

ANALYSIS OF PUBLIC AND STAKEHOLDER COMMENTS ON THE PROPOSED PROGRAMMING CODE FOR FREE TO AIR BROADCASTING AND THE COMPLAINTS HANDLING PROCEDURE FOR BROADCAST CONTENT AS AT 30TH NOVEMBER 2015

1.0. Introduction

Following the call for public and stakeholder consultations on the draft Programming Code for Free-To-Air Radio and Television Services, and the Complaints Handling Procedure in the print media from 8th April 2015 to 8th May 2015, inputs were received from a number of stakeholders through various fora.

Table 1 and 2 lists the sources of contributions received while Table 2 and 3 set forth the list of comments and inputs that were received and analysed against the proposed Code and Complaints Handling Procedure.

Table 1: List of stakeholders who submitted inputs during the consultation period

Index	Name of Stakeholder
1.	NTV's Press Pass programme of 20 th April 2015
2.	Jack Owiti (Sign Linguist)
3.	Eileen Mwaniki – a member of the public
4.	KAMP – PRISK – Collective Management Organizations
5.	Association of Practitioners in Advertising
6.	Kenya Film Classification Board
7.	Kenya Union of Journalists
8.	Kenya Copyright Board
9.	Mediamax
10.	Multi-choice (K) Ltd.
11.	Media Council of Kenya

Table 2: List of stakeholders who submitted inputs during the workshop held on 9th July 2015

No.	Stakeholders that submitted inputs
1.	Pamoja FM
2.	Capital FM

No.	Stakeholders that submitted inputs
3.	ATG Radio
4.	Television Viewers and Radio Listeners Association
5.	Kenya National Association of the Deaf (KNAD)
6.	UNICEF - Kenya
7.	Andrew White - Advertising Industry - TV Commercial Production
8.	People United for Responsible Entertainment (PURE)
9.	Family TV
10.	Kenya Association of Music Producers
11.	Kenya Union of Journalists
12.	Christ FM
13.	George Kimani - Continental Content Distribution Africa
14.	KAMP – PRISK – Collective Management Organizations
15.	Association of Practitioners in Advertising
16.	Mother & Child TV
17.	ICT Consumers Association of Kenya
18.	Television Viewers and Radio Listeners Association

TABLE 3: Analysis of Comments submitted on the Programme Code and Complaints Handling Procedure During the Consultation Period

Comments	Analysis	Recommendation
<p>Eileen Mwanyiky [mailto:em.eileen@yahoo.com]</p> <p>I think the watershed period starts late and ends late. But if that cannot be revised that's fine. Our children should not be watching TV or listening to radio past 8:00pm. Keep in mind that research has shown that children, who watch television for two hours a day, are at risk of poor academic performance and</p>	<p>The justification for designating 5.00a.m. to 10.00pm as the watershed period is informed by the following:</p> <ul style="list-style-type: none"> • Children are unlikely to be awake before 5.00a.m. • Due to traffic jams and homework obligations some children, especially school-going children in urban settings, wake up early 	<p><i>This submission raises pertinent concerns. However, the Code has sufficient safeguards and provisions on the issues raised. It is, therefore, recommended that the requested changes are not implemented.</i></p>

Comments	Analysis	Recommendation
<p>weight gain. I think the content should also discourage same sex relationships being introduced to our children even in form of animation. The prohibitions should also include advertising within the watershed period in which racy, sexual implications to sell products should be discouraged. Also should be included no advertising cigarette and alcohol commercials during watershed period.</p>	<p>and sleep at or even after 10.00pm.</p> <p>It is, therefore, important to ensure that children are protected from inappropriate programming when they are likely to be awake. In light of the foregoing, the proposed time span in the Code for the watershed period should be retained.</p> <p>The Code already prohibits promotion or advertising of products unsuitable to children during the watershed period (see Sections 4.27), advertising of tobacco and alcoholic products (see Section 13.2.9) and advertising of products not permissible in Kenya (see Section 5.10.3). Section 4.2.4 and 16.2.2 also discourage display of inappropriate sexual subjects or violent actions during the watershed period.</p>	
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>Restriction of advertisement and sponsorship during sports news, traffic updates and the weather is not fair as it does not interfere with reporting.</p>	<p>Restriction on sponsorship of news is meant to ensure broadcasters maintain due impartiality and accuracy in news and current affairs programming.</p> <p>Traffic and weather updates should be exempt from this requirement.</p>	<p><i>It is recommended that this section is revised to remove traffic updates and weather from such restrictions.</i></p> <p>To obligate broadcasters to have editorial independence over programming, it is proposed that the following provision be introduced in the Code under 5.10:</p>

Comments	Analysis	Recommendation
		5.10.1 Broadcasters must maintain independent editorial control over programming.
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>The ongoing consultation process has been taken in bad faith because CA has put in place measures without consulting the industry and media stakeholders</p>	<p>CA has developed the draft Code as provided for in the ICT sector law. In line with constitutional requirements, the Code has been subjected to public and stakeholder consultation. All inputs received from stakeholders shall be consolidated and considered in the development of the final document.</p>	<p><i>A stakeholders' forum shall be convened to discuss the Code with stakeholders once the alignment of the document with stakeholders' input is completed.</i> This forum was held on 9th July 2015</p>
<p>Kenya Film Classification Board - Eva Mbuni Corporate Communications</p> <p>Section 3.5.4 – Trailers for programmes that require parental guidance should not be broadcast during watershed period.</p> <p>Remarks: If programmes rated GE and/or PG are allowed to be broadcast during watershed period, why should trailers rated PG not also be broadcast? The Code may need to allow trailers rated PG to be screened as well for uniformity.</p> <p>Action for CA: Confirmation on rationale for this clause.</p>	<p>This submission has merit, as the prohibition amounts to a contradiction.</p>	<p><i>It is recommended that: Section 3.5.4 be amended to read: Trailers for programmes rated 18 should not be broadcast during the watershed period.</i></p>
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>Journalists will have to surrender their sources as in</p>	<p>This is a misinterpretation of the code. The code provides for exceptions where confidentiality was a condition for giving information as is the case in</p>	<p><i>The code states as below and should remain as is:</i></p> <p>5.3.1 Care must be taken in selecting news sources since the credibility of the news rests upon its sources.</p>

Comments	Analysis	Recommendation
<p>the case of Investigative journalism.</p>	<p>most investigative pieces (see section 5.3.2 of the code)</p>	<p>5.3.2 News sources must be clearly identified, except when confidentiality of the source was a condition for giving information. 5.3.3 Before airing information provided by a confidential source, an effort should first be made to look for a source who can be identified or who can corroborate the information provided by the confidential source. 5.3.5 Suspects or fugitives from the law may be interviewed as news sources. However, they should not be aided, abetted, or encouraged when in the act of planning or committing a crime nor shall they be accompanied on their way to committing a crime.</p>
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>Is the code definitive to FTA players or can pay TV come up with theirs or do they jointly come up with one for CA to approve. This might lead to self-regulation.</p>	<p>This particular code is specific to Commercial Free to Air TV and Radio services. Broadcasters are however at liberty to come together and develop their own Code, and submit it to the Authority for approval. Where a broadcaster is a member of a body, which has proved to the satisfaction of the Authority that its members subscribe and adhere to a programming code that has been duly approved by the Authority, it will not be bound by this Code. This Code shall however serve as the benchmark document</p>	<p><i>No action required on the Code.</i></p>

