFVF, 2010, pp. 59-63).

However, it should be noted that except for a few respondents, the stakeholders both in the interview process and submissions did not appear to consider the impacts of co-productions to funding and development of local productions. Even the respondents that mentioned international treaties only referred to them in as far as they served to protect international markets against South African productions (Respondent 4 interviews, 12 March 2013).

5.3.4 Intellectual Property Rights

Intellectual property rights were not considered when the research questions were formulated, however; they proved to be an important element in analysing the impact of local content regulations on the production sector. The respondents interviewed emphasised their importance in the context of addressing supply of local content.

The respondents argued that Commissioning as a content acquisition method worked against the growth of the production sector. This method did not allow the originator of the content to exploit their production fully across all distribution channels (Respondent 4 interview, 12 March 2013; Respondent 10, telephonic interview, 17 March 2014; Respondent 9, telephonic interview, 18 March 2014).

5.3.5 Monitoring and Enforcement

It is important that the above system is supported by an efficient and robust monitoring and enforcement system. The respondents and policy submissions also highlighted this as critical to the success of the regulations. They indicated that the major shortcoming in the regulations resulted from ICASA's inability to monitor and enforce the regulations, and further recommended that ICASA be capacitated to improve these functions. The negative impact of ICASA's inability to monitor and enforce the regulation is discussed in detail in section 5.4 below.

5.4 The impact of Local Content Regulation

5.4.1 Success of Local Content Regulations

The research question considers how effective the local content regulations have been, and the extent to which the above cultural and economic reasons for regulating local content have been achieved.

The respondents emphasised cultural and economic reasons for regulation local content. They further argued that to a certain extent, the regulations were successful in fulfilling these policy goals. They cited the fact that there is now a preference for local content as an indication of their success (Respondent 2, interview, 11 March 2013; Respondent 1, interview, 11 March 201.

However, some also expressed reservations with the quality of the content and the extent that it reflected the countries diversity and gave minorities a voice. They indicated that the demand for local content is limited to certain genres, like soap operas, which were easy and cheap to produce (Respondent 11, interview, 28 March 2014; Respondent 12, interview, 01 April 2014).

While the respondents confirmed their support for the local content regulations, the respondents also called for a broader definition of local content to include regional and African content. They motivated for a more progressive and flexible approach to regulation. They also advocated inclusion of African and regional content for both cultural and economic reasons, that is, reflecting the complex nature of South African society and increasing the economies of scale for the South African local content industry (Respondent 12, interview, 01 April 2014).

The above arguments are in line with previous stakeholder submissions made to the 2002 ICASA Local Content Review (ICASA, 2002). Mnet and Media Monitoring Project (MMP) submissions advocated the inclusion of African content to the definition of South African content (ICASA, 2002, pp.11, 13). In response to these submissions, ICASA undertook to forward the submissions advocating this inclusion to Parliament (ICASA, 2002, p. 33).

The respondents also called for a more realistic and flexible approach to local content, taking into account the cost of local content production as well as it impacts on the broadcasters' advertising revenue (Respondent 2, interview, 11 March 2013).

5.4.2 Limitations of Local Content Regulations

5.4.2.1 Monitoring and Enforcement

Whilst the majority of the respondents and stakeholder submissions recognised the success of local content regulations, they also noted that the regulations were not being effectively implemented and enforced. They argued that the methods applied by ICASA were deficient and cited the lack of independent auditing of monitoring information as an indication of this weakness.

The SOS coalition highlighted lack of detailed reporting and consequences for non-compliance as a weakness in ICASA's monitoring and enforcement. The submission argued that compliance reporting should reflect "the results of credible independent monitoring of broadcasters to assess real levels of compliance with local content regulations" (SOS, 2012, p.8).

It cited examples of broadcasters who have missed their deadlines in submitting their commissioning protocols and having not been penalised (SOS, 2012, p. 5). These views were shared by the Kagiso Media submission, which also maintained that the challenges with local content had less to do with the "reach and ambit" of the regulation as it does with ICASA's capacity constraints to monitor and enforce them effectively (Kagiso Media, 2012, p.27).

In addition to the weaknesses highlighted above, the respondents felt that compliance to these regulations was cumbersome. One respondent specifically pointed out that in addition to these regulations production companies also had to comply with numerous other pieces of legislation. This fact is also highlighted in the Mnet and Multichoice submission to the ICT Policy Review Green paper (2014, p. 10).

The above weaknesses in ICASA's system are also highlighted in the comparison of the monitoring and enforcement methodologies applied in Australia, Canada and the United Kingdom. The comparison indicated similarities in these methodologies, but also highlighted the areas where these countries differed from South Africa. The major areas where ICASA differed with the respective regulators were:

- ≥ The presence of independent auditing processes (Australia, Canada and United Kingdom);
- ≥ The use of detailed reporting on expenditure per programming genre (United Kingdom); and
- ≥ The provision annual sector statistics and industry information (Australia, Canada and United Kingdom; ACMA, 2014; CRTC, 2010; Ofcom, 2010) (ICASA, 2011)

5.4.2.2 Regulatory Impact Assessment

The respondents further cited the Regulatory Impact Assessment (RIA) of the long-term effectiveness of regulations as an indication of ICASA's lack of capacity, and the reason why the regulator and the industry did not appreciate the impact of local content regulations. (Respondent 4 interview, 12 March 2013 (Respondent 5, interview, 12 March 2013) (Respondent 7, interview, 13 March 2013)

This fact is also repeated in a number of stakeholder's submissions, including those made towards both the Broadcasting Regulatory Review and the ICT Policy Review processes. These submissions emphasised the importance of conducting a regulatory impact analysis as a basis of regulation making and their effectiveness. (Mnet and Multichoice, 2014, pg.15; NAB, 2013, pp.3, 7)

The above arguments on monitoring, enforcement and RIA highlight the importance of ICASA's internal monitoring, enforcement and regulatory making processes to the success of the local content regulations. It is, therefore, important that in reformulating the regulations for the digital broadcasting environment, ICASA's policy making and review processes be considered.

5.5 The Impact of DTT migration on local content regulation

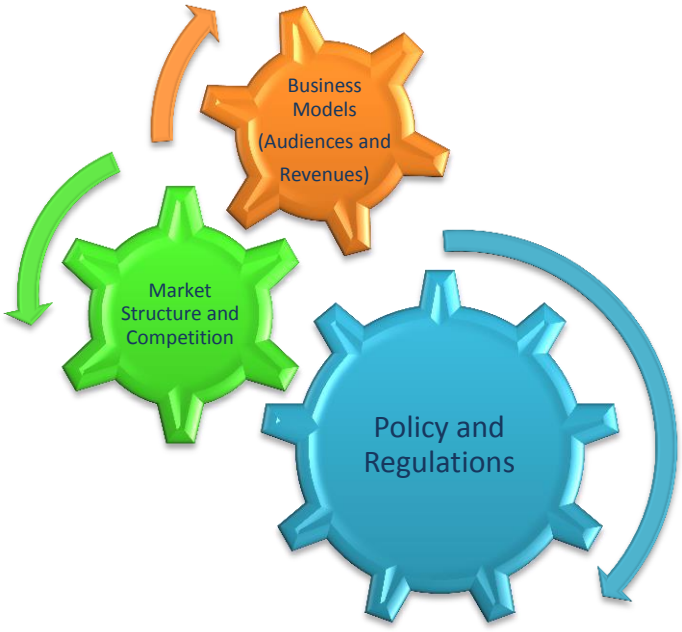
The research question considered the extent that DTT presented challenges to the current local content regime. It also considered the unique features of the DTT platform, and whether these differed significantly from other platforms (analogue, satellite tec.) to warrant a different approach towards regulating local content on this platform. It also considered changes required to the current local content regulations to cater for DTT, as well appropriate mechanisms of promoting the production and consumption of local content in the DTT environment.

