

Icasa's proposed sports broadcasting regulations: A bleak future for SA sports

By [Kuhle Mavuso](#)

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South Africans are a sports-loving nation, often building social cohesion through sport. Former President, Nelson Mandela built bridges between South Africans through sport:

“ Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does. It speaks to youth in a language they understand. Sport can create hope where once there was only despair. It is more powerful than government in breaking down racial barriers. ”



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South African football fans were left disappointed in 2018 by a "blackout" of all Premier Soccer League (PSL) matches on the broadcasting platforms of the South African Broadcasting Corporation (SABC). It is reported that the "blackout" was due to a break-down in the negotiations between the SABC and Supersport regarding the terms of a mutually beneficial sub-licencing arrangement that would ensure that the PSL matches are broadcast on the SABC platforms. The PSL broadcasting rights are currently exclusively licensed to Supersport.

The public disagreement between the SABC and Supersport happened at the same time as the local broadcasting regulator, the Independent Communications Authority of South Africa (Icasa), published significant proposed amendments to the Sport Broadcasting Services Regulations, 2010 (the 2010 Regulations). The initial 2010 Regulations have been lauded internationally for having adopted a sensible approach in balancing the needs of various stakeholders, including sports fans, sports federations, broadcasters and advertisers. The proposed amendments, however, tip the balance by significantly curtailing the ability of sports federations to licence their broadcasting rights on an exclusive basis. If the public submissions made in response to the amendments are to be believed, these amendments are likely to have dire impact on sports in South Africa.

In terms of understanding the broader legislative landscape, section 192 of the Constitution, requires Icasa to regulate the broadcasting industry in the public interest and section 60 of the Electronic Communications Act (ECA) provides that:

“ Subscription broadcasting services may not acquire exclusive rights that prevent or hinder the free-to-air broadcasting of national sporting events, as identified in the public interest from time to time, by [Icasa], after consultation with the Minister [of Communications] and the Minister of Sport and in accordance with the regulations prescribed by [Icasa]. ”

Many other nations such as Australia, India, the United Kingdom (UK) and the European Union have similar legislation to section 60 of the ECA (sometimes referred to as anti-siphoning laws). In the UK, similar legislation covers those events which are generally felt to have special national resonance, and which contain an element which serves to unite the nation and are a shared point on the national calendar.

In response to the proposed amendments to the 2010 Regulations, Icasa has received 33 written submissions from numerous interested stakeholders, including broadcasters, universities as well as local and international sports federations such as Cricket South Africa and the International Cricket Council. During the oral hearings which took place in May 2019, most stakeholders, such as the South African Hockey Association, Netball South Africa and the PSL, submitted that the current regulatory regime created by the 2010 Regulations accords with international best practice and strikes the appropriate balance between the needs of all material stakeholders.

During the consultation process, a significant number of stakeholders cautioned that while the objectives of Icasa ("[to] reach a wider audience and to strike a balance between audience and revenue) are laudable, the proposed amendments will hamper the ability of sports federations to earn sufficient income to invest into the local sporting industries which is necessary to produce internationally competitive senior national squads. Stakeholders submitted that if the sports federations are unable to attract sufficient revenue from the licensing of their broadcasting rights on reasonable and discretionary commercial terms, the following initiatives are likely to suffer:



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- Various grassroots development programmes;
- Elite player and coach development and retention;
- The training of umpires;
- Programmes designed to address past racial inequalities;
- Programmes designed to invest in international competitiveness;
- Programmes designed to increase the participation of women in male dominated sporting codes such as cricket, soccer and rugby;
- Programmes designed to safeguard the physical well-being and safety of persons and property at sports events;
- The maintenance of stadia and other facilities;
- Increasing levels of awareness and exposure to minority or less popular sports such as hockey and tennis; and
- The attractiveness of South Africa as a host destination for major sporting events.

In this regard, it was submitted by broadcasters such as the SABC that if the same content is available across all services, broadcasters (free-to-air and pay-tv) will find it increasingly difficult to grow an audience. The SABC also submitted that the proposed amendments should have been preceded by an economic impact assessment which measures how stakeholders would be impacted by the proposals.

Local and international sports and broadcasting industries and sports fans alike wait with bated breath for the outcome of the consultation process undertaken by Icasa – hoping that there may be a sensible resolve to the concerns raised and that broader access rights will not unravel the underpinning of the sports industry itself.

The proposed amendments may also need to be considered in light of the objectives of the ECA as enunciated in section 2

thereof, which require it to:

- encourage investment, including strategic infrastructure investment, and innovation in the communications sector;
- refrain from undue interference in the commercial activities of licensees while taking into account the electronic communication needs of the public; and
- promote stability in the ICT sector.

It may well be that these proposed amendments lose sight of these and require refinement.

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