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	in considering approval of such codes developed by a body of broadcasters.	
<p>Kenya Film Classification Board- Eva Mbuni Corporate Communications</p> <p>The KFCB Board has been informing the public and media that the appropriate programmes to be aired during watershed period are those that have been rated GE and PG. Programmes rated 16 and 18 are aired after 10:00pm. Action for CA: Kindly advice on the way forward since a consensus on the age appropriate programmes needs to be reached.</p>	<p>Given that Classification and Rating fall within the remit of KFCB, it is important to align the Code with KFCB guidelines</p>	<p><i>It is recommended that Code be amended to exclude airing of content rated 16 and 18 during the watershed period.</i></p>
<p>Kenya Film Classification Board- Eva Mbuni Corporate Communications</p> <p>I feel the Board needs to work closely with Communications Authority to develop the guidelines for rating of commercials, infomercials, documentaries, programme promotions, programme listings, community service announcements and station identifications. CA was involved in review of the classification guidelines to be used in rating films and programmes but we may</p>	<p>This proposal has merit.</p>	<p>CA to explore with KFCB the possibility of developing classification guidelines for use by the advertising industry.</p>

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<p>need to develop guidelines for rating the categories mentioned.</p>		
<p>Kenya Copyright Board Marisela Ouma</p> <p>I have looked at the code and find no direct link with Copyright except for user Generated content. UGC is a peripheral matter in Copyright. It appears from the General principles that provisions touching on copyright in the lines discussed at the WIPO seminar were an intended to be part of these provisions. If so, it should come just before Section 18 and we can share some ideas on how to deal with it.</p> <p>As for the current document, I propose a change in 2.5 remove 'adhere' and replace with 'respect' and delete 'of programmes' and replace with 'Intellectual Property held by third parties'</p> <p>I also propose the term User Generated Content be defined, hence affecting section 19.1. The term UGC should not be abbreviated.</p> <p>KECOBO - Kipsigei Edward</p> <p>-All broadcast content is protected by copyright laws. Since not all content is generated within the broadcast organization, due care must be taken to avoid infringement of copyright</p>	<p>These submissions have merit. It is therefore proposed that a section on Copyright be introduced in the Code.</p> <p>SECTION 19: COPYRIGHT</p> <p><i>Relevant legislation to this section includes Section 46I (g) of the Kenya Information and Communications Act, 1998, that directs broadcasters to respect copyright and neighbouring rights in respect of any work or material as well as Cap 130 of The Copyright Act of the laws of Kenya.</i></p> <p>The requirement for broadcasters to have contracts will provide a framework for broadcasters to take specific steps to ensure that related content or rights owners are compensated adequately whenever their copyrighted sound recordings or audio-visual works are broadcast. This will also address the issue of remitting royalties and licence fees to content owners or their agents as well as Collective Management Organizations.</p>	<p><i>Recommended that a section on copyright be included in the Code in line with KECOBO's recommendation.</i></p> <p><u>Guidelines on Copyright</u></p> <p>-The Broadcaster shall be responsible for all obligations and liabilities to any third party associated with copyright or other rights that may arise from the broadcast of copyright programme.</p> <p>-The Broadcaster must have contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material.</p> <p>-The Broadcaster is obliged to have contracts for broadcast of copyrighted material and it must, upon request, submit such contract to the Authority.</p>

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<p>works held by third parties.</p> <p>-Broadcast organizations shall be required to put in place a clear copyright policy to guide acquisition and clearance of copyright assets</p> <p>-Broadcast organization must establish a system for handling complaints from copyright owners for infringement of their copyright and possible remedial measures including compensation and withdrawal of the offending programs.</p> <p>-Complaints of copyright infringement shall be addressed the Broadcast entity and copied to the Communications Authority and Kenya Copyright Board.</p> <p>-The broadcaster must submit certificates of clearance from the Kenya Copyright Board, Music Copyright Society of Kenya and KAMP-PRISK as a condition for license renewal.</p>		
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>Is it possible for the code to be housed at MCK?</p>	<p>This proposal cannot be implemented under the current legal framework as the responsibility of developing and enforcing compliance with the Code solely rest with the Authority.</p>	<p><i>It is recommended that the status quo is maintained, and that the Code is issued out as part of the broadcasting licence for ease of enforcement/implementation .</i></p>
<p>Press Pass Interview on NTV on 20th April 2015</p> <p>Who defines what is</p>	<p>Offence shall be adjudged in the context of existing community standards.</p>	<p><i>In order to validate this approach, the Authority may carry out a national survey on Kenyans' views and</i></p>

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offensive?		<i>attitudes on decency and good taste in broadcasting from time to time.</i>
<p><u>The Kenya Union of Journalists (KUJ)</u> KUJ is of the view that section 102 of KICA that establish the multimedia appeal tribunal was halted by the High Court. They propose that the complaints handling procedure be delayed until the petition in the high court is dispensed with.</p>	<p>The Section on CA mandate with respect to Complaint Handling is not affected by the current litigation, and CA is still able to address complaints. The only limitation is that the consumers will not be able to seek redress in the Communications and Multimedia Appeals Tribunal.</p>	<p><i>It is therefore recommended that Complaint Handling Procedure can be progressed and implemented.</i></p>
<p><u>Multichoice Kenya Ltd</u> 1. The complaints handling procedure provides that complaints relating to a programming code adopted by self-regulatory body will be adjudicated and resolved in accordance with that body's enforcement mechanisms. Section 1.3.5.4 states that complaints handling procedure will also apply to contraventions of the self-regulatory programme code. The inclusion of both these clauses makes it unclear as to why, if a self-regulatory body has its own procedure in place, the complaints handling procedure should apply to it.</p>	<p>There is no contradiction at all on this matter. In cases where consumers are aggrieved by content aired by broadcasters who subscribe to a Code approved by the Authority, and are not satisfied with the manner in which their complaints have been handled by the offending broadcaster, they still have the right to escalate their complaints to the Authority for regulatory intervention. The co-regulation framework anticipated under the law does not preclude the Authority from seeking to resolve consumer complaints escalated to it. Our Code however will not cover broadcasters who subscribe to a Code approved by the Authority.</p>	<p><i>It is recommended that the provision in the proposed Complaints Handling Procedure be retained as is.</i></p>

