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# TECHNOLOGY, MEDIA & TELECOMMUNICATIONS ALERT

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### Revenue "*Streaming*"? The South African government sets its sights on licensing content streaming services

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## Revenue “Streaming”? The South African government sets its sights on licensing content streaming services

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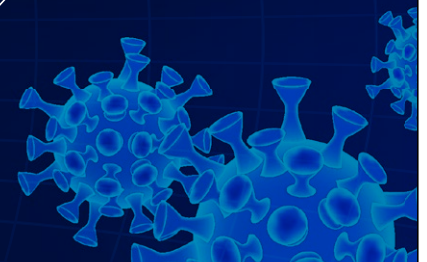
Many on-demand content streaming services have thus far managed to evade licensing requirements in South Africa, but a new white paper seeks to change this.

The Department of Communications and Digital Technologies has published a draft white paper which may bring significant regulatory changes to the South African broadcasting landscape, in particular for on-demand content services. The draft white paper, titled *Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020* (Draft White Paper) was published early in October 2020 and seeks to align the regulatory framework for broadcasting with the increasing popularity of on-demand content services, which includes streaming platforms. The Draft White Paper aims to align South Africa’s policy, legislative and regulatory framework with the Fourth Industrial Revolution and ever-evolving technology so as to promote investment in the audio and audiovisual contents industries.

The Draft White Paper states that “the current statutory definition of broadcasting services is too narrow and too platform-specific in its application by the regulator to capture the range of new audiovisual content services proliferating online”. It therefore, seeks to adopt a more technology neutral approach and proposes new definitions which seek to encompass the various forms of on-demand content services including “audio and audiovisual content services”; “on-demand content services”; “on-demand audiovisual content services”; “on-demand audio content service”; “user-generated video” and “video sharing platform services”. The introduction of these definitions and regulation of the defined services will level the so-called playing field between traditional linear broadcasters and non-linear service providers by creating a set of rules that promote fairer competition and regulatory parity between the two.

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One of the most significant proposed changes is the introduction of a licensing regime for on-demand audiovisual content service providers, including those offered over the Internet. Based on annual turnover in the preceding financial year, on-demand audiovisual content service providers will either apply for an (i) individual licence or (ii) class licence. Service providers with an annual turnover of R100 million or greater in the previous financial year will be required to apply for an individual licence, while service providers with an annual turnover of between R50 million and R99 million in the previous financial year will be required to apply for a class licence.

Video sharing platform services, which allow users to upload and share video content, are exempted from licensing, however the white paper emphasizes that they are not exempt from regulation. Rules in respect of hate speech, protecting minors and other regulations will still apply to these platforms.

The Draft White Paper states that the Independent Communication Authority of South Africa (ICASA) should remain the regulator in respect of the newly defined audio and audiovisual content services, but recommends that there be a closer working relationship between ICASA and the Film and Publication Board to ensure a coordinated approach to the regulation of the services, avoid duplication and any possibility of regulatory ‘forum shopping’.

The Draft White Paper may be a meaningful step to levelling the competitive landscape in South Africa and correcting disparities in the regulation of traditional linear broadcasters and non-linear service providers.

The white paper is open for comment until 30 November 2020.

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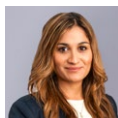
***Fatima Ameer-Mia, Lee Shacksnovis  
and Mieke Vlok***

## OUR TEAM

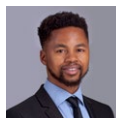
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### **BBBEE STATUS:** LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### **PLEASE NOTE**

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