

*Enthusiastic content regulation has achieved a great deal in supporting local music and production, says Lara Kantor.*

# Local made lekker

**T**his year may be the 10th year of democracy and 10 years of free and independent broadcasting regulation, but it has been only seven years of local content regulation for South African broadcasters. The first local content regulations came into being in 1997. In this time, local content regulation has been extraordinarily vigorous; therefore, although there are not yet 10 birthday candles on the local content cake, a retrospective is already worthwhile.

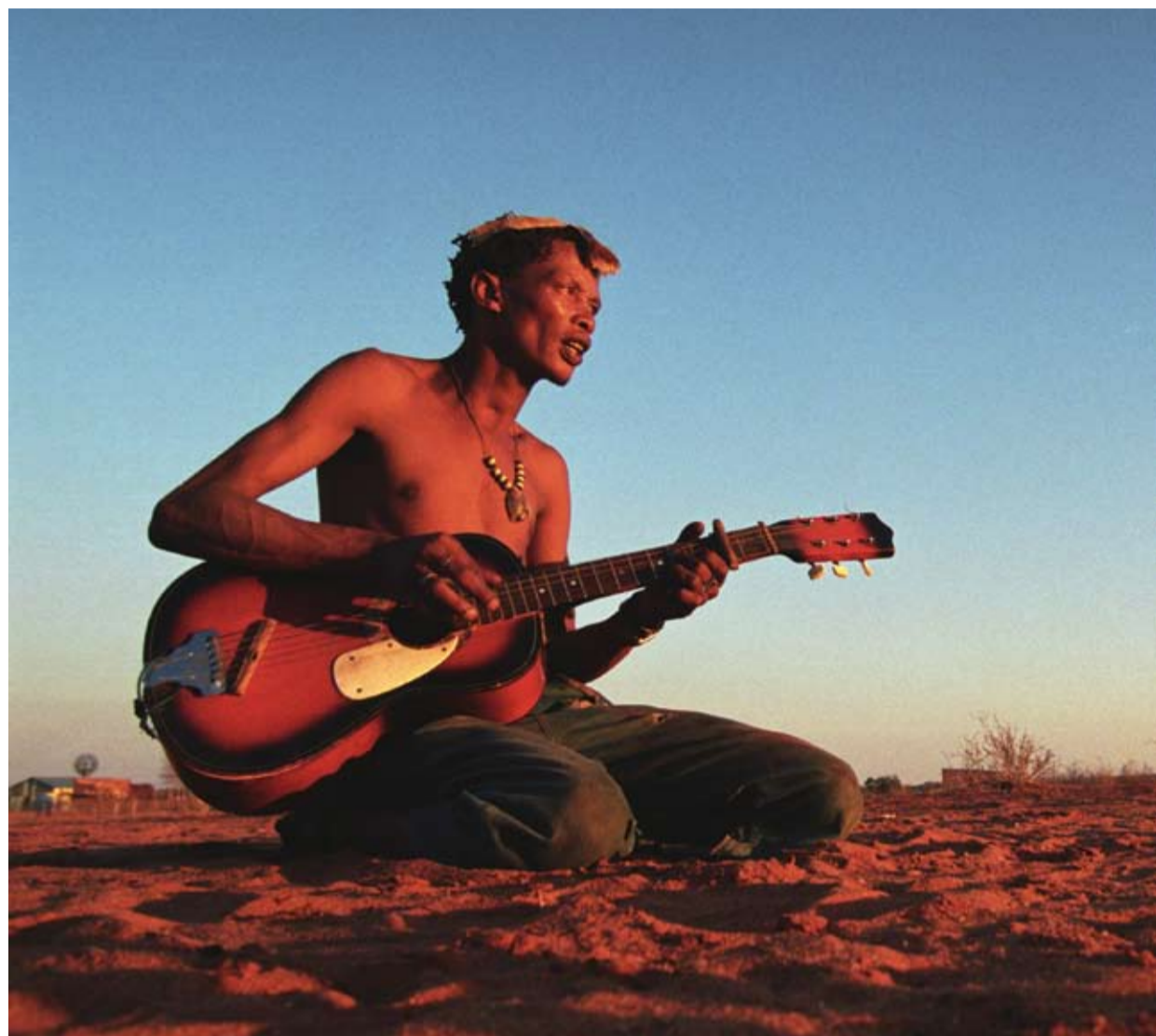
It was in the then not-so-shabby halls of Johannesburg's downtown hotels that local content quotas for radio and television stations were first mooted. These were the venues for the Independent Broadcasting Authority's (IBA) public hearings on local content, cross-media ownership and the SABC, held over many months during 1995 and finalised in a report to the Parliament in August of that year.