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<p>2. Paragraphs 3.3 and 3.4 of the complaints handling procedure gives CA powers to condone the filing of a complaint after the 30 day period has lapsed, investigate such a complaint, and compel a broadcaster to respond to such a complaint and cooperate in the Authority's investigation. It would be irregular for the complaints handling procedure to provide the extension beyond the 30 day period as it would go beyond the provisions of the Act.</p>	<p>The law requires broadcasters to keep a log of recordings of their transmissions for a period of one year. Situations may arise where a complainant may give justifiable grounds for the extension. In so doing, the Authority shall consider all factors including the timelines provided for in the law.</p>	<p><i>It is recommended that the provisions are retained as is.</i></p>
<p>Mediamax</p> <p>Inclusion of News, current affairs and discussions of national importance in the criteria for determining local content on account of the fact such inclusion would advance the realization of the ICT policy objectives of creating employment; promoting investment in local programme production, and; encourage diversity in programming</p>	<ul style="list-style-type: none"> - Attainment of 60% local content quota by June 2018 may be a challenge for some broadcasters, especially the new players on the digital platform because local content is expensive compared to foreign programmes. It is proposed that the Code is revised to obligate broadcasters to attain 40% local content within a year after they are licensed and 60% with the a period of four years after licensing. - Inclusion of news, current affairs and advertisements as local content would stifle opportunities for other genres of content, and 	<ul style="list-style-type: none"> - <i>It is recommended that the provisions are revised to read as follows:</i> -Broadcasting stations shall ensure, within one year of award of licence, not less than 40% of their station's programming is local content. Broadcasters' local content programming should increase to 60% within four years after receipt of licence. The local content programming referred to in this paragraph excludes news, and advertising. -Any broadcaster that does not comply with the local content quota shall be required to pay such an amount of money as may be prescribed by the Authority for every year they are in

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	<p>thus compromise the realization of the ICT policy goal of diversity in programming.</p> <ul style="list-style-type: none"> - Current affairs programming that is produced locally and in keeping with the other parameters of local content is not excluded from computation of local content - It is true that news gathering and production supports many formal and informal jobs in broadcasting sub-sector. Other genres of content especially content by independent producers such as drama, documentaries, music, children programmes, etc, also have additional potential to generate additional/new jobs for our youth while at the same time contributing to maintenance of our Kenyan identity and culture. - Live coverage of events of national importance does not constitute local content as this does not involve any creative input. 	<p>contravention.</p>

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<p>Jack Owiti – Sign Linguist <i>Proposed Guidelines on Standards for Kenyan Sign Language on Digital Terrestrial Television</i></p> <ul style="list-style-type: none"> i. Sign language may be broadcast in an open format (i.e. visible to all viewers) or in a closed format (i.e. available to be added as an option in the receiver). ii. The main body of the intended audience uses Kenyan Sign Language (KSL) as its most accessible format. The choice of sign language should reflect this allowing for regional sign language variations within regional programs. iii. Where practicable the style of interpreter or presenter should be appropriate for the intended audience iv. Sign language interpreters should sign with a level of competence and fluency at least equivalent to the minimum standard of Registered Qualified Interpreters as set out 	<p>All the Proposals have merit. We shall follow up to ensure this is done. It is proposed to include proposals viii and ix in the Code. The other proposals can be addressed through the conduct of journalists and their professionalism rather than the broadcaster. It also preferable for the monitoring of effectiveness of the service to be done by other parties rather than the broadcaster.</p>	<p><i>It is recommended that Section 20.2.1 Which states</i> ‘Broadcasters shall take specific steps to include Persons with Disabilities in different programmes. In addition, broadcasters should air programmes focusing on persons with disabilities with a view to improving their general welfare and wellbeing.’ <i>be amended to include provisions on the listed proposed guidelines , viii and ix</i></p> <ul style="list-style-type: none"> i. The presentation of the signer on the intended display screen should be of sufficient size and resolution to show all movements of the full upper trunk together with arms, hands and fingers, shoulder, neck and all relevant facial movements and expressions. ii. The size of the overlay must ensure that the body and facial expressions referred to above are easily discernible from normal viewing distances. It is important that the person signing can be clearly distinguished.

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<p>by the World Association of Sign Language Interpreters (WASLI).</p> <p>v. Apart from interpretation of live programs, where it might be impractical, sign language interpretation should start at the same time as speech. It should be noted however that sign language and English have a different grammar structure so that the two cannot match each other directly</p> <p>vi. Broadcasters should monitor the effectiveness of the service through contact with deaf people and their representatives namely the Kenya National Association of the Deaf (KNAD).</p> <p>vii. Where practical a visual caption should be displayed when there is a breakdown in the service.</p> <p>viii. The presentation of the signer on the intended display screen should be of sufficient size and resolution to show all movements of the full upper trunk together with arms,</p>		

Comments	Analysis	Recommendation
<p>hands and fingers, shoulder, neck and all relevant facial movements and expressions.</p> <p>ix. The size of the overlay must ensure that the body and facial expressions referred to above are easily discernible from normal viewing distances. It is important that the person signing can be clearly distinguished and speakers identified.</p>		
<p>KAMP-PRISK Brian – Legal & Licensing Officer</p> <p>i. ...it is proposed that appropriate clearances for the use of such sound-recordings and audio-visual works must be obtained through or from the relevant bodies.</p> <p>ii. ...ensure that related right owners (producers & performers) are adequately compensated through equitable remuneration whenever their work is put in use for commercial purposes. Basically, it denotes that the producer and</p>	<ul style="list-style-type: none"> - These proposals have merit and are already catered for under the amended section 19 on Copyright - the proposal to make it mandatory that each broadcaster obtains clearance from KAMP-PRISK has been taken care of in section 19.2.3 which allows the authority to require a broadcaster to submit any contracts on copyright if and when they are requested to do so. - Relevant legislation to this section includes Section 46I (g) of the 	<p><i>It is recommended that section 19 of the code be amended to reflect the proposals below;</i></p> <ul style="list-style-type: none"> -The Broadcaster must have contracts with copyright licensing bodies or authorized legal vendors before broadcasting copyrighted material. -The Broadcaster shall be responsible for all obligations and liabilities to any third party associated with copyright or other rights that may arise from the broadcast of copyright programme. -The Broadcaster is obliged to have contracts for broadcast of copyrighted material and it must, upon request, submit such contract

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<p>performer do not have to get authorization exclusively from the right owner to administer their right because that mandate has been donated to the organizations by law making them member and non-member organizations. It is therefore discretionary that the user exploits producer and performer works but ensure they compensate through payment of the requisite license fee.</p> <p>iii. -It is therefore mandatory that each broadcaster obtains clearance from KAMP-PRISK. Based on that it is proposed that for related rights management a mandatory clearance be obtained by all broadcasters, then the channel of redress in the event of infringement be through compensation of amounts cumulative based on the license fee payable and award of damages.</p> <p>iv. KAMP-PRISK</p>	<p>Kenya Information and Communications Act, 1998, that directs broadcasters to respect copyright and neighbouring rights in respect of any work or material as well as Cap 130 of The Copyright Act 2001 of the laws of Kenya., which includes content covered in Section 28, 30 and 30 A</p> <p>Since copyright is one among the standards of broadcast content outlined and the code in section 22.1 states that Complaints of violations of this Code shall be handled by the Authority, which shall hear and rule on such complaints in accordance with their duly established rules of procedure , in case of infringement, the complaints handling mechanism in Section 21 of this code applies.</p> <p>- Since copyright is one among the standards of broadcast content outlined and the code in section 22.1 states that Complaints of violations of this Code shall be handled by the Authority, which shall hear</p>	<p>to the Authority for reviewing.</p>