This research should ideally be able to consider the practical impact of DTT on the South African market. However, as indicated in the literature review section, the digital migration process in South Africa has been delayed. ICASA itself as only instituted a review of local content regulations recently Therefore, the research instead considered industry literature on the impact of digital broadcasting in general. This information is supplemented by stakeholders' perceptions of the likely market and regulatory impact on the South African broadcasting industry.

The literature reviewed highlighted a number of changes that result from digital broadcasting. These relate to changes to the market structure and resultant competition dynamics; changes in audience and media consumption patterns; changes business models; local content funding strategies; and finally regulatory challenges posed by all these changes (Bosland, 2007, pp. 7010, 21; Berger, 2010, p. 13).

These impacts are depicted in figure 5.1 and discussed in detail in sections 5.1.1 to 5.1.3 below. Essentially this diagram illustrates the interrelationship between market structure, competition, broadcaster’s business models and policies and regulations. Policies and regulations shape the broadcasting market structure and competition within this sector. This in turn influences the business models adopted by broadcasters.

Figure 5: 1 Market and Regulatory impact of Digital Migration



5.5.1 Broadcasting Market Structure and Competition

Market changes relate to the audience and the advertising revenue fragmentation that results from multiple channels and platforms. This is a common theme reflected in the literature reviewed. The argument that is advanced is that since local content regulation is based on supply and demand of local content, multichannel digital broadcasting is likely to undermine this balance by increasing programming costs, and by fragmenting audiences and thus advertising revenue. (Bosland, 2007, p. 21; Berger, 2010, pp. 34-35)

The respondents indicated that fragmentation of audience and advertising revenue not only threatened the sustainability of broadcasting services, but also diminished that production budgets dedicated to local content. They felt that the impact would be greater on Free-to-Air and public television, in several ways:

- ≥ Unregulated access to advertising revenue by subscription services eroded their revenue base, as the latter also had access to subscription revenue.
- ≥ The impact of diminished revenues on their ability to create sufficient local content to meet the demands of a multichannel environment.

≥ Inability of both incumbent and new Free to Air to produce compelling programming offerings to stand up to the competition by incumbent subscription services
(Respondent 13, telephonic interview, 12 March 2013)

The respondents from the Free-to-Air sector were also concerned about the impact of new media services on competition in the broadcasting market and therefore their sustainability in this environment. They argued that broadcasting services will not only be competing amongst themselves, but also with broadcasting services provided over other platforms such as the Internet. They argued that this warrants more stringent competition regulation by ICASA, in order to ensure fair competition and sustainability of Free-to Air broadcasters. (Respondent 13, telephonic interview, 12 March 2013)

This concern is also reflected in the submission made to the ICT Policy Review Green Paper. These submissions highlighted competition aspects which directly impacted on their individual business environments, but also shared a common view that regulation had to be reviewed in order to create a fair competitive environment. They further argued that similar services should be regulated comparably and that ICASA should apply regulatory parity in regulating local content. (e.tv, 2014, p22) (ACTSA, 2014, p14) (Mnet and Multichoice, 2014, p18) (NAB, 2014, p.11)

However, the reviewed literature also indicated that the market might respond in a much more complex fashion. For example, the Australian Broadcasting Corporation (ABC) predicts that audiences will on one hand be fragmented across platforms and will have access content across an increasing range of devices and contexts, and thus by-pass local content regulation. However, the ABC also notes that traditional broadcasting services will continue to attract the largest audiences, particularly around major events, sport and high-quality entertainment. (ABC, 2007, p.4)

These developments are also supported by views expressed by the Mei-Pochtler and von Merey and Ofcom. These authors noted that converged services tend to complement traditional services instead of competing directly with them. Mei-Pochtler and von Merey, indicate that audiences don't abandon traditional media and devices despite the greater programming choice and the availability of new devices.

(Mei-Pochtler and von Merey. 2014, p.6) Furthermore, Mei-Pochtler and von Merey and Ofcom argue that these services can enhance the primary viewing experience over traditional broadcasting platforms, and creates additional revenue streams for traditional broadcasting services. (Mei-Pochtler and von Merey, 2014, p.10; Ofcom, 2013)

Based on the above arguments advanced by the stakeholders in relation to the impact of digital broadcasting on the broadcasting market structure and the need for regulatory parity, it can be concluded that multichannel broadcasting, by fragmenting audiences and advertising revenue across platforms, threatens the financial basis of local content programming.

This development, therefore, threatens broadcasters' ability to fulfil local content regulations. This calls for more stringent regulation of competition and that an appropriate environment is created for all broadcasting services regardless of platform to thrive. It can also be concluded that technological developments can be harnessed to advance public interest goals.

However, the converged broadcasting market is complex, and audience's preferences are constantly evolving. It is, therefore, important that broadcasters develop more complex business models base on their audiences' consumption patterns. These are discussed further in the section on broadcasting business models below.

5.5.2 Broadcasting Business Models

The respondents emphasised the need to review business models in order for broadcasting services to remain relevant in the digital broadcasting environment. Most of the respondents felt that the current advertising revenue funding model is inappropriate for a multichannel environment. (Respondents1, interview, 11 March 2013) (Respondent 13, telephonic interview, 12 March 2013)

The anticipated market changes warrant changes to the broadcasting services' business models to match the challenges posed by digital broadcasting. In considering the possible revision of the broadcasting business models, it is important that the key elements of such a model are considered, as well as the impact that digital migration would have on these elements.

5.5.2.1 Traditional Broadcasting Business Models

The prevalent business models applied by public, commercial and subscription broadcasters are summarised below.

Table 5:1 Traditional Broadcasting Business Models

LICENSE CATEGORY	PREVALENT CONTENT ACQUISITION STRATEGIES	SOURCE OF FUNDING	REVENUE/ OUTPUT
Public TV	≥ Commissioning ≥ In-house production	≥ Public Funding ≥ Ad revenue ≥ License Fees	Ad Revenue
Commercial FTA TV	≥ Commissioning ≥ In-house production	Ad Revenue	Ad Revenue
Subscription TV	≥ Channel Aggregation	≥ Ad Revenue ≥ Subscription Fees	Ad Revenue

The traditional broadcasting business model is based on accessing compelling or public interest programming to attract audiences, who are in turn, sold to advertisers to generate revenue. In the case of subscription television, services also sell subscriptions. Therefore, subscription fees serve as an additional revenue stream. (SABC, 2010, pp. 5-6)

The above table maps public, commercial and subscription broadcasters against three elements of the broadcasting business model, namely, content acquisition, funding and revenue. According to the table this commissioning and in-house productions are indicated as predominant content acquisition strategies by Free-to- Air and public television. However, broadcasters utilise various content acquisition strategies including, co-productions, licensing, advertiser funded programmes (AFP) and bartering. (SABC, 2010, p. 23)

The table further indicates that Free-to- Air and public television services both rely on advertising funding. However, based on its public mandate and associated programming obligations, public television also accesses public funding. Free-to-Air television, on the one hand, relies solely on advertising. (SABC, 2010, p.23) (Strategic Analytics, 2007, p. 39)

Subscription television service providers are essentially channel aggregators, providing specialised channels directly targeted to specific audiences. According to Strategic Analytics channels are delivered to subscribers based on for a fixed monthly fee or as a premium services, and are either based on a set schedule or are delivered on demand (2007, p.19)

Subscription television services utilise various content acquisition strategies. The above Strategic Analysis reports indicates that channels are compiled using a combination of commissioned programmes, in-house productions, independent producers, and, acquired rights to ready-made feature films and TV programs.(2007, p32). The main source of funding for subscription services is subscription fees. However in some countries, like in South Africa, they are also allowed to access advertising revenues.[11]

5.5.2.2 Media Consumption and Audience Patterns

The literature reviewed indicates that the above business models are set to change as a result of digital broadcasting. The most significant change is the manner in which programmes would be consumed, which in turn impacts on programming scheduling, audience patterns and advertising revenue patterns. Bosland, 2007, pp. 7010, 21; Berger, 2010, p. 13).