The hearings saw independent film makers, musicians and various public interest groups lobby loudly for the newly formed regulator to set minimum quotas on airtime for South African material. That this inquiry took place before any new commercial broadcasters were licensed, and long before "proudly South African" made local lekker, is an indication of the early importance attached to local content.

Dubbed the 'Triple Enquiry', the IBA hearings were perhaps predictable in their divisiveness. On the side of the angels stood the above mentioned cultural choir, singing a catchy tune about the economic and social benefits of enforcing local content on air. On the other side of the microphone were the decidedly un-cherubic broadcasters arguing costs and, well, costs.

The outcome was a set of local content quotas for all radio and television stations. Initially greeted with squeals of protest by broadcasters, the 20% quota for both commercial radio and television was soon quietly accepted. It wasn't long before applicants for new licences were promising to exceed the minimum quota. (The most notable of these was the generous promise by etv that it would offer 45%

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local content, although this commitment is now cause for complaint by the free-to-air channel as its quota is higher than competitors who made no such rash assurances.)

Broadcasters didn't have long to get accustomed to the quotas before the IBA's successor, the Independent Communications Authority of South Africa (ICASA) made good on its promise to review and raise the quotas in an inquiry launched in November 2000.

This time broadcasters were more sophisticated in their response, supporting local content regulation and the setting of quotas, but also arguing for a broader approach by the regulator. They argued: the regulator should also seek commitments by the music industry, funding by government and should provide incentives for broadcasters to invest in more marginal types of local content, such as arts programming.

Much of the discussion focused on the impact the previous quotas had had on the local music and production industries. Evidence was mixed on whether the quotas had made any direct positive contribution to the growth of these industries.

Broadcasters said there was no evidence that quotas alone could achieve sustainable growth in the recording and production industries. This was supported by some recording and production industry representatives. Gallo, for instance, submitted that, "while there has been a noticeable increase in the sales of local kwaito product, there has been no discernable difference in the fortunes of South African pop and rock music. Local content quotas do not work for all genres".

International success stories such as in France and Australia were also cited, and here the evidence was clear – when governments come to the party, the local content cake grows. In these jurisdictions,

on-air quotas are only one part of local content regulation.

Governments invest heavily in subsidising production, developing and supporting industry training and international marketing efforts, and granting tax incentives, among others. Together with on-air quotas, such interventions have seen local cultural industries thrive in these jurisdictions.

Broadcasters suggested that ICASA should copy some of the more successful international ideas such as the well-regarded Australian Music Performance Committee (AMPC), where the broadcasting and recording industries report regularly on compliance with the quota and on recording and production of new local music. (This suggestion was one of those initially taken up by ICASA, but squabbling between the music and broadcasting industries on the terms of reference appears to have stalled progress.)

The reviewed local content quotas, which came into effect in August 2003, were significantly different from the previous ones, and incorporated some of the suggestions made by broadcasters.

Firstly, the quotas were raised substantially (see tables) and secondly, ICASA adopted some of the suggestions of broadcasters and introduced a points scheme whereby additional points towards the quota can be gained if minimum criteria are met.

In terms of this scheme, commissioning African language programming and sourcing programming from provinces other than Gauteng, KwaZulu Natal and the Western Cape can earn broadcasters additional points. In radio, the scheme works to capture the on-air promotions broadcasters undertake in support of South African music and allow these to count towards the quota. Alarming for television broadcasters was the new rule that limited the contribution of repeats to the quota. As of August 2003, with a few exceptions, only the first repeat of



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local material is allowed to count fully for the quota – from then on it counts as if it is foreign content.