Comments	Analysis	Recommendation
<p>therefore opine that the code should make it express that the conditions of the Copyright Act regarding the use of copyrighted sound-recordings and audio-visual works in broadcasts must be strictly observed as a pre-condition. For our case in related rights (producer&performer) management, it is vital that sections 28, 30 and 30A in addition to any other enabling sections of the Act and law are highlighted as relevant parts of legislation forming the code.</p> <p>v. KAMP-PRISK propose that the CA and not the broadcast entity put in place mechanisms of arbitrating between broadcast entity and CMO in the event of complaints on infringement and the disputes be settled within 30 days.</p>	<p>and rule on such complaints in accordance with their duly established rules of procedure, in case of infringement, the complaints handling mechanism in Section 21 of this code applies.</p> <p>The requirement for broadcasters to have contracts will provide a framework for broadcasters to take specific steps to ensure that related content or rights owners are compensated adequately whenever their copyrighted sound recordings or audio-visual works are broadcast. This will also take care of the issue of remitting royalties and/or licence fees to content owners, or their agents or through Collective Management Organizations</p>	

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<p><u>Association of Practitioners in Advertising</u></p> <p>Section 5.9.1 – Advertisements must be clearly distinguished from the news What mechanism is proposed for this, will this be a break bumper screen clearly stating advertising break?</p> <p>Section 9.3 – No programme or sponsor shall be allowed to manifestly favour or oppose any candidate or political party. However, the right to responsibly inform the public on significant issues and events and the duty to provide a forum for the discussion of such issues and events shall be respected. Does this prohibit any party, organization, or person, during elections from airing a programme of their own making, or sponsoring a programme they feel is watched by their electorate? It also seems to contradict section 9.5, please clarify.</p> <p>Section 13</p> <p>Section 13.2. Advertisements shall be</p>	<p>Section 5.9.1 is meant to ensure consumers do not misconstrue ads/commercials as part of news. The Authority does not wish to be over-prescriptive on the mechanism to be applied as long as the distinction is clear.</p> <p>In addition, Section 5.10.1 has been further elaborated in section 13.2.5 where it states ‘Advertisements shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means. In principle, they shall be transmitted in blocks and isolated advertising spots shall remain the exception.’</p> <p>Section 9.3 (9.2.2) refers to unpaid airtime i.e. programmes produced internally by broadcasters and/or sponsored by an interested party in the election. On the other hand section 9.5 (9.2.5)</p>	<p><i>It is recommended that the prescription of number of breaks of advertisement in a specified program period be removed in order for the Authority not to be over prescriptive. The maximum amount of advertisement time in a specified program period will however be retained and limited to the TV service.</i></p>

Comments	Analysis	Recommendation
<p>clearly distinguishable as such and recognizably separate from the other items of the programme service by optical and/or acoustic means. In principle, they shall be transmitted in blocks and isolated advertising spots shall remain the exception.</p> <p>What is meant by isolated advertising spots? And what is the threshold level for exception?</p> <p>Whilst the APA recognizes and accepts the global practice of advertising being aired in blocks on television, we question the practicality of imposing this on radio. Advertising works by arresting the attention of the listener, and if there is an acoustic device announcing “Advertising break” the propensity of the listener to change channels will be very high, and if advertisers do not get enough response from their advertising, the amounts allocated to it will go down. This will adversely affect the broadcasters, and the advertising industry value chain right down to the producers and voice talent because revenues will diminish.</p>	<p>refers to airtime that has been paid for by the political aspirant to progress his own agenda. Therefore there is no contradiction whatsoever.</p> <p>In essence, a party or political candidate can produce a programme and pay for it to be aired as long as it does not contain unjustified attacks on individuals, their families, ethnic background, race, religion or their associations</p> <p>Isolated is used to refer to advertising spots/breaks that occur/are placed at specific points in a programme where only one advert is aired. Such spots could easily be misconstrued as part of news or other programming. As far as radio is concerned, broadcasters should explore mechanisms of ensuring that these ads are separate from other forms of programming especially news. Airing of an advertising spot during programme should therefore be an exception and justified by context (e.g. emergency announcements, etc)</p>	

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	<p>This comment is made on the assumption that we require broadcasters to announce or text crawl the words “Advertising break” before airing adverts which is not the case. In the case of radio for example the station can run its station id or the current programme’s signature tune to mark the start or the end of the ad break.</p>	
<p><u>Media Council of Kenya</u></p> <p>i) That each broadcast firm/media enterprises either singly or jointly by way of a consortium be allowed to formulate an internal first instance complaints handling mechanism based on a programme code either approved by or recommended by the Communications Authority.</p> <p>ii) That where outcomes from internal complaints resolution system are not satisfactory then the Authority shall be at liberty to refer the complaints to the Complaints Commission under the Media Council of Kenya for adjudication based on the programme code and Broadcast regulations.</p> <p>iii) That before granting</p>	<p>i) This proposal is in line with the provisions of the Act and broadcasting regulations, and reflects what is already happening on the ground. The Procedure is already aligned with this legal provision.</p> <p>ii) KICA and subsidiary legislation do not envisage a situation where complaints arising from contraventions of the Code, law, regulations and licence conditions are escalated the Complaints Commission. Administration of the Code is also vested on the Authority. The existence of the Complaints Commission and CA’s Procedure does not</p>	<p><i>It is recommended that:</i></p> <p>i) <i>No change is required as the proposal is already provided for in the Complaint Handling Procedure.</i></p> <p>ii) <i>The Authority and MCK, under the framework of the MoU entered into recently, share notes on programming complaints lodged against broadcasters, to avoid a situation where licensees suffer double jeopardy.</i></p>

Comments	Analysis	Recommendation
<p>and/or renewing broadcast licenses the Communications Authority shall take into consideration an evaluation report by the Media monitoring unit of the Media Council of Kenya recommending to the Authority each broadcaster's suitability or otherwise for grant and/or renewal of license based on professional and/or ethical media standards competency and/or performance audit.</p> <p>iv) That other than issues of professional and media standards, the Authority shall retain supervisory autonomy over license conditions set out in the Kenya Information and Communications [Amendment] Act 2013 that speak to technical specifications, frequency spectrum, water-shed scheduling, disclosures of conflict of interests, political campaigns and advertisements.</p> <p>v) That where radio and television stations which are subject to license conditions are in breach of any prescribed codes, then the Authority shall subject them to compulsory program standards by monitoring matters relating to standards and licence conditions, investigating complaints from the public and</p>	<p>constitute a contradiction as MCK's mandate in broader (includes print).</p> <p>iii) During the licensing and licence renewal process, the Authority usually invites the public and other interested parties to submit representations on the application. As a key stakeholder, MCK may take advantage of this window to, where necessary, submit objections or evaluation reports to the Authority for consideration.</p> <p>iv) The proposed limitation on the scope of CA's code is inconsistent with the scope outlined in KICA, which covers all programmes to be broadcast by licensees.</p> <p>v) The proposal is inconsistent with KICA, as complaints dealing with programming content are supposed to first be referred to the offending broadcaster, and where necessary subsequently escalated either to the Authority, Tribunal or High Court.</p>	<p><i>iii) The proposed change is therefore unnecessary.</i></p> <p><i>iv) Proposed change is therefore not justified.</i></p> <p><i>v) Suggested change has not merit.</i></p>

