

Compromised ICASA toothless against SABC?

Without a strong, independent regulator to ensure the public broadcaster fulfils its licensing conditions and public mandate, only Parliament and the Department of Communications can call the SABC to account — and both of these institutions are dominated by the ruling party.



The Independent Communications Authority of SA (Icasa) regulates all airwaves and all fixed-line communications. In practice, Icasa has often maintained the status quo through “light touch” regulation or even self-regulation, rather than taking a proactive stance.

The problem, however, say commentators, is that Icasa is itself dominated by vested interests — both in the government and in business — and its independence and capacity has been compromised.

“(Icasa) is a systemic failure in exactly the same way the SABC is a systemic failure. The SABC is imploding first, and Icasa will be next,” says broadcasting lawyer Justine Limpitlaw.

Limpitlaw says the regulator suffers from juniorisation and a lack of skills. She blames Parliament for recommending councillors with insufficient experience and who had not demonstrated a commitment to independent regulation.

Councillors are recommended by Parliament’s portfolio committee on communications and are appointed by the communications minister.

A weak regulator suits many

“The problem is, the council knows which side their bread is buttered, and they won’t do anything to stand up for Icasa’s independence. It suits government to have a weak regulator,” she says.

A weak regulator suits both big business and the government, says Limpitlaw. She says broadcasting needed to be regulated in the public interest, to ensure that broadcasters meet their constitutional mandate.

Both the SABC and Icasa are forfeiting autonomy in favour of external, and perhaps exclusively political, intervention,

Rhodes University journalism professor Guy Berger said in his Thought Leader blog last week.

He said there was a view in the African National Congress that policy should be made by the government and Parliament and not by outside institutions.

Icasa had not tried to stick up for its independence when it appeared before the portfolio committee, said Berger.

Icasa's weakness appears to be manifest not only in the regulations it publishes, but also in its ability to monitor compliance with those regulations.

Media Monitoring Africa has started a new project to assess the SABC's compliance with its own licence conditions, says executive director William Bird, as it was concerned that Icasa was not able to fulfil this function properly.

The SABC is required to submit compliance information each quarter to Icasa, which should then draw up a report assessing the extent of this compliance. But the SABC's compliance information is submitted in the form of a report drawn up by the broadcaster assessing its own compliance with regulations, and without providing supplementary information such as programme schedules. This means the report is unverifiable.

The last available report compiled by Icasa on the public broadcaster, for the March 2006 to March 2007, was withdrawn after the SABC complained about its methodology. A copy obtained by *Business Day* reveals that the SABC failed to comply with several regulations including those on news, current affairs, documentary, educational programming, South African drama, children's programming, and language.

In some cases the limits on advertising — 12 minutes an hour — were not complied with.

Report would no longer be relevant

Icasa spokesman Sekgoela Sekgoela says the regulator is able to carry out its monitoring duties, and is in fact doing so. He says the report on the SABC for March 2006 to March 2007 had revealed that the SABC was complying with the local content quotas and the 12 minutes requirement on advertising.

“This report is still under review and will be in the public domain in due course,” he says.

“Compilation of the SABC's compliance with regulations, licence terms and conditions and specific issues in the charter takes longer to prepare as information has to be thoroughly verified against that submitted by the SABC.”

The danger of this approach is that the report would no longer be relevant once released, several years after the period to which it relates, says an independent media researcher.

Kate Skinner, spokeswoman for the Save Our SABC (SOS) coalition of civil society organisations, says a special meeting would be convened to discuss Icasa after members expressed unhappiness about the regulator.

Independent producers complain that the system of commissioning series, where the broadcaster retains full copyright, prevents growth in the industry, but Icasa has elected not to intervene in this matter.

The Freedom of Expression Institute, which is also a member of SOS, says it is “deeply disappointed” by a ruling from the complaints and compliance committee of Icasa that it did not have jurisdiction to intervene in the blacklisting controversy.

The public broadcaster had failed to make the Sisulu commission's report on the matter publicly available and had not detailed the steps it would take to prevent this happening again.

Icasa chairman Paris Mashile says the regulator is “ready to engage” its critics but asked for concrete evidence rather

than a “philosophical discussion”.

The problem is, the council knows which side their bread is buttered, and won't do anything to stand up for Icasa's independence

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