

BROADCASTING REGULATION

in the new South Africa

COLIN KNOWLES, GENERAL MANAGER PLANNING AND CORPORATE, ABA, RECENTLY RETURNED FROM THREE WEEKS IN SOUTH AFRICA WHERE HE WAS PROVIDING ASSISTANCE TO THE INDEPENDENT BROADCASTING AUTHORITY OF SOUTH AFRICA (IBA) TO ESTABLISH A BASIS FOR PLANNING NEW INDEPENDENT BROADCASTING SERVICES IN THE 'NEW SOUTH AFRICA'. THIS PROJECT WAS JOINTLY FUNDED BY THE AUSTRALIAN INTERNATIONAL DEVELOPMENT ASSISTANCE BOARD AND THE IBA, AT THEIR REQUEST.

The massive political changes in South Africa have been reflected in an opening-up of the airwaves to new independent broadcasters, new laws and a new independent broadcasting regulator, the IBA, to administer the laws. The IBA will put in place a system that will provide a diverse range of broadcasting services at the national, regional and local level. Broadcasting in South Africa will cater for all language and cultural groups and provide entertainment, education and information. South Africa has a diverse range of language groups to cater for, population centres ranging from very densely settled to sparse, and a topography which frequently makes it difficult to adequately serve the target populations.

Prior to the changes to the law, all broadcasting in South Africa was provided by the government-owned South African Broadcasting Corporation (SABC) which operated a large number of separate services. The SABC levies receiver licence fees. In recent years some temporary licences were granted to aspirant commercial and community broadcasters, but these were for short periods. Some broadcasting services from the former 'independent homelands' operated under separate legislation of the homeland governments.

NEW REGULATORY ENVIRONMENT

The new South African law reflects many elements within similar laws in Australia and Canada and opens the way for the development of separate



community, national and commercial radio and television sectors. Naturally, the transition from a government monopoly to a diverse industry will take time and careful handling. To that end the law requires the IBA to undertake several inquiries into various aspects of the SABC, including its viability, before moving to grant permanent licences to new entrants.

Amendments to the law were passed earlier this year which allow the IBA to grant temporary licences to community broadcasters. In September 1994 the IBA published draft regulations designed to set in train the process leading to the issuing of such licences. Because of the wide interest in owning a broadcasting license, the IBA decided to provide these temporary licences for low power services (5-10km coverage) which would allow many more interest groups to be catered for. The IBA

hopes to grant the first of these licenses before the end of 1994.

Broadcasting transmission facilities for the SABC are provided by SENTECH, a subsidiary company of the SABC. SENTECH is an independent transmission company responsible for providing and maintaining transmission services for the SABC for a fee and is responsible for the eventual replacement of transmission equipment. Any dividends earned by SENTECH are paid back to the SABC. SENTECH contracts its services to private or community broadcasters on the same basis.

The new laws provide separation of the broadcasting and transmission licenses (Broadcasting Distribution Licences). They provide for licensing 'common carriers' of broadcasting services who provide

carriage and infrastructure to any licensed broadcaster on non-discriminating terms. At the same time they allow for broadcasters to establish their own facilities, or to contract with third-party carriers who are not common carriers. Full responsibility for compliance with technical conditions of the transmission system rest with the broadcast distribution licensee. The broadcasting licence is principally concerned with content.

RADIO AND TELEVISION

While there are currently many interested aspirant commercial broadcasters, the current advertising market is reported to be relatively small. Therefore, it seems unlikely that all of the aspirants would be successful even if there were unlimited channels available in the frequency bands. Virtually all radio broad-


casting is presently on the FM band. There are a small number of very high power AM stations (the AM spectrum is almost vacant) while the FM spectrum in the major centres around Cape Town and Johannesburg is intensively used and only a few channels remain available for new services.

Television services are provided by the SABC and a commercial subscription television licensee, MNET. Both were in place under the former South African government. The IBA will be looking to introduce new independent, commercial, free-to-air services as well as community television services as it moves on to allocation of new licences.