Comments	Analysis	Recommendation
<p>thereafter referring the complaints to the Complaints Commission under the Media Council of Kenya which is an independent adjudicator on matters relating to codes of media ethics and professional practice, including the Code of conduct for the practice of journalism, the Broadcast regulations and the Programming code.</p> <p>vi) Where complaints are not resolved between the complainant and the broadcaster concerned but the Authority finds a breach of a code of practice, licence condition or standard, it may take administrative enforcement action through referral for adjudication to ensure future compliance. The primary responsibility for ensuring that TV and radio programs reflect community standards rests with TV stations themselves under a system of industry-developed codes of practice.</p>	<p>vi) Unless, a broadcaster belongs to a body of broadcasters whose Code has been duly approved by the Authority, broadcasters are bound by the provisions of this Code. As indicated earlier, broadcasters are at liberty to become members of such bodies and subscribe to the respective codes.</p>	<p><i>(vi) No change is therefore warranted</i></p>

TABLE 4: Analysis of Comments submitted on the Programme Code and Complaints Handling Procedure during and after the Stakeholders Workshop Held on 9th July, 2015

Comments	Analysis	Recommendation
<p><u>Lenny Ng'ang'a,</u> <u>Chairman</u> <u>Association of</u> <u>Practitioners in</u> <u>Advertising</u></p> <p>The Advertising Standards Committee of the Association of Practitioners in Advertising (APA), which is currently a self-regulatory body, should be included in the Code as an escalation point in the handling of complaints on matters advertising.</p>	<p>The development and review of the Complaints Handling Procedure and the Code is guided by KICA. The code and Procedure borrow from the Act, which piece of legislation does not mention the suggested bodies. The Authority can still work together with APA without necessarily hardwiring the Committee in the Complaints Handling Procedure.</p>	<p><i>It is, therefore, recommended that the requested changes are not implemented.</i></p>
<p><u>Oscar Biuta,</u> <u>Pamoja FM</u></p> <p>Complaints come about because of lack of proper knowledge and professionalism amongst media practitioners. It is therefore necessary to emphasize on minimum training in journalism for all presenters and reporters in the code.</p>	<p>The issue of professionalism is key and CA, at the licensing stage, evaluates the profiles or CVs of directors and station manager to confirm whether they have the requisite experience and competence to run a broadcasting station. CA's mandate does not include regulation of professional standards, which responsibility falls within the remit of MCK. CA cannot therefore set the minimum training for journalists in the Code.</p>	<p><i>It is, therefore, recommended that the requested changes are not implemented.</i></p>
<p><u>Njonjo Mue,</u> <u>People United for</u> <u>Responsible</u> <u>Entertainment (PURE)</u></p>	<p>Enforcement of the laws, regulations and the codes of</p>	<p><i>No action required on the Code</i></p>

<p>We have sent complaints to MCK and CA with regards to content aired on radio but CA usually appears helpless in handling these issues. We therefore welcome these two documents and emphasize on CA's enforcement of the same.</p>	<p>practice has been a challenge since most broadcasters are operating on permits which have limited conditions on content but we are now working on a framework to guide the issuance of licences and our licensees will be required to adhere to the code as one of the licence conditions.</p>	
<p><u>Andrew White</u> <u>Advertising Industry - TV Commercial Production</u></p> <p>The Local content provision is a new front, and it should also apply on content for TV commercials since the TV commercial production industry in Kenya is under threat. It is important to note that 5 – 10 million dollars spent in TV commercials is spent on Advertising agents and their clients thus boosting the growth of the industry and job creation. However, most commercials that were previously being shot in Kenya have now moved to South Africa, India and Spain. Withholding taxes of TV production has not stopped the movement of commercial productions to overseas. In Australia for example 80% of all commercials must be produced locally.</p>	<p>We mean that the more the time allocated to advertisements and news, the less airtime will be available for other genres of local content within the 40% or 60% dedicated to local content programming.</p> <p>We shall, nonetheless, explore other mechanisms within the law to ensure that we promote local adverts.</p> <p>We will engage further on this before any reviews are undertaken.</p>	<p><i>The Authority held a follow up meeting with Independent Local Content Producers for further consultations on this matter. During the meeting, it was suggested that the Broadcasting Regulations should be reviewed to give power to CA to prescribe an Advertising Code in line with the practice in Australia, Malaysia and other best practice jurisdictions.</i></p> <p><i>Section 46 K (d) of KICA provides the requisite legal framework for the proposed review:</i></p> <p>Prescribe anything that may be prescribed under this Part.</p> <p><i>The Association of Practitioners in Advertising (APA) forwarded these proposals to the Taskforce on the Review of the</i></p>

<p>In Malaysia in the 1980s it used to be 40% but now it's also 80%. In Indonesia its 100% of all commercials.</p> <p>In Kenya, 50% of commercial production will find itself offshore in the coming year.</p> <p>I would like the idea that inclusion of advertisements as local content will stifle diversity and creativity be explained.</p>		<p>Broadcasting Regulations.</p> <p><i>The taskforce has, however, advised the Authority to include a provision in the Programming Code on the minimum threshold of local footage that adverts aired by licensees should have. It is recommended that the Authority adopts this proposal, and sets 40% as the minimum level of local footage in adverts aired by licensed TV stations in order to ensure parity with the local content quota set for the first year of operation for licensees.</i></p> <p><i>Thus: introduce section ' 13.2.5 A licensee shall ensure that ALL advertisements aired on its station contain at least 40% local content footage. '</i></p>
<p><u>Chief of Communications</u> <u>UNICEF - Kenya</u></p> <p>Could all the guidelines on Children matters be put together in the Code so that we can discuss them further?</p> <p>Section 4.2.2 should have a section that specifically states the kind of material that is unsuitable for children</p> <p>Definition of unsuitable material for children:</p> <p>-Demeans any person or group on the basis of ethnicity, nationality,</p>	<p>The proposal to consolidate provisions on children in the Code has merit. CA shall re-arrange the document as proposed for ease of reference.</p> <p>This proposal is already catered for under Section 4.2 on the guidelines to children's</p>	<p><i>It is recommended that the document be restructured into a format that clearly outlines the various programming/content standards. This restructuring will pave way for the consolidation of sections 4 and 11 , which deal with matters concerning children.</i></p> <p><i>It is, therefore, recommended that the requested changes be not implemented.</i></p>