According to the SABC scheduling and attracting quality audiences through compelling programming are key success factors of the traditional broadcasting business model (2010, p.15).Whereas traditional programme scheduling is based on day-parting, where programmes are scheduled to follow target audiences and their daily routine, multichannel broadcasting with its multiple platforms and time-shifted viewing calls for different scheduling strategies. (SABC, 2010, pp. 23-24) However,

[11] This has proved to be a major source of contention, with representatives of Free-to-Air broadcasters arguing for changes to the advertising regulations to limit subscription broadcasting services access to revenue. (e.tv, 2014, pp. 4-7, 8) (Respondent 10, telephonic interview, 17 March 2014) (Respondent7, interview, 13 March 2013) and submissions made by e.tv to a number of policy processes (e.tv, 2012, p.8). These arguments are discussed in detail below in the section on regulatory parity.

audiences can now access broadcasting services across multiple platforms and traditional services must adjust their scheduling patterns to retain their audiences.

Mei-Pochtler and von Merey considered these developments in relation to public broadcasters' revenue generation. The group argues that competition with new entrants will significantly impact on public broadcasting revenue. Therefore, for the PBS to remain relevant it must provide compelling content for their target audiences, while at the same time fulfilling the public service mandate. The further argued that the PBS should complement its traditional programming, which is argued to remain relevant for a while, with providing content over multiple platforms. (Mei-Pochtler and von Merey, 2014, p. 4)

However, this requires an in-depth "understanding of target audiences and the economics of successfully delivering different genres of cross-media content" It should therefore "identify those programming genres in which it should strive to be a content leader, as well as those in which it can afford to be a follower." They further argue that the PSB must "maximize its investments by understanding the costs and benefits of providing content." (2014, p. 4)

5.5.2.3 Content Acquisition Strategies

The ability to produce and access to sufficient content is for multiple channels is also seen as an important aspect of broadcasters' business models. Most of the respondents raised reservations with content availability. They argued that audience and revenue fragmentation adversely affected the production sector and decreased of revenue available to invest in productions. (Respondent 11, Interview, 28 March 2014)

The respondents felt that these challenges could be addressed by reducing content costs, diversifying sources revenues as well as exploring alternative content acquisition models, including sharing risk and funding with producers. The respondents argued that this approach served both the content originators and broadcasters as it reduced the broadcasters' dependence on advertising revenue, and open new revenue streams. (Respondent 10, telephonic interview, 17 March 2014)

The respondents further perceived the public broadcaster as the key driver of the uptake of DTT services and based on its public interest mandate the custodian of local content programming. (Respondent 4 interview, 12 March 2013 (Respondent 5, interview, 12 March 2013) (Respondent 7, interview, 13 March 2013)

Similar to arguments raised by the Mei-Pochtler and von Merey, the respondents felt that in order for public broadcasting services to be effective in this role, it needed to balance innovative programming and pubic interest programming and to create a niche for itself in the digital broadcasting market.

The respondents proposed that public broadcasting services should play the role of a public programming curator. Similar to the Mei-Pochtler and von Merey's proposal, the responded also advocated the PBS to exploit the multiple media platforms at its disposal to fulfil this role. Respondent 11 (Interview, 28 March 2014)

Based on the above-mentioned review of industry reports and stakeholder inputs it can be argued that complete paradigm shift in relation to market positioning and branding of the television channels was required in order for broadcasters to survive. The revised business models should reflect the changed market conditions brought about by digital broadcasting, and should be informed by an understanding of the likely course of migration, uptake of services, and the likely impact on broadcasters' revenue.

5.5.3 Policy and Regulatory Impacts

Given the above changes to the broadcasting market and business models, it is important to consider the impact that digital broadcasting will have on local content regulations. This will determine areas that require revision. These impacts relate to the general broadcasting regulatory environment, including the creation of market conditions that are conducive for completion, as well as specific local content regulatory mechanisms including quotas, funding, incentives, intellectual property law and enforcement.

5.5.3.1 Competition

The creation of market conditions conducive to the growth and sustainability of broadcasting in a DTT environment was constantly raised by industry stakeholders and respondents, who highlighted the importance of competition in achieving this. Competition is also seen as key to successful implementation of local content regulations on the DTT platform.

The stakeholders argued for more stringent competition regulation in the broadcasting. They also advocated for regulatory parity to be implemented to address competition faced by traditional broadcasting services from new broadcast like services.

The interview respondents argued that lack of competition and unfair content acquisition practices in the industry also affected the diversity of the content produced. The majority of the respondents were especially critical of the commissioning which remained the dominant model of acquiring content. They argued that this method of sourcing content is skewed in favour of broadcasters and did not empower originators of content to exploit it across other platforms. Respondent 5 argued that competitive broadcasting environment should be created to lessen the production sector's dependence on the SABC for their livelihood. (Interview, 12 March 2013)

Additionally a number of the respondents advocated more direct government intervention to encourage fair content acquisition practices in the industry. the respondents also felt that the supply side interventions must be supported by more stringent regulation of intellectual property, focused funding and encouraging other methods of sourcing content such as licensing, co-production, bartering. (Respondent 5, interview, 12 March 2014) (Respondent 11, interview, 28 March 2014)

5.5.3.2 Local Content Quotas

A major consideration of this study is whether quotas, initially conceived in an analogue environment, will remain relevant in a multichannel broadcasting environment. The initial application of quotas by ICASA to multichannel broadcasting services is limited to subscription services and, aggregates these across

bouquets of channels and provides for payment-in-kind alternatives to compliance. (2002, pp. 54-55) This mechanism is largely based on commercial viability of subscription broadcasting.

The literature review highlights the economic rationale behind imposing quotas. Kariithi (2003, p. 162), Bhattacharjee and Mendel (2001, p.7) and Bosland (2007, pp. 2-4) indicate various ways in which local content quotas protect audio-visual markets, stimulate local production industries and benefit local economies.

However, the research argues that, while important and also applicable to the viability of Free-to-Air and public television, economic considerations should not be the sole consideration in imposing quotas. Public interest objectives behind local content should be carried through on the DTT platform. It thus considered how best to apply quotas in a way that ensures the economic viability of all broadcasting license categories while at the same securing the public interest. The outcome of the qualitative interviews reflected a need to review quotas to achieve these goals.

The majority of the respondents felt that the current quotas were channel based, and were, therefore, ineffective for regulating multichannel broadcasting services. They argued that that audience patterns and viewing habits had changed, and warranted a flexible approach, where local content quotas could be aggregated across a bouquet of channels or shifted between the channels. In this regard Respondent, 13 argued that the regulations should be "relaxed and quotas applied across the bouquet leaving it up to the broadcaster to make editorial and financial decisions."(Respondent 13, telephonic interview, 12 March 2013)

However, the respondents differed in the level that should be imposed. In this instance the research sought to establish whether different quotas should be applied to different distribution platforms, that is, whether Free-to–Air services provided the DTT platform should have more stringent requirements as opposed to satellite-based services. Some respondents felt that DTT requirements should be stringent while others argued that there should not be any difference between the DTT and satellite. The latter group further argued that light touch regulation of satellite services is not justifiable.

Those arguing for more stringent local content regulation on the DTT platform cited a number of reasons as justification. These included, the use of terrestrial spectrum (albeit on a smaller scale), national coverage of the DTT platform, and relatively cheaper DTT infrastructure deployment. (Respondent 6, Skype interview, 16 March 2013) While the opposing view's arguments were based on both commercial and public interest considerations.

The commercial arguments contended that DTT and satellite-based services should have similar requirements as they were competing for the same audiences and advertising revenue. (Respondent 13, telephonic interview, 12 March 2013) (Respondents 11, interview, 28 March 2014. Respondent 13 further argued that subscription satellite broadcasters had an unfair competitive advantage over Free-to-Air broadcasters as they had had a foothold in the market.

