

CA consulted stakeholders on media programming rules – a rejoinder

Our attention has been drawn to an article in the *Daily Nation* of January 18 under the banner 'State should consult with stakeholders to make rules that support media industry', which dripped with inaccuracies regarding the recent publication of the Programme Code for Free to Air radio and TV broadcasting services by the Communications Authority of Kenya (CA). CA wishes to address the said inaccuracies as follows under the 'right of reply'.

In his opinion piece, Dr. Hannington Gaya - the Chairman of the Media Owners Association (MOA) –alleges that CA issued the programme code without first consulting stakeholders. This allegation has no grain of truth as the Authority subjected the Code to public and stakeholders' consultation from April 8 to May 7 last year. During the consultation period, the Authority received input and representations from 11 stakeholder groups, including media owners. The Authority subsequently convened a stakeholders' workshop on the programme code on July 9, 2015 at the Stanley Hotel attended by 100 representatives from 79 organisations during which the analysis of submitted inputs was discussed in detail with stakeholders. An additional 18 representations and inputs from stakeholders were submitted and deliberated on during the said workshop, and thereafter during one-on-one meetings convened by CA.

The public and other stakeholders will also recall that NTV's Press Pass programme of 20th April 2015 dedicated a show on the code following the publication of the draft code during which more inputs were ventilated and subsequently analyzed alongside other submissions. The Press Pass video clips are available at <https://www.youtube.com/watch?v=NtDAbPHzls0> and <https://www.youtube.com/watch?v=8MJz89bic5o>

A report on the consultative process undertaken on the programme code is available on our corporate website at <http://www.ca.go.ke/images/downloads/PublishedResponses/Analysis%20of%20Public%20and%20Stakeholder%20Comments%20and%20Inputs%20on%20Public%20Consultation%20on%20the%20Programme%20Code%20and%20Complaints%20Handling%20Procedure%20.pdf> We are, therefore, dismayed by MOA's dishonesty on this matter.

Indeed, as ICT stakeholders will also confirm, the Authority usually subjects all its major regulatory decisions to a process of public and stakeholders consultation in line with the provisions of the Constitution. A visit to our website will bear this fact out. At the moment, six draft regulations have been published in the CA website for stakeholders' comment, including the draft broadcasting regulations as reviewed by a taskforce set up by the ICT Cabinet Secretary last year.

The Code basically outlines the programming standards that radio and TV broadcasters have to observe, and constitutes one of the licence conditions that licensed broadcasters have to adhere to. It is primarily meant to ensure that children are protected from unsuitable and inappropriate programmes during

the family viewing or listening hours otherwise referred to as the watershed period (from 5.00a.m. to 10.00pm). In accordance with Section 46H of the Kenya Information and Communications Act, the Authority is required by law to develop and enforce the programme code for free to air broadcasting services. The Authority has therefore not arrogated this responsibility unto itself.

Contrary to Dr. Gaya's claims, the Code does not in any way interfere with free operations of media enterprises. The media, like all other enterprises in the country, is expected to operate within the confines of the law. In any case, the Supreme Court of Kenya, in its ruling on the digital migration case, clearly noted that it would not be unfeasible for broadcast licences issued by the Authority to come with some content or programming standards. Indeed, the broadcast media is regulated globally through the mechanism of a programme or broadcasting code. The publication of the code is, therefore, not unique to Kenya.

Section 46 H of the ICT sector law also allows a body of broadcasters to develop their own programme code and an enforcement mechanism that its members can subscribe and abide by, and forward the same to the Authority for approval. Therefore local broadcasters who wish to be governed by their own Code are at liberty to do so, as long as CA endorses the Code and the attendant enforcement mechanism.

On the review of the broadcasting regulations, the Authority wishes to remind the MOA that rule-making powers in the sector reside in the Ministry of Information, Communications and Technology. As already alluded to, during the latest review of the broadcasting regulations last year, the Ministry set up an inclusive taskforce in which MOA was most ably represented by Nation Media Group's Linus Kaikai and Owino Sekou. The Taskforce's output that incorporated inputs from the media owners is currently undergoing public consultation and CA calls on MOA to encourage its members to submit comments on the draft regulations which are uploaded onto CA's corporate website. We have no doubt that the new leadership in the Ministry of ICT shall sustain this longstanding tradition of public and stakeholder consultation in its rule-making activities in the future.

In respect to local content, it is important for MOA to note that the Authority uses the parameters outlined in the broadcasting regulations in enforcing compliance. Local content rules feature in all jurisdictions with a view to ensuring that broadcasting services support and promote opportunities for local film producers in order to nurture the creative arts industry and create jobs. In addition, the rules ensure broadcast programmes promote local cultures and values. There is hardly any country in the world that includes advertising and news in the definition of local content. The taskforce on the review of broadcasting regulations considered this matter and indeed excluded news and advertising from consideration as local content. The taskforce also considered the various station formats in the country and enhanced the definition of local content to include new parameters for other programme genres including cartoons.

As alluded to above, local content rules do not interfere with the constitutionally guaranteed freedom of establishment as alleged by Dr. Gaya. On the contrary, the rules are meant to ensure creation of jobs for our youth, a noble cause that our local media should champion. Indeed, the National ICT Policy Guidelines and ICT sector law obligate broadcasters to dedicate a minimum amount of time as prescribed by the Authority to the broadcast of local content. Nonetheless, broadcasters are encouraged to take advantage of the ongoing public consultations on the revised broadcasting regulations to submit their input on the definition of local content.

The Authority remains open to engage broadcasters and other stakeholders with a view to ensuring the local broadcasting sector works efficiently and creates value in the greater interest of the public, and licensees.

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