<p>race, gender, religion, or mental or physical disability.</p> <ul style="list-style-type: none"> -Fosters violence as a desirable means of resolving conflict and problems. -Depicts inappropriate sexual scenes or violent actions. -Portrays any dangerous or harmful behaviour that can be easily imitated by children. -Presents an image in a way which is frightening or distressing to children. <p>Depicts the consumption of alcohol or tobacco unless a health education message is being communicated.</p> <ul style="list-style-type: none"> -Advertises products or services that could cause physical, mental, psychological or moral harm to children. -Advertises a food product or beverage that contains misleading or incorrect information about the nutritional value of that product. -Depicts unsafe use of a product, or unsafe situations which may encourage children to engage in activities dangerous to them. -Presents inappropriate content, for example, adult themes in music videos and bad language on radio that may encourage children to imitate. 	<p>programmes and welfare.</p> <p>Implementation of the proposal would amount to a repetition.</p>	
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<p>Guidelines for Interviewing Children</p> <ul style="list-style-type: none"> -Do not discriminate in choosing children to interview because of gender, race, age, religion, status, education background or physical abilities. -Do not surprise or ‘ambush’ children for interviews. -Do no harm to any child; avoid questions, attitudes or comments that are judgmental, insensitive to cultural values, that place a child in danger or expose a child to humiliation, or that reactivate a child's pain and grief from traumatic events. -No staging: Do not ask children to tell a story or take an action that is not part of their own history. -Ensure that the child or guardian knows they are talking with a reporter. Explain the purpose of the interview and its intended use. -Obtain permission from the child and his or her guardian for all interviews, videotaping and, when possible, for documentary 	<p>This submission raises a pertinent issue and should be introduced as section 11.2.9 in the code. This will ensure that the non-discrimination clauses in the Code now apply also children.</p> <ul style="list-style-type: none"> - This is already catered for under section 11.2.2 -This is already catered for under section 11.2.4 -This is already catered for under section 11.2.4 -Should be introduced as section 11.2.7 -This is catered for under section 5.5.5 as follows: <i>Broadcasters shall request for permission to conduct an interview with a minor from</i> 	<p><i>It is, therefore, recommended that sections 11.2.6, 11.2.7, 11.2.8 and 11.2.9 be introduced in the code as justified.</i></p> <p><i>No action required</i></p> <p><i>No action required</i></p> <p><i>No action required</i></p> <p><i>Recommended that this proposal is adopted as Section 11.2.7</i></p> <p><i>No action required</i></p>
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<p>photographs. When possible and appropriate, this permission should be in writing.</p> <p>-Permission must be obtained in circumstances that ensure that the child and guardian are not coerced in any way and that they understand that they are part of a story that might be disseminated locally and globally. This is usually only ensured if the permission is obtained in the child's language and if the decision is made in consultation with an adult the child trusts.</p> <p>-Pay attention to where and how the child is interviewed. Limit the number of interviewers and photographers. Try to make certain that children are comfortable and able to tell their story without outside pressure, including from the interviewer.</p> <p>-Children should not be required, coerced or bribed to recall and narrate traumatic experiences, demonstrate horrific acts or describe them in graphic details. In film, video and radio interviews, consider what the choice of visual or audio background might</p>	<p><i>the minor's parents or guardian before conducting an interview.</i></p> <p>-amend section 11.2.3 to reflect this submission as it raises a pertinent issue</p> <p>Should be introduced as section 11.2.6</p> <p>-This is catered for under section 11.2.4</p>	<p><i>It is recommended that section 11.2.3 be amended to include the requirement stating the conditions surrounding the acquisition of consent.</i></p> <p><i>Recommended for inclusion as section 11.2.6</i></p> <p><i>No action required</i></p>
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<p>imply about the child and her or his life and story.</p> <p>-Change their voice and obscure their visual identity. Ensure that the child would not be endangered or adversely affected by showing their home, community or general whereabouts.</p> <p>Guidelines for Reporting on Children</p> <p>1. Do not further stigmatize any child; avoid categorizations or descriptions that expose a child to negative reprisals - including additional physical or psychological harm, or to lifelong abuse, discrimination or rejection by their local communities.</p> <p>2. Always provide an accurate context for the child's story or image.</p> <p>3. Always change the name and obscure the visual identity of any child who is identified as:</p> <p>a. A victim of sexual abuse or exploitation,</p> <p>b. A perpetrator of physical or sexual abuse,</p> <p>c. HIV positive, or living with AIDS, unless the child, a parent or a guardian gives fully informed consent,</p> <p>d. Charged or convicted of a crime.</p>	<p>-This is catered for under section 11.2.1 although not in its entirety</p> <p>-This is catered for under section 11.2.1</p> <p>- This proposal has merit. However the provisions on accuracy cater for this</p> <p>- Submissions 3, 4& 5 are catered for under section 11.2.1. However, the Scope for section 11.1 should be amended and the phrase 'for example, in factual programmes concerning criminal activity.' be deleted so that the subsequent guidelines can cover other issues as submitted such as health, sexual abuse, asylum seeker and other issues</p>	<p><i>Recommended that Section 11.2.1 be amended to capture new aspects of this proposal.</i></p> <p><i>No action required</i></p> <p><i>No change is required</i></p> <p><i>It is therefore recommended that section 11.1 be amended by deleting the phrase 'for example, in factual programmes concerning criminal activity.'</i></p>
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<p>4. In certain circumstances of risk or potential risk of harm or retribution, change the name and obscure the visual identity of any child who is identified as:</p> <ul style="list-style-type: none"> a. A current or former child combatant, b. An asylum seeker, a refugee or an internal displaced person. <p>5. In certain cases, using a child's identity - their name and/or recognizable image - is in the child's best interests. However, when the child's identity is used, they must still be protected against harm and supported through any stigmatization or reprisals.</p> <p>Some examples of these special cases are:</p> <ul style="list-style-type: none"> a. When a child initiates contact with the reporter, wanting to exercise their right to freedom of expression and their right to have their opinion heard. b. When a child is part of a sustained programme of activism or social mobilization and wants to be so identified. c. When a child is engaged in a psychosocial programme and claiming their name and identity is part of their healthy development. <p>When use is validated</p>	<p>that can afflict a child</p>	
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<p>for images depicting children identified as being in any of the four groups outlined above, a signed subject release from the child and her/his guardian should be secured. This release must be obtained in circumstances that ensure that the subject is not coerced in any way and understands the implications of the release. At minimum, this means that the release must be in the subject’s language and that the decision is made in consultation with a trusted adult member of the same cultural group.</p> <p>6. Confirm the accuracy of what the child has to say, either with other children or an adult, preferably with both.</p> <p>7. When in doubt about whether a child is at risk, report on the general situation for children rather than on an individual child, no matter how newsworthy the story.</p>	<p>Submissions 6 & 7 are catered for under section 11.1</p>	<p><i>No action required</i></p>
<p><u>Hellen Wagura</u> <u>Kenya National Association of the Deaf (KNAD)</u></p> <p>I have noted with</p>	<p>We are still available to get</p>	