Public interest opinions were largely based on protecting the public interest, and local programming provided by public broadcasters. Respondent 11 argued less stringent regulation of subscription satellite could result in less investment in quality public programming and a loss of a critical audience mass to subscription television, which are required to maintain public and free-to-air advertising revenue. Respondent 11, interview, 28 March 2014)

She further argued that this has led to the dominance by the incumbent subscription service provider in the South African market, which in turn enabled it to lock down lucrative audiences and premium content ahead of the DTT transition. It also enabled them to use non-traditional platforms to cross-subsidise other platforms, "reversion of content across multiple platforms." She expressed concern that this could similar to the development in Ireland could have the effect of turning the DTT platform into "poor man's television." (Respondent 11, interview, 28 March 2014)

While the respondents differed in how quotas should be applied across platforms, it more useful to apply this distinction between licensing categories rather than distribution platforms. Respondent 13 expressed the same opinions, indicating the requirements should be less for subscription services and higher for the PBS and community because of their public programming obligations. (Respondent 12, interview, 01 April 2014)

Similar to the respondents interviewed, the majority of stakeholder policy submissions reviewed, with the exception of Mnet and Multichoice, were in agreement with continued application of local content quotas on the DTT platform. They, however, also advocated a revision of quotas to ensure their relevance to the DTT platform.

Mnet and Multichoice in their Green Paper submission argue that quotas were not suitable as commercial broadcasters needed the flexibility to meet the challenges of multi-channel, multi-platform environment. They argued that they were particularly unsuitable for subscription services, "whose primary mandate is to meet the demands and needs of subscribers" (2014, p40)

Those submissions that advocated content quotas were however of the opinion that these needed to be reviewed for their relevance to the environment. They also recommended measures that can be applied in this regard.

E.tv's submission to the ICASA Broadcasting Regulatory Review Issues Paper (the Broadcasting Review) advocates a review of local content regulations to suit the DTT environment. It suggested measures such as aggregating the 35 percent local content quotas across the bouquet of services.

However, the submission argues that local content regulation should only be applied to the DTT platform once a critical mass of audiences has migrated to the DTT Platform, which is "a minimum of 4 million functioning Set Top Boxes installed in the country". (e.tv, 2012, p. 26)

While the SABC shares e.tv's view that requirements be aggregated across channels, it is also of the opinion that broadcasters should be exempt from these requirements during the dual illumination period. It further argues that this period should be accelerated. The SABC argues that this exemption will afford broadcaster an opportunity to assess whether "such content is desirable and also to change it if it is undesirable, without having to worry about stringent regulations" (2012, p. 9)

Rhodes university submission to the Broadcasting Regulatory Review advocates for local content quotas to be reviewed upwards. The submission maintains that these obligations should be applied to services “targeting South African audiences as part

of their business models." They should be obliged to "contribute to South African content, including music-specific television channels." (Rhodes University, 2012, p.33)

Kagiso reiterates the need for a review of the application of local content regulation for a multichannel environment to be informed by a wider cultural industry and ICT policy context. In this regard their submission to the Broadcasting Regulatory Review highlighted the fact that a review of local content regulation should be informed by, amongst others by a comprehensive DoC Policy review, a national content strategy and market study to gauge the state of play in content production including the availability of content and the viability of content creation industries (2012, p.28)

The NAB's submission added that such a review should be accompanied by a proper RIA exercise to inform "substantive" recommendations on the various regulations. (2012, p.9)

In exploring a new regulatory regime for local content, Kagiso however recommends that ICASA should consider the needs to exempt genre specific channels such as news and sport, aggregating requirements across the bouquet and retaining the pay or play principle for subscription television (2012, p.28)

The international case studies that were conducted as part of the literature review indicates that Australia considered the revision of Australian content quotas in its Convergence Review. (The Convergence Review Committee, 2012) While initially this review proposed extensive Australian content quotas in the digital broadcasting environment, the Australian Broadcasting Amendment Act (Australia, 2013) did not bring most of these into effect.

However, Broadcasting Amendment Act still extended the Australian content standard non-core television services. This implies that Australian content requirements now apply to all platforms. It also implemented a progressive increase of Australian content airtime for commercial free-to-air broadcasters. At the same time, the changes facilitate compliance by providing for a more flexible incentive and point system.

5.5.3.3 Coordination of supply side interventions

The need to coordinate local content regulatory mechanisms across the broadcasting value chain is constant refrain through-out the industry and sector reports, interviews, and stakeholder submissions. Industry reports highlighted the coordination gap to be most glaring in the coordination of production funding and incentive schemes. For example the NFVF 10 year review indicated a number of funding agencies involved in administrating and funding of incentive schemes. (NFVF, 2010, pp. 43-46)

The majority of respondents also emphasised this to be a major shortcoming of the local content supply side interventions, and contended that this aspect of regulation should be strengthened and coordinated to ensure that enough local content is generated to meet the content demands of a multichannel environment.

They advocated an interdisciplinary approach, as local content is a "national issue" (Respondent 7, interview, 13 March 2013) The respondent noted that with the ICT Policy Review there might be a need to review the three tiers of broadcasting, as the lines have now become blurred in a digital environment. They emphasised the fact that the regulator should focus on creating an enabling environment for existing players to be able to migrate to the DTT environment and to continue to thrive.

Some respondents like respondent 13, went further to argue for a broader market regulation addressing market failure and encouraging direct investment in cultural industries. (Respondent 13, telephonic interview, 12 Mach 2013)

The respondents also emphasised that given the nature and scale of resources required to meet the demands of a digital environment, stakeholders should be incentivised to provide local content. For example, Respondent 8 advocated a score card approach with points allocated to local productions. Other incentives could be allocating more capacity on the DTT mux to those broadcasters producing more local content. He argued that this would also encourage local content across other platforms, including mobile. (Respondent 8, Skype interview, 17 March 2013)

5.6 Revision of the local content regulations

The section above reflected the challenges posted by digital broadcasting and the South African Stakeholders' perceptions of the likely impact of DTT on the broadcasting market. The research question considered the changes required to the local content regulations in response to these challenges. It also explored appropriate mechanisms that could be applied in this regard.

The revision of local content regulations should be considered in the context of market, content consumption and regulatory challenges brought about by digital broadcasting outlined in section 6.5 above. The majority of respondents maintained that there should be a review of the local content regulations, and advocated a content regulation regime that is sophisticated enough for the market complexities of a multichannel environment.

In response to this research question, industry stakeholders did not address specific mechanisms but outlined broad principles that local content regulations should address. They indicated that given the scope of the changes and current challenges with the regulations, the revision would be more appropriate within a broader ICT policy revision.

5.6.1 Competition and Regulatory Parity

As mentioned in section 6.5.1, number of respondents and submissions highlight the need to regulate broadcasting and broadcast-like services equitably. In this regard, they indicate the following as key to ensuring regulatory parity in regulating local content.

- ≥ Applying quotas and requirements equitably across broadcasting services;
- ≥ Regulation of advertising revenue;
- ≥ equitable access to premium/ compelling content; and
- ≥ Facilitating fair content acquisition practices.

The main competition issues relating to digital broadcasting are summarised below.

Table 5:2 Digital Broadcasting and Competition

PLATFORM	SERVICE	BUSINESS MODEL	COMPETITION ISSUES
Traditional Terrestrial Television	One-way broadcast channels	Advertising/ license fees	Access to and property rights over spectrum, negative and positive externalities, and economies of scale
DTT	Mostly one-way multiple video channels, and limited interactivity including video on demand, pay-per-view	Some targeted advertising, license fees and subscriptions	Vertically integrated distribution and content production, negative externalities, control access to consumer, and economies of size and scope
Subscription Satellite	Mostly one-way multiple video channels, and limited interactivity including video on demand, pay-per-view	Some targeted Advertising and subscriptions	Vertically integrated distribution and content production, negative externalities, control access to consumer, and economies of size and scope
IP-TV	Two-way interactive multiple video channels	Targeted advertising, subscription and transaction fees	Access control

Source: Jakubowicz, 2007, p. 10.

An examination of South African broadcasting policy documents indicates that these policies anticipated the impact the digital broadcasting on the competition dynamics in the broad caring sector. These documents also reflect that regulatory parity, that is, regulating like services equitably, as a solution to the challenges anticipated.

