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SOUTH AFRICAN FILM & TELEVISION INSTITUTE

2nd July 1993

Melody Emmett
Coordinator of Technical Committees
Multi-Party Forum
World Trade Centre

Faxno : 397-2211

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Dear Ms Emmett

I am writing on behalf of SAFTI with regard to the draft bill on the proposed Independent Broadcasting Authority.

As you are aware, the draft bill was tabled and made available for public comment on June 22. The deadline set by the MPF for such comment was July 5, next Monday.

As the bill envisages substantial and highly contentious changes to South Africa's broadcasting dispensation we believe it is essential that those drafting it do only so after taking account of as wide a range of opinion as possible.

This has not been the case: the MPF has given the public just two weeks to get a copy of the draft bill (no mean task in itself), study it, and formulate a meaningful and considered response. We believe this is impractical. The draft bill is 84 pages long and is incomplete. We therefore request that the MPF extend the period allowed for public comment by at least 10 days - that is, to July 15.

We are concerned that the inadequate time set aside and mechanisms established for public submissions will result in only a token and wholly inadequate contribution by the public on the issue of the IBA. We believe this is not in keeping with the commitment by the MPF to an open process on all issues, and to a substantial public role on the issue of broadcasting in particular.

We would appreciate your making known our concerns and our request to the appropriate MPF structures as soon as possible, and to all participating parties. However, our hastily considered response is attached in the meantime.

Yours sincerely



Carl Fischer
Chairperson - SAFTI



NB: REVISED 2/7/1993 AT 16H00

Initial comments by the Council of SAFTI on the draft IBA Bill dated 22nd June 1993.

SAFTI has continuously supported the concept of an Independent regulator for broadcasting in South Africa and finds the following aspects of the draft commendable:

1. The depoliticised manner in which the IBA is appointed as well as the planned independence of the IBA : it will only report to Parliament and intervention by the Executive will be legally improper.
2. The open, public hearings which the IBA will hold and the rights of interested parties to address the Board.
3. The authority which the IBA will have to award the conditions of existing licensees in accordance with this Act, which also regulates the duty of broadcasters towards local independent producers (Sect 51).
4. The limitations of foreign control which will only benefit the local independent product (Sect 45).
5. The limitations on Control of Private Broadcasting Services as well as cross-ownership (Printed Media - Private Broadcasting). It is of the utmost importance that there should be a multiplicity of voices. Although the draft does secure the position of M-Net's shareholders, it does not allow for further expansion. "No person shall be in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300,000 and have company interests in more than one private broadcasting licence" (Sect 47(7)) "No person shall be in a position to have company interests exceeding 35% in a private broadcasting licence and be in a position to exercise control of a newspaper or newspapers whose average or combined average circulation exceeds 300,000" (Sect 47 (10)).

6. Section 50 provides quite extensively for the protection of independent local product. The definition of local content is questionable. It defines local product in such a fashion that it excludes programmes such as sport, advertisements, game shows, teletext and continuity announcements. It defines independent local producers in an acceptable fashion. It ensures that a broadcasting licensee would not have control of a local independent production company. It gives the IBA the authority to include conditions in a broadcasting licence which would place a duty on broadcasters to :-
- a. expend a minimum percentage of its gross revenue on programmes which have a local television content; and
 - b. allocate a minimum percentage of the total amount of broadcast transmission time to television content; and
 - c. allocate, when the licensee provides a subscription television broadcasting service, a minimum percentage of unencoded time to programmes which have a local television content; and (for the further aspects see paras (d) and (e) which deal with local and regional TV and with the allocation of a minimum percentage of the percentages to a prescribed diversity of TV programmes which are independent TV productions).

Section 50 (4) (d) authorises the IBA to set a minimum period within which the broadcaster shall comply with this section.

SAFTI does not support the view set forth in the note that Section 50 is superfluous in the light of Section 3 (14). It is of paramount importance that the IBA should get guidance from the Legislative. The section does not set fixed percentages. This approach may, at first, seem too vague. Yet, on reconsideration it is important that the IBA, as independent body with special expertise, should be allowed to work out a policy after a proper investigation which would include the opportunity for SAFTI to address the IBA. No longer will SAFTI find itself in the problematic situation where it will have to address the SABC management - the very management which has a vested interest in its own production company. The SABC will be allowed to produce a certain percentage of local product itself. However, the independent local producer will no longer have to compete against SABC owned units for the local product allocated to it by the IBA.

7. SAFTI supports the concept of self-regulation of matters such as accuracy, fairness and sensitivity towards cultural differences. SAFTI also supports the prohibition of censorship of programmes by the Broadcasting Monitoring and Complaints Committee (Section 56 (2)).
8. SAFTI supports the approach according to which licenses cannot be revoked unless a gross and repeated transgression takes place (Sect 67). Contracts by independent producers with licencees should not be subject to revocations on an arbitrary basis. Vested interests are at stake.
9. **Points of Criticism**
 - a The term of three years for commissioners is too short. To ensure that the IBA can plan its policy for the future properly, three years is far too short. The IBA should have a term of five years. This kind of term will also draw persons with real expertise, who may not want to get involved on a full-time basis for only three years (Sect 7).
 - b To ensure that the broadcasters do not have to channel massive amounts to the IBA, it is submitted that the State should subsidize a significant part of the expenses of the IBA.
 - c Section 33 guarantees the licence for Sentech and refers to the "signal distribution company of the SABC". The Act or the IBA (who should be under a duty to put this into effect) must ensure the absolute independence of SENTECH. This is absolutely necessary for the equal treatment of all broadcasters.
 - d SAFTI opposes the intervention of Parliament as proposed by the draft in two instances :
 - (i) The privatisation of Public Broadcasters
 - (ii) The revocation or suspension of the licences of public broadcasters.
 - e The definition of Broadcasting Service should be expanded to include such persons as provide a service which involves the collecting of revenues as a result of the reception within the Republic of international television or radio signals by satellite or other means.

- f The definition of local content should not exclude game shows and sport, since this contradicts the objects and policy of the act regarding the development of the a national identity, culture and character. Local sport and local game shows can contribute toward the culture and character of a nation. Further the current definition discriminates against local producers of game shows and sports programming.

Intervention of Parliament politicises the matter once again. The IBA, once constituted in the special and transparent manner for which Schedule I provides, should be trusted to do its work properly. Once the spectre of Parliament's consent is present, it affects the independence of the IBA.

SAFTI Council
2nd July 1993