<p>concern that KNAD was not consulted in the development of the Code. On matters of access to broadcasting services by Persons with disabilities, specifically the deaf, we have been sending complaints to broadcasters urging them to come up with mechanisms to address this issue.</p>	<p>inputs from KNAD. It is, however, important to note that we had an earlier meeting with stakeholders from the PWD sector in which KNAD was also invited before the Public Consultation. Subsequently, the draft Code was sent to KNAD electronically for inputs. CA is willing to host a follow up meeting with KNAD.</p>	<p><i>A follow up meeting with KNAD for further consultations was held on 23rd July 2015 at CA offices.</i></p>
<p>We appreciate the fact that you have addressed the issue of size of the overlay but we would like the issue of quality of the sign language interpreters be addressed in the Code.</p>	<p>Media Council of Kenya deals with the issues of curriculum and professionalism of media practitioners i.e. sign language expertise. However, the disability sector may be disenfranchised by the quality of signing services. In this regard, it is proposed that this proposal is adopted.</p>	<p><i>It is recommended that this provision be included in the Code under Section 20:</i></p> <p><i>Broadcasters should ensure the use of experienced Sign language interpreters with relevant qualification in the Kenyan Sign Language from the Kenya National Examination Council or its equivalent.</i></p>
<p><u>Nickson Kakiri, Chair – KNAD</u></p>	<p>-Labelling people as deaf and dumb or kiziwi, cripple is not acceptable. We should therefore include proper language use as part of the guidelines under PWDs.</p>	<p><i>Proposed change is, therefore, unnecessary</i></p>
<p>Provision of Sign language interpretation</p>	<p>-This submission has merit. It is however already covered under section 15.2.3: <i>Broadcasters must exercise sensitivity and avoid humour, which offends good taste and decency. Examples include jokes based on race, gender and disability, as such humour (even malicious intent) can easily cause hurt or humiliation.</i></p>	

<p>by all free to air TV stations</p> <p>Currently there are only 3 free to air channels that offer sign language interpretation services. It should be made compulsory for all free to air channels to offer sign language interpretation during news and matters of national significance in line with the spirit of non-discrimination enshrined in Article 27 of the Constitution.</p> <p>Further, the Persons with Disabilities Act is currently in the process of being amended and one of the key amendments is the removal of an option for TV stations to have either a sign language inset or subtitles. The proposed amendment bill requires all TV stations to have a sign language inset and caption during news and matters of national importance. The Communications Authority of Kenya should include this in the programming code so as to enforce this matter.</p> <p>-the Authority should consider allocating 7% - 10% of local content to deal with issues specific to Persons with Disabilities</p>	<p>-Enforcement of the laws, regulations and the codes of practice has been a challenge since most broadcasters are operating on permits which have limited conditions but we are now working on a framework to guide the issuance of licenses and all our licensees will be required to adhere to the code as one of the licence conditions.</p> <p>- The Code has sufficient provisions on this matter. e.g. Section 15.2.4 states that:</p> <p><i>All television stations shall provide a sign language insert or subtitles in all newscasts, educational programmes, and in all programmes covering events of national significance to facilitate enjoyment of the programming by physically challenged persons.</i></p> <p>- This proposal has merit. It is however important to start with news, educational programmes and events of national importance before</p>	<p><i>The code will be implemented as envisioned in section 22</i></p> <p><i>It is recommended that this Section be revamped to include sign language inserts and captions during emergencies, and to change reference to physically challenged persons to Persons with Disabilities.</i></p> <p><i>15.2.4 All television stations shall provide a sign language insert or subtitles in all newscasts, educational programmes, and in all programmes covering emergencies and events of national significance to facilitate enjoyment of the programming by Persons with Disabilities.</i></p> <p><i>This will be implemented in the next one to two years through a gazette notice in</i></p>
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<p>-the Authority should also consider requiring broadcasters to use captions when airing adverts so that they can be understood by Deaf people.</p> <p>-Requiring a sign Interpreter to sign for over an hour is too much, its normally supposed to be 30 – 40 minutes then they take a break since sign language interpretation is tasking both physically and mentally</p> <p>1. Improvement of Sign language insets size and brightness</p> <p>The few TV stations that have sign language insets have them too small and many times they are dark. This makes it very difficult for a deaf person to be able to make out some facial expressions or signs that the interpreter is making, all of which are integral to effective communication in sign language. This matter should be addressed and TV stations compelled to make the insets larger and bright enough for Deaf people to comfortably see the sign language interpreter. We appreciate the fact that</p>	<p>introducing new obligations.</p> <p>- This provision has merit. However this provision is not supported by legislation.</p> <p>- This is a matter that deals with terms or conditions of service/employment, which is not within the remit of the Authority. It is a matter that should be taken up with broadcasters through trade unions or through the National Council for Persons with Disabilities (NCPD).</p> <p>-This proposal has merit. However the changes recommended during the consultation on Section 20 will address this issue sufficiently.</p>	<p><i>line with the KICA.</i></p> <p><i>No change is recommended</i></p> <p><i>Proposed change is therefore unnecessary</i></p> <p><i>It is recommended that the changes introduced in section 20 during the consultation should remain as follows:</i></p> <p>i. The presentation of the signer on the intended display screen should be of sufficient size and resolution to show all movements of the full upper trunk together with arms, hands and fingers, shoulder, neck and all relevant facial movements and expressions.</p> <p>i. The size of the overlay must ensure that the body</p>
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<p>this was mentioned among the matters that the Communications Authority of Kenya will include in the programming code.</p> <p>2. Quality of Sign Language Interpretation Services</p> <p>Article 46 of the Constitution guarantees consumers the right to goods and services that are of reasonable quality. This may be interpreted to mean that Deaf persons, as consumers of Sign language interpretation services are guaranteed the right to quality interpretation services. This has however not been the case with there being numerous instances of incompetent sign language interpreters being hired by media houses. This results in deaf people being unable to receive the full information as the interpreters are not able to interpret properly. It is our contention that in order to ensure the capability of such interpreters it is important for Deaf persons to be involved in the vetting process. The Kenya National Association of the Deaf being the main body</p>	<p>-Media Council of Kenya deals with the issues of curriculum and professionalism of media practitioners i.e. sign language expertise. However, it is recommended that a clause be introduced to take care of this problem. The issue of vetting is however unnecessary as stakeholders in the disability sector are at liberty to lodge complaints with broadcasters in case of poor sign language interpretation services and escalate the same to the Authority if their complaints are not handled to their satisfaction.</p>	<p>and facial expressions referred to above are easily discernible from normal viewing distances. It is important that the person signing can be clearly distinguished.</p> <p><i>It is recommended that this provision be included under Section 20.</i></p> <p><i>Broadcasters should ensure the use of experienced Sign language interpreters with relevant qualifications in the Kenyan Sign Language from the Kenya National Examination Council or its equivalent.</i></p>
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<p>representing Deaf interests in Kenya should as such be consulted whenever such selection processes are being undertaken.</p> <p>The Communications Authority of Kenya may facilitate this by including such requirement in the programming code.</p> <p>3. Channeling of Complaints</p> <p>There is a large population of Deaf persons who cannot write and communicate only through Kenyan Sign Language. As such it is our contention that the Communications Authority of Kenya should include Kenyan Sign Language as a medium of channeling complaints to the Authority.</p> <p>There is also a need to centralize channeling of complaints so as to allow easy addressing of issues being raised. We propose that the Authority should engage with KNAD on this especially in complaints regarding Sign Language Interpretation.</p>	<p>-There are sufficient safeguards in the complaints handling procedure to ensure that PwDs are facilitated to lodge complaints on the contraventions of the Code. For instance, Section 2.3.12 of CA’s Complaints Handling Procedure obligates broadcasters to provide a manner in which complaints from PwDs and from those who may lack language and/or writing skills shall be addressed.</p> <p>Section 3.9 of the Procedure provides that in cases where the complainant (to the Authority) is disadvantaged due to lack of language and/or language skills or has some form of disability, which may render him or her unable to clearly present the complaint, the complainant may seek assistance from authorized officers of the Authority.</p>	<p><i>Proposed change is therefore unnecessary.</i></p>
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	<p>There is no need to specifically mention the Kenyan sign language in the code because if a complainant can only communicate in the Kenyan sign language then the Authority/broadcaster shall provide an authorized person who understands the same language to handle the complaint.</p>	
<p><u>Martin Nyakundi</u> <u>Television Viewers and Radio Listeners Association</u></p> <p>-While making a complaint against a media house for airing offensive content and I'm required to provide a clip of the content aired, what happens if the broadcaster won't give me the incriminating clip.</p> <p>-Trailers aired during news show a climax of a movie as a way of wetting the viewers' appetite, some of this trailers contain sexual content. It would therefore be proper if trailers with adult content are prohibited from being aired during the watershed period.</p>	<p>-The Authority, in its complaints handling procedure, does not require the complainant to produce the clip. The complainant only needs to indicate the time the offending programme was aired. The law obligates the broadcaster to keep a log of all programmes for a year, which means the Authority can therefore ask the broadcaster to produce the clip or extract it from CA's broadcast logger.</p> <p>-This issue, which was also raised by KFCB, has merit.</p>	<p><i>The code has sufficient safeguards and provisions on the issues. Proposed change is therefore unnecessary.</i></p> <p><i>It is recommended that: Section 3.5.4 be amended to read: Trailers for programmes rated 16 and 18 should not be broadcast during the watershed period.</i></p>