The Triple Inquiry highlighted the fact that broadcasting services should complement each other and contribute towards public interest, which is conceived as the creation of market conditions allowing all services to thrive, protect the viability of the public broadcaster and secure access to services. (The IBA, 1995, p 28) It further argues that these principles should be retained in a digital environment and that convergence should not result "damaging or wasteful competition or unduly shift the costs of receiving information back onto consumers" and should not limit their access. (The IBA, 1995, p.27)

In the same vein, the White Paper provided for ICASA to develop a regulatory and licensing framework for multichannel broadcasting on both the terrestrial and satellite platforms. The licensing framework is also contemplated to include "data transmission." By so doing the policy pre-empted competition across all delivery platforms, and between traditional and converged services (DoC, 1998, executive summary, section 7.3)

The ICT Policy Review Green Paper views regulatory parity as a key mechanism of regulating competition in a converged environment. It states that regulatory parity is based on principles of fair competition and technological neutrality, and aims treat like services in a similar manner, regardless of their platform of their delivery platform our access devices used to receive them. (DoC, 2014, p.54)

These principles and related advantages are also reflected by Apperaley, who indicates that parity facilitated competition, investment and efficiency. At the same time he noted the difficulty in identifying similarities between services across delivery platforms, warranting regulatory parity. He also noted that there were disadvantages to regulating services equitably including, stiffing growth of innovative services and undermining funding for Australian and local content by relaxing local content requirements (Apperaley, 2011, pp.7-8)

Stakeholders' submissions to this ICT Policy Review Green Paper also reflect the sector's agreement with regulatory parity, but also differences in terms of how it should be applied.

The Mnet and Multichoice submission argues that in implementing regulatory parity, "the regulatory burden on traditional broadcasting services should be eased, while new media services should be "brought into the regulatory framework in an appropriate manner." (2014, p.12) It should however be in a manner that does not stifle the innovation required to sustain new media, and also affords traditional broadcasting services the flexibility they require to survive. (Mnet and Multichoice, 2014, p.19)

ACTSA argues that given its international nature competition for audiences over converged platforms cannot be regulate using conventional methods such as local content quotas. The focus should, therefore, be on "stimulating content production" rather than "throttling of information availability."(ACTSA, 202, p.11) The NAB further recommends that a light-touch approach be adopted in relation to all services, regardless of their platform (NAB, 2014, p.12)

On the other hand e.tv raised concerns about fair competition in the broadcasting sector. Its submission in particular highlighted its concern over competition for advertising revenue and its implications for the sustainability of Free-to-Air television in South Africa. (e.tv, 2014, pp.3, 21-23) e.tv also made a similar submission to the ICASA Broadcasting Regulation Review (ICASA, 2012), where it argued that television advertising revenue has not grown to the extent that it would accommodate new market players.

This submission noted that more Free-To-Air channels will be created with the advent of DTT, and that their reliance on advertising revenue warrants that ICASA to regulate competition more effectively. (e.tv, 2012, p. 8) Its submission to the ICT Policy Review Green Paper advocated direct regulatory intervention in the form of advertising revenue caps for subscription television services, must carry obligations and proportionate compensation for channels. (e.tv, 2014, p.7)

5.6.2 Funding of Content

Production and acquisition of programming are one of the major costs of implementing DTT migration. According to Plum Consulting, indicates that content is an important driver of uptake of DTT services. This however requires broadcasters to invest in content origination or digital content acquisition. (Plum Consulting, 2014, p.14)

This fact is also reflected in the interviewees, where the respondents emphasised the importance of content to the migration process. (Respondent 11, interview, 28 March 2014) (Respondent 18, telephonic interview, 22 April 2014)

Respondent 11 (Interview, 31 March 2014) further recommended that South Africa should consider a digital content fund similar to that proposed by the Australian Convergence Review. This review proposed that, since content is produced for multiple platforms Internet, Service Providers (ISPs) should also be required contribute into the fund. These funds can then be used to promote innovative ways of producing Australian content including content flighted over Internet Protocol Television (IPTV) and Video-on-Demand (VOD) Services (DBCD, 2012, p. 83)

An examination of broadcasting policy documents reflects the support for content production and therefore the uptake of DTT. For example, the White Paper on Broadcasting provides for multi-channel distribution services to contribute to financing of local content production by the payment of licence fees and contributing to production funds. (Doc, 1998, section 7.2)

5.6.3 Policy Review

Most of the respondents felt that the weaknesses in regulation and enforcement of local content regulations can be addressed by the policy review addressing the fundamental technology, market and policy issues affecting the broadcasting industry as a whole. They felt that this will not only address the weaknesses in the regulator, but will also lead to implementation of the revised framework that will, amongst others, ensure a fully functional public broadcaster and align the country's cultural industries policies and strategies.

The respondents argued that such a policy framework would not only articulate the approach to content regulation but will also provide an integrated policy and strategy toward the development of cultural industries. It will, therefore, also inform supply and demand measures that would sustain local content in a converged environment.

Broadcasting Policy in South Africa has always been forward-looking indicating that policy should provide direction regarding how broadcasting services and local content should be approached in a digital and converged environment. For example, The Triple Inquiry highlights the following priorities relevant to policy review; which will have an impact on the underlying principles for revising the local content regulations.

- ≥ *The need to co-ordinate the regulation of the broadcasting and telecommunications markets especially where interests may overlap in areas such as spectrum use where broadcasting services can be provided through telecommunications service providers and broadcasters may lay rival claims.*
- ≥ *The need to broaden access and choice for the majority of South Africans in broadcasting and information service through the most cost effective means which offer the lowest reception costs to the consumer.*
- ≥ *The need to test new technologies and services against their impact upon the dominant policy goal of universal access to broadcasting, telecommunications and information services.*
- ≥ *The need to counterbalance international broadcasting services distributed from satellite, which South Africa cannot regulate by a range of readily accessible domestic broadcasting services which have a high degree of local content and which reflect the cultural diversity of South Africans.*

(The IBA, 1995, p. 27)

The importance of basing the review of local content regulation within an overarching policy context is highlighted in a number of submissions made to the ICASA 2012 Broadcasting Regulatory review including those of etv, Mnet, Kagiso, SOS and the SABC. These submissions highlighted the fact that the Broadcasting Policy Review was being conducted outside of a proper policy review.

The SOS coalition (2012, p. 2) and Kagiso (2012, pp.2-5) went as far as to point out that this could be construed as the regulator addressing issues beyond its mandate. The SABC (2012, pp.3.5), Mnet (2012, p.6), NAB (2012, p.6) and Multichoice (2012, p. 2) emphasised the need for a review to be guided by an overarching policy review (2012, pp.3, 5)

In sum, the review of South African broadcasting policy documents, interviews and stakeholder submission highlights the fact that it is more prudent to review local content regulation within a broader ICT policy review process. These indicate the fact that such a review will achieve the following key to successful implementation of local content regulations on the DTT platform.

- ≥ Provide a vision of broadcasting and content development in a digital environment;

- ≥ Address effective competition in the light of market structure changes brought about by digital broadcasting and convergence;
- ≥ Address Intellectual Property Rights;
- ≥ Address new production funding models and coordinate incentives across the value chain; and
- ≥ Strengthen the PBS as the custodian of public interest programming**.**

5.7 Summary

This chapter presented an analysis of the findings outlined in Chapter 4. In relation to the definition and Scope of local content the research confirmed the public interest as the basis for regulating broadcasting and local content. It also advocated a broader definition of both broadcasting and local content to account for the market complexities of the digital broadcasting, maintain the cultural relevance and realise the economic advantages brought about by the migration.

In terms of the impact of local content regulations: the research indicated that they have been fairly successful, despite reservations on the depth and diversity of the programming. It also highlighted challenges with implementation and weaknesses within the regulator.

The research presented the market, business and regulatory challenges associated with digital broadcasting and highlighted the need to revise of local content regulations accordingly. The stakeholders indicated that the market was more complex than just direct translation of analogue broadcasting onto digital platforms and is likely to involve more complex issues.

