



Broadcasting Services Act
Fact Sheet Seven:
Limitations on programme content

Introduction:

The most problematic sections in the Broadcasting Services Act (BSA) (2001) relate to the restrictions on the programme content of potential private broadcasters.

The restrictions include local content quotas and the requirement that all broadcasters must make one hour available to the government “to explain its policies” to the people. Failure to adhere to any of these restrictions can lead to the suspension, or worse, cancellation of licenses.

This section looks at some of these restrictions and argues that they are inherently unconstitutional as they give the government undue influence over what private broadcasters may wish to transmit.

One hour per week to be set aside for the government:

In terms of Section 11(5) of the BSA, all broadcasters are “obliged to make one hour *cumulatively* per week available, at its request, to the government to explain its policies”. This is clearly not justifiable in country that professes to be a democracy! Why should the government have greater rights in explaining its policies over, say, other opposition parties and interests groups such as labour unions, civil society organisations, etc.?

The requirement that the one hour per week is cumulative implies that should the government not utilise its ‘rightful’ one hour per week for the next five weeks, an affected broadcaster will effectively be ‘owing’ the government a total of five hours of free broadcasting airtime!

In addition, this requirement means that the government has a right to change the editorial content of any broadcaster. For instance, if one is operating a subscription satellite service which only broadcasts sports and movies, they will be forced to flight political news in the form of government broadcasts to accommodate the government’s requirements.

This requirement constitutes an unreasonable interference with a broadcaster’s right to broadcast freely as well as the listener’s rights to tune into a station of their choice.

It is, in effect, an infringement on citizens’ fundamental rights to seek, receive and impart information through the media of their choice, and thus falls foul of Section 20(1) of the Constitution of Zimbabwe. Section 20(2) of the Constitution only grants the government the right to interfere with individual’s right to free expression only if these rights are a threat against public safety, health, morality, or the economic interests of the state.

Clearly, the proposed interference cannot be justifiable under any of these categories.

Further, the Minister of Information is granted the power to “impose *any* programme standard, which in his [*sic*] opinion will provide appropriate community safeguards” (section 25). (This section gives the Minister wide and discretionary influence and is another abridgement of the freedom of expression guaranteed by the Zimbabwean Constitution.

Any restriction on freedom of expression must fall within the limitations outlined in the Constitution (Section 20(2)) or must be worded in such a clear and precise manner that individuals will be clear on how to conduct their actions. The section states that the Minister

has the power to impose “any” standards he/she may choose and this will be dependent on “his [sic] opinion”. This is obviously open to abuse and selective application.

If the power of the Minister to control programme content was restricted to situations of gross abuse of licences such as hate speech or direct incitement to racial or ethnic violence, the restrictions may well be considered reasonable. However, the ministerial discretion is so wide as to cover any possible situation, which the Minister may decide to prescribe. This therefore renders his/her powers unconstitutional.

Section 39 and the Fifth Schedule (Part III) of the Act also state that:

“if there is an event which in the Minister’s discretion constitutes a major accident, natural disaster, epidemic, civil unrest or public disorder or war and there is a declaration to this effect by the Minister, a licensee shall provide his [sic] facilities to anyone to communicate an emergency free of charge... in addition a licensee is obliged as a public service to provide sufficient coverage of national events.”

And: Further, by simply publishing a notice in the Gazette, the Minister becomes entitled to broadcast free of charge on a commercial broadcast “such items of national interest as are specified in the notice.

Commercial broadcasting exists to make profit, thus, every single second of broadcast time counts for money. If the government wants to broadcast anything, it has access to four state radio channels and one state television channel, so why should it legislate that it can use a private broadcaster’s resources to broadcast “national events” or “national interest” items *gratis* becomes difficult to understand!

If the government wants to utilise the airtime of a private broadcaster, it must pay like any other client for that service as is common practice in most democracies. Besides, what constitutes a “national interest” item? The Minister in his/her sole discretion determines the answer to this question.

For community broadcasters, there is a prohibition against broadcasting material of a “political matter” (Fifth Schedule, Part IV). “Political matter” is loosely defined as “including the policy launch of a political party.” Without a universally agreed legal definition of what a “political matter” is, this clause exposes all community broadcasters to the caprices and whims of the Minister of Information, who has the discretionary power to determine what is political and what is not political.

This means that community broadcasters are in fact gagged even before they go on air in direct contravention of the individuals’ rights to freely express themselves as guaranteed under Section 20 (1) of the Constitution.

Mandatory local content requirements:

In order to promote and protect their local arts industries, most countries the world over prescribe mandatory local content requirements in broadcasting. Zimbabwe is not an exception in this regard.

Local content quotas help to promote local languages, culture and national identities in an era where Western domination of the global arts industry threatens to render smaller cultures and languages extinct. However, the local content quotas stipulated under Zimbabwean law are, if not ridiculous for a country that has such a poor arts industry, prohibitive to say the least. In the Sixth Schedule of the BSA, 75% of all broadcast content is supposed to be of local origin (section 11(3) and (4)).

According to the Sixth Schedule, all television broadcasters are required to have 75% local or African programming (Clause 2(1)), of which 70% or more of its drama, current affairs, social documentary, informal knowledge building, educational and children’s programming must be from a Zimbabwean source (Clause 2(3)).

For radio broadcasters, 75% of their music must be of local origin, while another 10% must be of African origin. For subscription TV, 30% of the music broadcast must be Zimbabwean, while a further 10% should be of African origin. Further, 10% of all productions must be of other Zimbabwean vernacular languages other than Shona and isiNdebele (section 11(4)).

While in principle these requirements are laudable, in practice they are almost impossible to achieve considering the poor state of the arts industry in the country right now.

There is virtually no support film and programming industry to assist licensees to get the broadcast material to meet the quota. It is impossible to imagine that, even if Zimbabwe's broadcasting and arts industry is well-developed, say for instance, to South Africa's standards and capacity, licensees would be able to meet these steep requirements. The end result will be poorly produced and re-repeated 'dramas', 'street theatre' plays, music videos and talk shows which will soon lose appeal to viewers. There will simply be a dearth of material to broadcast and it seems as if the mandatory requirements were made to ensure that very few companies, if any, can invest in broadcasting, and thus maintain the ZBH monopoly.

The South African example:

In South Africa, local content is not legislated in terms of an Act of Parliament. The Independent Broadcasting Authority (IBA) Act states that the regulator shall set local content quotas (section 53 of the South African Independent Broadcasters Act [IBA]).

In terms of the regulations, private broadcasters are required to carry at least 20% South African content and are given a maximum of years to reach this quota unlike in Zimbabwe where broadcasters are expected to reach their targets as soon as they first go on air. Subscription TV is required to carry 15% South African local content and public television 50% (see the IBA Local Television Content Regulations (1997), sections 3, 4 and 5, and the IBA Africa Music Regulations, (section 3).

Further, a prospective licensee is allowed to pledge the local content quota (above the stipulated requirements) that they can meet, and state how they will meet this over years upon getting the licence and they are bound by the law to meet their promised quotas.

Ends.