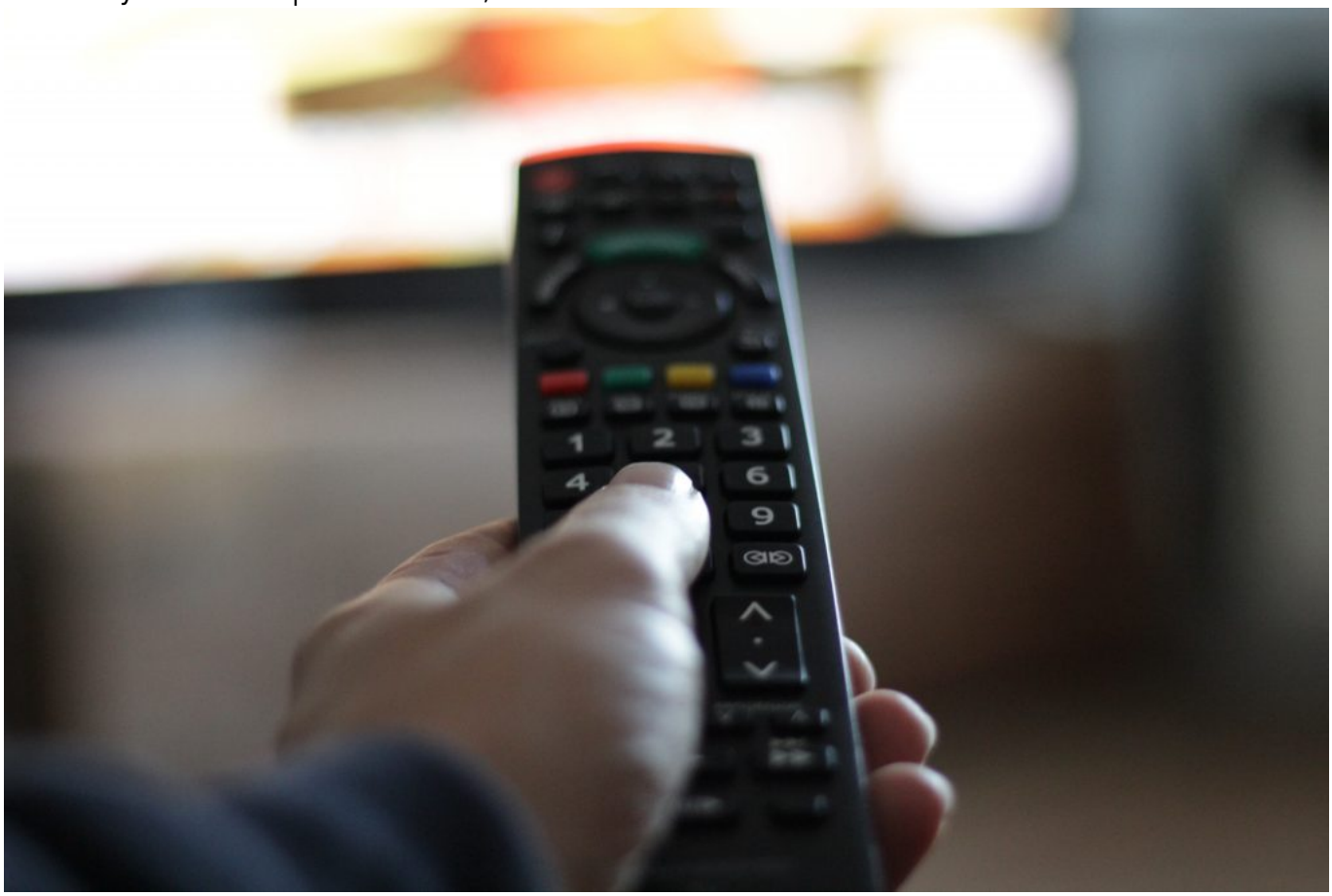
SABC'S HOUSEHOLD BROADCASTING LEVY – THE PROPOSED NEW SYSTEM

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In June 2021, Cabinet passed the South African Broadcasting Corporation ("SABC") Bill for public comment. However, the SABC is unhappy with the Bill in its current form, stating that the Bill does not provide for adequate financing of the Corporation because it is struggling to collect TV licence fees. South Africans have been increasingly resistant towards paying annual TV licence fees in the recent years, with an evasion rate of 75%. During public hearings held on 20 September, the SABC instead proposed a public broadcasting household levy system, which provides for fees to be paid to the SABC based on people's access to devices. This household broadcasting levy means that users will be charged based on the possibility of access to SABC services, rather than actual usage of services.

The proposed system is based on Germany's household levy system. In 2018, the German Federal Constitutional Court ruled that the monthly fee levied on every household to fund public broadcasters is constitutional because the financing of public service programming is fundamental to democracy((Judgement of 18 July 2018 – 1 BvR1675/16.)). The levy is applicable to all households, and home owners that own more than one property will only be liable to pay the fee once. The levy of €17.70 funds several public service broadcasters as well as a radio station. The plaintiffs in the case argued that the levy imposes a hidden tax by states in Germany that have no authority to levy. In addition, it was argued that the levy is inequitable because the fee is not charged on actual usage or the number of people using the service within a house.

It is important to understand whether the German system can be applied in a South African

context considering the vast differences in socio-economic circumstances. South Africa has a large number of informal communities, and implementing such a system can prove to be difficult in collecting the levy. Although the SABC could benefit from imposing such a levy which can possibly lead to increased revenue, many consumers could be driven towards services such as Netflix and Amazon, which can ultimately lead to decreased revenue. Whether the revenue would actually go towards the SABC is another pertinent question, as the SABC has been plagued with issues of maladministration and misuse of public funds over the years. Furthermore, the Bill in its current form does not cater for low income households and introduces harsher penalties for non-payment of licence fees.

During a virtual hearing on 20 September, MultiChoice indicated its disapproval of the proposed regime and the Bill, stating that the Bill's proposal to shift the power to make the TV licence fee regulations from the Minister of Communications to the Independent Communications Authority ("ICASA") does not make sense – ICASA deals with broadcasting regulations yet the collection of TV licences are practical aspects. Additionally, Multichoice stated that it was not appropriate for regulations to be made jointly by ICASA and the Minister of Communications because the Bill's proposal to give the SABC the right to veto regulations that affect it is impermissible, as no person must exercise decision-making power or judgment in their own matter. The publication of the ICT White Paper on Audio and Audio-visual Content Services may also have an impact on current broadcasting legislation. The White Paper proposes the recovery of the SABC to come in the form of a delegation of the collection of TV licence fees to other persons, particularly pay-tv platforms such as Netflix and MultiChoice. It remains to be seen whether the proposals in the White Paper will be accepted as it has raised a new round of controversy in the media.

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