The stakeholders also highlighted the importance of regulating competition effectively and applying parity in regulating local content. They provide principles as opposed to specific mechanisms that could be applied in regulating local content on the DTT platforms. These conclusions are expanded in the ensuing Chapter. The concluding chapter consolidates the finding, and analysis concludes the report with recommendations and areas for further research.

6. CHAPTER 6 REVISION OF LOCAL CONTENT REGULATORY ENVIRONMENT

6.1 Introduction

This research considered the current local content regulatory framework and implementation strategies in South Africa in the light of the multi-channel digital broadcasting environment, focusing on the DTT platform. It reflects on strategies of ensuring that the public interest objectives associated with broadcasting and local content regulation are retained. In this regard it considered market, technology and other changes brought about by digital broadcasting and consequently policy and regulatory changes required matching the changed environment.

6.2 Findings

This section summarises the findings of the research, highlights the main themes emerging from the literature review, qualitative interviews and the stakeholders' policy submissions. These are;

- ≥ the public interest motives underlying local content regulations;
- ≥ effectiveness of local content regulations; the impact of digital migration on the regulations; and
- ≥ the desirability of conducting a policy review to inform the revision of the regulations.

6.2.1 Public Interest

As we saw in chapter 4 industry stakeholders understood the local content regulations and their policy objectives. Similar to the literature review on public interest theory and South African broadcasting policies, the respondents and the stakeholder submissions maintained that broadcasting is a "public good". They argued that its imperatives could not be left to market forces and required regulations to ensure that the public interests are attained. They thus viewed local content regulation as necessary to ensuring that public interest goals associated with broadcasting are achieved.

Most of the stakeholders interviewed highlighted the cultural, economic and ideological reasons for regulating local content. Most were in agreement with the regulations and indicated that they had been effective in the sense that there is now demand for local programming. However, some expressed reservations with the quality of the content and the extent that content reflected South Africa's diversity and gave minorities a voice.

The respondents also advocated a broader definition of broadcasting to facilitate regulation of broadcast-like services that are competing directly with traditional services. They however did not indicate the elements that should be included in such a definition. They also advocated the inclusion of regional and African content in the definition of local content. They argue that this will reflect a more realistic view of local culture. The cultural proximity will also facilitate the expansion of the market for South African productions, and create economies of scale required to sustain local content in a digital broadcasting environment.

6.2.2 Effectiveness of local content regulations

The research indicated that the regulations were only effective as part of a larger system of regulation, which provides for both supply and demand side interventions. These included local content quota, financial incentives, copyright and intellectual property rights, and supported by treaties and co-production agreements.

It was noted that these spanned a number of government agencies, with the NFVF, dti and SARS playing a key role in relation to production incentives, and ICASA regulating content quotas. It was noted that intellectual property, while it played a key role in local content production, was largely regulated as a contractual arrangement. However, the creation of a level playing field and curbing of anti-competitive practices, were furthermore seen as an important requirement.

Industry stakeholders highlighted the fact that implementation and ICASA's capacity posed a challenge to the effectiveness of local content regulations. The respondents further cited various examples of how the regulator failed in this regard. The purported failure of the SABC to fully realise its public programming mandate was cited as a case in point.

The regulations also do not adequately address the supply side of the regulations and therefore not sufficient develop the independent production sector. The study highlighted implementation and enforcement as the major shortcoming of the regulation. The study further proposed strategies to improve the current regulations. It recommended that a comprehensive review of ICT and broadcasting policy, articulating a long-term vision of local cultural industries and content would be more appropriate for regulation of local content on digital platforms.

The respondents specifically cited a lack of accurate reporting and independent verification of monitoring information submitted by licensees as a major weakness. The study noted that the countries used in the comparison (Australia, Canada and the United Kingdom) implemented mechanisms of independently verifying monitoring information, and suggested that ICASA also consider mechanisms of implementing similar systems.

The stakeholders suggested mechanisms of improving this state of affairs, including improving monitoring and conducting a Regulatory Impact Assessment (RIA) of the local content regulations. It is, therefore, important that in re-formulating the regulations for the digital broadcasting environment, ICASA's policy making and review processes be re-considered.

6.2.3. The impact of digital migration

The research considered market, technology, and other changes brought about by DTT and consequently, policy and regulatory changes required to match the changed environment. These were conceived as informing strategies of ensuring that the public interest objectives associated with broadcasting and local content regulation are retained. These proposed strategies expanded in the recommendations section below.

6.2.4 Policy Review

The research recommends an overhaul of ICT policies in the country, based on above-mentioned regulatory weaknesses and the impact of digital migration. In this regard, the industry stakeholders argued that a revision of broadcasting policies would provide direction on how content should be regulated in a converged

environment, and by default the application of local content regulation on the DTT platform.

Such a policy framework would not only articulate the approach to content regulation but should also provide an integrated policy and strategy toward the development of cultural industries. It will, therefore, address both supply and demand measures that are required to sustain local content in a converged environment.

6.3 Recommendations

This section outlines recommendations emanating from the analysis of the above findings and reflects areas that regulation must addressed in order to ensure that that public interest imperatives associated with local content are carried through to the digital broadcasting environment. These relate to the following; the definition of broadcasting and the scope of local content; interventions required supporting local content production; Co-ordinating support side interventions; and broadcasting policy review and specific regulatory changes that must be implemented to support local content on digital platforms.

6.3.1 Definition of broadcasting and the scope of local content regulations

The study recommends that the definition and scope of broadcasting be expanded to include broadcast like services. This will ensure effective competition and ensure that similar services are regulated in a similar fashion and therefore place equitable local content requirements.

Related to this is the expansion of the definition of local content to include African and regional content. Not only will this be consistent with South Africa's support for the principle of using culture to further economic development as reflected Southern African Development Community Protocol on Culture, Information and Sport (2002) and African Union Charter for African Cultural Renaissance (2006). According to the respondents interviewed this will also serve to expand the market for South African originated content.

6.3.2 Interventions required in order to support local content production

Local content regulation contributed significantly to the growth of the independent production sector by creating demand for local content. However, their broadcaster economic impact will only be fully realised if incentives are coordinated in the context of broadcasting and content development strategy.

Given the anticipated increase in the cost of local production in a multichannel environment, it's also important that, in developing quotas and requirements, the economic viability of the sector be considered. These measures should consider the impact of the regulation on broadcasters' ability to attract advertising and to fund individual channels. It should thus consider overall profitability of broadcasting services. The exception should be public broadcasting services which are seen as custodians for local content. This requirement, however, must be matched with public funding.

The above implies that current content acquisition strategies and broadcasters' business models must be reviewed to ensure that broadcasters and the production industry can produce the volume and quality productions required in order to fill channels on the DTT platform. This review of the current content acquisition strategies should also encourage the broadcasters and content originators to share initial investment and risks. Given the wide ranging impact changes to broadcasters' business models would have, it is recommended that more research be conducted in this regard.

6.3.3 Coordinating support side interventions

It is important to adopt a holistic approach covering both supply and demand side interventions. Proposed interventions cover the entire value chain, including quotas supported by investment in production, tax incentives and production fund to stimulate the supply side of local content. In addition to these methods, the regulator must improve its monitoring and enforcement mechanisms. This implies that new monitoring methods and tools must be researched. The regulator must also develop the capacity to conduct RIA and conduct market research aimed specifically at

understanding market dynamic including audiences and services in the converged digital broadcasting environment.

In the interim, as suggested by the industry stakeholders, ICASA must improve its internal processes. It is suggested that ICASA explores the following improvements implemented by the countries used in the comparison.

- ≥ The Independent auditing of information received from licensees (Australia, Canada and United Kingdom);
- ≥ Reporting on expenditure per programming genre (United Kingdom); and
- ≥ Annual sector stats and industry information (Australia, Canada and United Kingdom) (ACMA, 2014; CRTC, 2010; Ofcom, 2010; ICASA, 2011).

6.3.4 Regulatory Changes

The digital environment is set to fundamentally change the manner in which the market operates. Revenue and audiences will not only be fragmented across the multiple channels on the DTT platform but also on converged platforms. Therefore broadcasting services will not only be competing amongst themselves, but with over the top services provided over other platforms such as the internet.