Since its implementation, broadcasters have been perturbed about the repeat restrictions, particularly the impact on genres such as children's and educational programming, which, by nature of their audiences, are designed to be repeated frequently.

The SABC has objected to ICASA stating that in making children's programmes subject to the same repeat restrictions as other forms of South African programming, the authority "may do significant damage to the SABC's ability to perform on its mandate to provide quality children's educational programmes and to cater to the needs of the child audience". At the time of writing, ICASA had not yet given any indication that it would adjust the repeat restrictions.

Perhaps most unpromising about the 2003 local content regulations is, that in the first eight months of their existence they had to be amended twice.

This is probably a consequence of their complexity. The quotas no longer simply measure air-time but also provide an intricate set of formulas through which repeats are penalised and additional points can be gained. The only thing trickier than implementing these quotas will surely be monitoring adherence to them, a task ICASA is charged with.

As the clock ticks towards the next review of local content quotas, which ICASA has promised will be in late 2006, what have we learnt about local content regulation?

Clearly local content is an area on which ICASA has chosen to regulate aggressively. This is not the case for all public mandate areas. An analysis of the approach the regulator has taken on language equitability shows, that this is, in contrast, a

## Current overall television quotas

Public Broadcasting Services	55%
Commercial Free-to-air Television	35%
Terrestrial Subscription Services	8%

## Genre quotas for public television services

	Previous quota	Increased by	Current quota
South African Drama	20%	15%	35%
Children's Programming	50%	5%	55%
Documentary Programming	50%		50%
Informal Knowledge Building	50%		50%
Current Affairs Programming	80%		80%
Educational Programming	60%		60%

## Genre quotas for public and private commercial free-to-air television service

	Previous quota	Increased by	Current quota
South African Drama	10%	10%	20%
Documentary Programming	25%	5%	30%
Informal Knowledge Building	25%	5%	30%
Children's Programming	20%	5%	25%
Current Affairs Programming	50%		50%

## Current radio quotas

	Previous quota	Increased by	Current quota
Public Service Radio Stations	20%	20%	40%
Community Radio Stations	20%	20%	40%
Commercial Radio Stations	20%	5%	25%



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surprisingly light-touch. The existing licensing frameworks for commercial radio and television make no specific requirements on language, but rather encourage stations to include languages other than English in their programming.

While in its decisions, the authority stated its intention to favour those applicants that propose to include indigenous languages, in practice most licences have been awarded to English language stations<sup>1</sup> and all current commercial radio licensees broadcast predominantly in English.

That local content has received more attention may be testimony to the greater lobbying power of musicians and filmmakers, or simply a consequence of the law mandating the regulator to conduct the Triple Inquiry – prioritising local content above other areas.

Parallel with its enthusiastic regulation of local content has been a refinement in ICASA's approach. Instead of just counting minutes, the regulatory framework now seeks to encourage certain kinds of behaviour such as investment in local African language programming, and discourage other behaviour like repeating said local African language programming. This refinement – while not always completely logical (in the case of repeats) is necessary. As our local broadcasting market has matured there is a need for more sophisticated and nuanced

rules and regulations.

So what might a 2006 review of local content hold? ICASA will probably want to raise the quotas again, driven by the elusive promise in the White Paper on Broadcasting Policy that foresees a majority of local content on all broadcasters within 10 years (of 1998).

The public broadcaster has already fulfilled that promise and it is therefore likely that the next review of quotas will put additional pressure on commercial operators to raise their output of South African content. Quotas of the future may also increasingly link local content to other public interest goals such as language and regional diversity – encouraging broadcasters not only to play local programmes but also to make contributions to other public interest goals.

Still three years shy of its 10th birthday, local content regulation has undoubtedly achieved a great deal. It will probably get another boost as ICASA looks at licensing new commercial radio operators in the next 18 months. Whatever the rules, the actual contribution to local content is finally made by broadcasters who have, so far, confounded the cynics and actively bought into the goal of supporting South African music and production. In that context the 50% goal for all broadcasters is perhaps not so elusive after all.

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<sup>1</sup> Two licences were awarded to Afrikaans language commercial radio stations. They subsequently went insolvent and are no longer broadcasting.