AN INDEPENDENT AUTHORITY

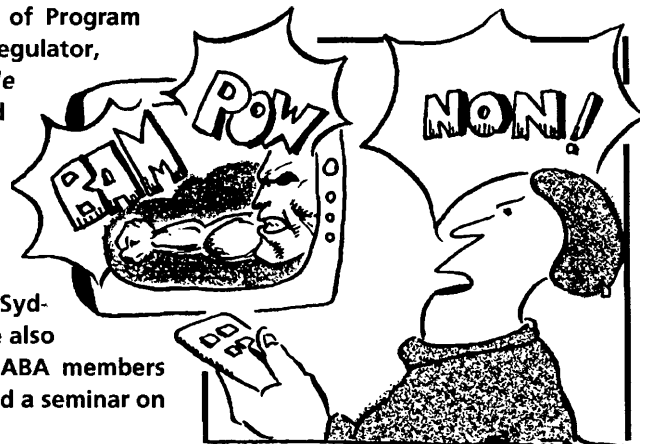
Establishment of a new regulatory agency in a country with no former open public regulatory scheme for broadcasting is a challenge in itself. There is a limited pool of experience from which to recruit staff and all policy and procedures have to be developed from scratch. The IBA has this task. It comprises seven councillors appointed after extensive public process, of which two are co-chairpersons. The composition of the IBA council attempts to ensure all major interests are represented and that it is truly independent.

The IBA's task is made doubly difficult because the legislation expects that new processes will be in place and operating within the 12-month period of transition for the existing broadcasters. There is strong interest in early issue of new licences. All of this has to happen in parallel with the IBA appointing all staff, finding suitable offices, preparing regulations, and conducting inquiries. To expedite the process, the IBA council quickly began conducting essential hearings without the benefit of any significant staff support.

There is a tremendous will to achieve results and to meet the challenges of the new order. There seems to be a great deal of goodwill among aspirants to see the process conducted properly and efficiently. By the end of 1994 most of the key professional and support staff of the IBA will have commenced duty allowing it to critically appraise the received infrastructure and the development of a new competitive, commercial sector, and a representative community broadcasting sector. 

MAINTAINING FRENCH CULTURE ON THE AIRWAVES

François Hurard, Head of Program Services for the French regulator, Conseil Superieur de L'Audio-visuel, visited Australia to address the 1994 forum of the Office of Film and Literature Classification, 'Multimedia Regulation and the Family' held in Sydney on 5-6 October. He also held discussions with ABA members and staff, and presented a seminar on regulation in France.



The Conseil is responsible for the regulation of audiovisual media including film, video, television, pay TV and radio. Mr Hurard spoke about the main content areas regulated in France.

In France, programs are broadcast in accordance with a quota system which is an obligation placed upon both public and commercial broadcasters. The quota system requires that in prime time (6pm to 11pm) as well as Wednesday afternoons (youth program time) no less than 60 per cent of programming be European works and 40 per cent be 'original French-speaking' works.

Private broadcasters do not pay licence fees for access to the broadcasting spectrum, but are required to contribute to the expansion of the production industry by commissioning French-speaking or European productions. This 'contribution' represents between 15 and 20 per cent of their annual turnover, two-thirds of which must be allocated to independent producers.

ADVERTISING

Private broadcasters are able to show advertisements between programs and are limited to one insertion of commercials during a program. The public broadcasters are only able to show advertisements between programs, and interruptions to programs are not allowed.

As in Australia, the advertising of cigarettes and tobacco products is prohibited. France prohibits political advertising.

PROTECTION OF YOUTH

The Conseil is responsible for ensuring that children and adolescents are protected from material which may be harmful to them. The Conseil issued a direc-

tive on the protection of minors after researching the regulatory regimes of various countries. The Conseil noted favourably many aspects of Australia's Children's Television Standards.

The directive issued by the Conseil requires broadcasters to ensure that they do not broadcast programs for young people which contain scenes likely to offend the sensitivity of a young audience. The broadcasters are also required to ensure that programs broadcast in peak viewing times are suitable for a family audience. Programs of an erotic nature or those likely to incite violence must not be shown between 6am and 10.30pm. In relation to other types of programs, a 10pm restriction applies to those not suitable for children under 12 years. The '10.30pm watershed', two hours later than the Australian M classification zone, needs to be considered within the context of the organisation of French 'family life', in that dinner time is usually between 8pm and 8.30pm and children's bedtime is at 10pm.

Broadcasters are required to warn viewers that a program may offend their sensitivity, particularly audiences which are likely to include children and adolescents. In addition to the directive the Conseil recently issued guidelines to the broadcasters in relation to 'reality shows' requiring that particular care be exercised in the presentation of suffering and distress.

MONITORING AND SANCTIONS

Each year the Conseil monitors 40,000 hours of national television programming. Regional television content is moni-