Therefore, the manner in which local content is perceived, and the scope of local content must change accordingly. Regulation should no longer be limited to promoting demand and supporting the production of local content, and the current tools such as quotas should be reviewed and applied in a more appropriate manner.

Options include a flexible approach, where local content quotas are aggregated across a bouquet of channels or shifted between the channels. However, it should also be noted that quotas are only effective as part of a broader well-coordinated system of regulating both the supply and demand of local content, supported by a strong monitoring and enforcement system. Some of the progressive strategies for regulating local content in the digital environment include:

- ≥ More stringent regulation of competition to ensure that audience and advertising does not erode the revenue base required to sustain local content productions for a multichannel environment;

- ≥ Harnessing technological developments to avail public interest programming across all platforms (DTT, internet, mobile etc.);
- ≥ Reviewing traditional broadcasting business models to suit the constantly evolving audience and media consumption patterns. In relation to DTT this must be based on audience research which will in turn their audience retention and revenue strategies;
- ≥ Considering more a progressive means of imposing content quota requirements across services bouquets, while making provision for niche and specialist channels;
- ≥ Coordinating local content supply side interventions and incentives;
- ≥ Exploring more progressive content acquisition strategies; and
- ≥ Protecting intellectual property rights.

6.3.5 Policy Review

It is recommended that as part of the ICT Policy review process currently underway, digital broadcasting be afforded more prominence and an overarching vision of local cultural industries and content be articulated. A more appropriate framework for broadcasting and local content regulations is best articulated within a framework addressing the following areas:

- ≥ Provide a vision of broadcasting and content development in a digital environment;
- ≥ Address effective competition in the light of market structure changes brought about by digital broadcasting and convergence;
- ≥ Address Intellectual Property Rights;
- ≥ Address new production funding models and coordinate incentives across the value chain; and
- ≥ Strengthen the SABC as the custodian of public interest programming.

6.4 Lessons Learnt

This section covers shortcomings and challenges encountered in conducting the research and also highlight areas for further research emanating from this study's subject matter.

6.4.1 Shortcoming and Challenges

The main challenge encountered in the research is the delay in implementation of DTT migration in South Africa. As indicated in the Chapter on the literature review, the process has encountered a number of delays which have resulted in uncertainty in the sector. As a result the researcher could not elicit specific recommendations relating to content regulations and the discussions centred around principles that should be followed in ensuring continued protection of local content on digital platforms.

This research should ideally be able to consider the practical impact of DTT on the South African market. However, due to delays in the migration process and the fact that ICASA itself has only instituted a review of local content regulations recently (July 2014), the research instead considered industry literature on the impact of digital broadcasting in general. This is supplemented by stakeholders' perceptions of the likely market and regulatory impact on the South African broadcasting industry.

Related to this are weaknesses in the structure of the interview guide. In an attempt to provide context to the review the researcher included sections A and B, respectively covering introductory comments on the principle informing local content regulations, and the impact of the current local content regulations.

Given the fact that the respondents were more familiar and were directly impacted by the subject matter, the interviews elicited more detailed responses in this section, as opposed to the core area of this study; which is the revision of local content regulations to suit the DTT platform. This limitation is addressed through a documentary analysis of policy documents, stakeholders' submissions to local content and DTT related policy processes, as well as further literature research using industry reports.

6.4.2 Areas of further research

At the time when the research selected the topic for study, DTT migration was a topical issue, and as indicated the process has for various reasons stalled. There are also two main policy processes underway covering revision of local content and broadcasting policy. The recent ICT Policy Review, initiated by the DoC in 2011,

and more recently the review of local content regulations instituted by ICASA in July 2014, had also not been conceived.

During the research a number of policy and regulatory themes emerged, that would enrich the body of research on digital broadcasting and local content regulation. These are outlined below.

6.4.2.1 Competition and Regulatory Parity

The creation of a fair competitive environment featured prominently in this study, with stakeholders highlighting the fact that competition is not effectively regulated in the current environment. A number of stakeholders highlighted the dominance of the incumbent subscription satellite service provider in a number of areas in the broadcasting value chain, ranging from premium content, audiences and advertising revenue.

The stakeholders advocated for regulatory parity as a remedy, and highlighted the following areas, which are also recommended for further research:

- ≥ Applying quotas and requirements equitably across broadcasting services;
- ≥ Regulation of advertising revenue;
- ≥ Equitable access to premium/ compelling content; and
- ≥ Facilitating fair content acquisition practices.

6.4.2.2 Revision of broadcasting business models

The research also highlighted challenges that the stakeholders anticipated with the uptake of digital broadcasting services, and broadcast-like services on other digital platforms such as internet. This necessitates a study on the likely course of migration, uptake of services, and the likely impact on broadcasters' revenue.

6.4.2.3 Intellectual Property Rights

The research did not consider intellectual property rights when the research questions were formulated. However, they proved to be an important element in analysing the impact of local content regulations on the production sector. Although these are

currently dealt with as a contractual matter, a number of stakeholders highlight them as a barrier to the development of production sector and advocate for a revision of the current regime. An avenue for further research is the form that such a change will take

6.5 Summary

The purpose of this research is to assess the current local content regulatory framework and implementation strategies in South Africa in the light of the multi-channel digital broadcasting environment, focusing on DTT platform. It examined strategies that can be implemented to ensure that the public interest objectives associated with broadcasting and local content regulation are retained with the migration of television services to the DTT platform.

The research was conducted through a literature review, documentary analysis of the regulations and policies supporting the local content regulatory regime, stakeholder submissions to related policy processes, as well as in-depth interviews with key industry stakeholders.

The findings indicate that local content regulations have been effective as demand for local content programming has increased. However, there were however, concerns that they did not sufficiently develop the independent production sector. There were also negative perceptions of the quality of local content programming, and arguments that this content does not reflect the cultural diversity and minorities' protection goals of the regulations. In addition, shortcomings are identified in relation to ICASA's capacity to enforce and assess the impact of the regulations.

The research further considered market, technology and other changes brought about by digital broadcasting, and, consequently policy and regulatory changes required to ensure the relevance of local content regulations in the changed environment.

However, it is recommended that more fundamental changes were required at an overarching broadcasting policy level. It is argued that the current broadcasting policies needed to be reviewed, and that this would provide direction on regulation of local content in a converged environment, and by default the application of local content regulation on the DTT platform.

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Appendix A: ICASA Regulations

YEAR	LEGISLATION/ POLICY	KEY ELEMENTS
1993	Independent Broadcasting Authority Act	Directed an inquiry into promotion of South African content on television and radio.
1994	Position Paper on one-year community radio licenses	Provided a framework for licensing temporary one-year community radio services, provided for local content programming.
1995	IBA Triple Inquiry Report	Made proposals on regulating South African Television Content and South African Music.
1996	Position Paper on Private Sound Broadcasting Services	Stipulates the provision of South African Music as a licensing requirement.
1997	Position Paper on Private Free-To-Air Television Services	Stipulates the provision of local television content and sourcing programming from independent production sector as a licensing requirement.
1997	The First South African Music Regulations and South African Television Content Regulations	Outlined quotas for music on radio and content on television, and a requirement for commissioning of independent productions.
1998	White Paper on Broadcasting	≥ It reinforced the Triple Inquiry stipulation that all broadcasters should have South African content obligations – varying in relation to the type of service offered (public, private, community, free-to-air or subscription. ≥ Contemplates a continuation of local content regulation in a multichannel environment. ≥ Contemplates the establishment of non-statutory Agency" to support production and encourage and promote local content.
1999	The Broadcasting Act	Translated the local content and media plurality directives expressed in the White Paper into legislation.
2002	Position Paper and Regulations on television and radio content	Reviewed the 1997 local content regulations and increased quotas, introduced format factors to promote neglected genres and minority languages.
2004	Position papers and regulations on community radio	Provides a framework for regulating community radio. Encourages locally sourced content as a cornerstone of community radio.
2004	Position papers and regulations on community television	Provides a framework for regulating community radio. Set a fairly high (55%) local content quota for local content programming and reiterated sourcing programming from independent production sector as a licensing requirement.

YEAR	LEGISLATION/ POLICY	KEY ELEMENTS
2005	The Electronic Communications Act (ECA)	Transferred the local content and related legislative requirements previously expressed in both the IBA and Broadcasting Acts into Chapter 8 of the ECA.
2006	Position papers and regulations on subscription television	Provides a framework for regulating and licensing subscription television services. Confirms an 8% local content quota, a 10 % independent production quota and provides for a payment-in-kind alternative for subscription service.
2006	South African Television Content Regulations revised	Made provision for subscription broadcasters in line with ICASA regulatory framework for pay-tv.
2008	Must Carry Position Paper and Regulations	Provides for the terms and agreements upon which subscription services are obliged to carry Public Broadcasting Services including local content programmes. Does not stipulate specific local content quota requirements.
2008	Broadcasting Digital Migration Policy	≥ Highlights the need to review the South African content quotas for a multichannel environment. ≥ Encouraged programming intended to promote amongst other things provincial content. ≥ Reiterates the need to facilitate further development of the creative industries. ≥ Commits to establishing) "aimed at generating content" for digital broadcasting, "contributing to the development of the Creative Industries as well as job creation.
2009	Position Paper and Regulations on Commissioning of Independently Produced South African Programming	Provided a framework for regulating Commissioning of Independently Produced South African Programming.
2009	Draft Local and Digital Content Development Strategy	Published to by the DoC to give effect to local content pronouncements by the Broadcasting Digital Migration Policy.
2010	The Position Paper in relation to Internet Protocol Television (IPTV) and Video-on-Demand (VOD) Services	≥ Set ICASA's parameters for regulating IPTV and VOD. ≥ Indicated that while IPTV fell within the existing legislative definition of broadcasting service, VOD did not and should be classified as an Electronic Communications Service (ECS); and concluded that IPTV services required.

YEAR	LEGISLATION/ POLICY	KEY ELEMENTS
2012	Broadcasting Regulatory Review Issues Paper	≥ Confirms preservation and promotion of local culture and languages as the primary purpose for regulating local content. ≥ Specifically highlights issues for consideration in the digital environment to the preservation of quotas, classification of different genres, and dissemination of local content on the various delivery platforms.
2012	The Position Paper and regulations on Digital Terrestrial Television migration	≥ Reiterates the Digital Broadcasting Migration views on the use of digital broadcasting to promote local content and minority languages and culture; the establishment of digital production hubs; and the need to review local content regulation for a digital environment. ≥ Contemplates licensing requirements and channel authorisation procedures. ≥ Retains current quotas until a comprehensive review of local content quotas ≥ Makes must carry applicable across all FTA channels ≥ Makes provision for the establishment of a Digital Television Content Advisory Group, to advice of the most effective way to acquire content and to incentivise the uptake of DTT services.
2014	The ICT Policy Review Green Paper	Intended to provide a revised broadcasting policy and a comprehensive future vision of the broadcasting sector in South Africa including the application of local content regulation to a converged environment.
2014	Discussion Document and Study on the review of local content regulations	Reviews the local contest regulatory arrangements, in the light of market developments and a multichannel broadcasting

Appendix B: Interview Schedule

INFORMATION SHEET, CONSENT FORM AND INTERVIEW QUESTIONS

INFORMATION SHEET:

MASTERS RESEARCH REPORT: REGULATION OF LOCAL CONTENT ON THE DIGITAL TERRESTRIAL TELEVISION PLATFORM

Dear Key Participant

You are invited to take part in this research study. Before you decide whether or not to take part, it is important for you to understand why the research is being done and what it will involve. Please read the following information carefully.

Background & overview of the study

This study is being conducted by **Botlenyana Mokhele** in partial fulfilment of the requirements for a Masters of Management in Public Policy at the Graduate School of Public and Development Management at the University of the Witwatersrand.

The proposed study will assess the current local content regulatory framework and implementation strategies in South Africa in the light of the multi-channel Digital Terrestrial Television (DTT) platform. It further examines strategies that can be implemented to ensure that the public interest objectives associated with broadcasting and local content regulation are retained in the migration from analogue to digital.

The DTT migration process will have a far reaching impact on all South African audiences and public interest associated broadcasting. The initial regulation of local content on digital platform is limited to commercial services, but the DTT migration process focuses mainly on public broadcasting services, free-to-air and community television services. By introducing multiple platforms, more channels, interactive services, and by changes in consumer behaviour, market structures and funding of broadcasting services, the DTT platform poses a challenge to the sustainability of the economic basis of local content regulation. Furthermore this migration process involves all elements of the traditional broadcasting value chain; including content generation, signal distribution and reception devices and will thus have a major

impact on the broadcasting industry in its totality. This impact calls for a revision of the rationale and the methods used to regulate local content in South Africa.

The organisation and funding of the research

Botlenyana is a private student and the study is not being funded.

Deciding whether to participate

Taking part in the research is entirely voluntary. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time and without giving a reason. There are no risks in participating in this interview although you may be inconvenienced by taking time out of your busy schedule to be interviewed. There will be no direct monetary benefit to you for your participation. However, the study may have several beneficial outcomes. In particular, it will further our understanding of the topic and contribute to the knowledge in the field.

Confidentiality

Any personal information collected about you will be kept strictly confidential. Identifiers will be removed from the data when the research findings are consolidated into a report and will not be included in any subsequent publications. The anonymised data generated in the course of the research will be kept securely in paper or electronic form for a period of five years after the completion of a research project. It may be used for further research and analysis.

Research Ethics

If you have concerns about the research, its risks and benefits or about your rights as a research participant in this study, you may contact Charley Lewis, see contact details below.

Contact for further information

Please contact the below for any further information you require pertaining to the study.

Supervisor Details

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Thank you for taking time to read the information sheet.

CONSENT FORM:

Masters Research Report: Regulation of Local Content on the Digital Terrestrial Television Platform

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 withdraw at any time, without giving reason. ☐

3. I understand that the researcher will not identify me by name in any reports using information obtained from this interview, and that my confidentiality as a participant in this study will remain secure. ☐

Please tick box

Yes ☐ No ☐

4. I agree to the interview being audio recorded. Yes ☐ No ☐

5 I agree to the use of anonymised quotes in publication

6. I agree that my data gathered in this study may be stored (after it has been anonymised) in a specialist data centre and may be used for future research Yes ☐ No ☐

Signature	Date
Name of Participant	Date
Signature	Date
Name of Researcher	Date

Semi-Structured Interview Questions

A. Introductory comments on Local Content Regulation

1. What do you understand by the concept of local content in the context of public interest programming for television broadcasting? Please explain.
2. To what extent should local television content be protected and promoted? Please give reasons for your answer.
3. What sorts of mechanisms do you believe should be implemented to protect and promote local television content? Please explain.

B. Impact of local content regulations

4. What are your views on the nature of local content regulations and their implementation to date?
5. How effective do you believe the regulation of local television content has been to date?

C. Revision of Local Content Regulation

6. a) What sorts of challenges do you see the introduction of DTT presenting to the current local content regulation regime? Can you elaborate?

6. b)What would say are the main issues concerning production and distribution of local content in South Africa?

7. To what extent, if at all, do the issues affecting the regulation of local content differ with respect to the DTT as opposed to other television platforms (i.e. analogue, Digital Satellite Television etc.)?
8. The current local content regulations were initially conceived an analogue environment. South Africa is in the process of migrating to a Digital Terrestrial Television (DTT) platform. To what extent - if any - do you believe that the promotion of local content through regulation should continue on the Digital Terrestrial Television (DTT) platform? Please explain your answer.
9. What regulatory mechanisms would you say are appropriate to promote the production and consumption of local content in the DTT environment?
10. What changes - if any - would you recommend to the current local content regulations to cater for DTT? Please explain.
11. Are there any mechanisms other than regulation that need to be adopted to protect and promote local content on the DTT platform? Can you explain?