<p>-Some untrained journalists depend on sensationalizing issues as a way of attracting audiences with no regards to the set broadcasting standards.</p>	<p>-The Code discourages sensationalism in news and other forms of programming. Therefore the Authority shall hold broadcasters responsible in the event that journalists flout this provision.</p>	<p><i>No change is required</i></p>
<p><u>Alex Gakuru</u> <u>ICT Consumers Association of Kenya</u> The revenues generated in the advertising industry in 2011 were to the tune of 100 million shillings and I'd therefore disagree with Mr. White's sentiments that the advertising industry is under threat</p>	<p>Mr. White confirmed that he had referred to the money that goes into production of TV commercials which is about 10% of the money made in advertising.</p>	<p><i>No action required on the Code</i></p>
<p><u>Cyrus Kamau</u> <u>Capital FM</u></p> <p>-The future of broadcasting is digital and dynamic in nature. How does the Code take care of this aspect, as in the case of live streaming of content?</p> <p>- Production of news is a major cost for broadcasters. Why is news not included as local content? In Kenya, advertising tends to take the format of sponsorship rather than spots. In this regard, the proposal to prohibit news sponsorship should be</p>	<p>The same broadcast content standards will apply despite the mode/ channels of dissemination. If, for instance, capital FM streamed their content online it will be the same content that will be on air thus no much impact with the changing technologies.</p> <p>- In most jurisdictions, news programming is not considered as local content. Inclusion of news as local content poses the danger of broadcasters who air news as part of their programming to meet a substantial part of the prescribed quota by giving more airtime to news, and thus deny consumers the</p>	<p><i>No action required on the Code</i></p> <p><i>Proposed change is therefore untenable.</i></p>

<p>reconsidered in view of the uniqueness of our market.</p>	<p>opportunity to enjoy other genres of programming. In respect to sponsorship of news, allowing it may affect the editorial independence of broadcasters over their news programming. Advertising firms therefore need to come up with more innovative ways of buying airtime for commercials.</p>	
<p><u>Brian Omondi</u> <u>Legal Officer, Kenya Association of Music Producers</u></p> <p>With regards to handling of complaints on copyrighted material, more specifically music, I wrote to CA concerning our dissatisfaction with how issues on compensation of producers of music are handled. I proposed that we allocate space in the code to deal with copyrighted material explicitly.</p>	<p>We received inputs from KAMP and we proposed inputs on copyrighted material which have been introduced under Section 19 of the Code which addresses the issue raised</p>	<p><i>This has already been taken care in Annex 1, and also above.</i></p>
<p><u>Erick Oduor</u> <u>Kenya Union of Journalists</u></p> <p>Why are we duplicating laws? I feel that the Complaints Commission housed at the Media Council of Kenya and the Multimedia and Appeals Tribunal perform the same functions. We also already have the Code of Conduct for the practice</p>	<p>KICA and subsidiary legislation do not envisage a situation where complaints arising from contraventions of the Code, law, regulations and licence conditions are escalated to the Complaints Commission. Administration of the Code is also vested on the Authority. The existence of the Complaints Commission, Multimedia and Appeals Tribunal and CA's</p>	<p><i>No action required on the Code</i></p>

<p>of Journalism with almost the same standards as the ones in the code. What role is CA going to play vis a vis MCK</p>	<p>Procedure does not constitute duplication as MCK and CA play complimentary roles. -The Authority and MCK, under the framework of the MoU entered into recently, shall share notes on programming complaints lodged against broadcasters, to avoid a situation where licensees suffer double jeopardy.</p>	
<p><u>Bishop Bett</u> <u>Christ FM</u> How do you classify religion when it comes to local content, as in the case of issues to do with homosexuality?</p>	<p>There are 8 parameters for local content. If a programme, be it religious or not, meets five of those parameters it will be classified as local.</p>	<p><i>The code has sufficient provisions on the issue raised thus, no action required</i></p>
<p><u>George Kimani</u> <u>Content Distributor</u> With niche programming, some stations specialize on news. The Code needs to be amended to be able to deal with that in matters local content. Such stations may be given incentives so that they can survive.</p> <p>-Why should PAY TV be treated differently at this point. PAY TV is accessed by all people in public places such as hotel lobbies and its content should be monitored and regulated.</p>	<p>Niche channels that are unable to meet the prescribe local content quota due to their unique nature of programming will make a contribution to the Universal Service Fund to support development of local content in line with the law.</p> <p>We have only started with FTA TV stations because you don't have to make an effort to receive it and it's largely accessible by all. This, however, is not the last code; we will endeavor to develop more specific codes. Also some of the channels on the PAY platform have already been regulated at the FTA level for proper content.</p>	<p><i>No action is required</i></p> <p><i>No action is required</i></p>

<p><u>Otieno Adipo</u></p> <p>The definition of UGC should be expounded on. What is meant by end user and who is the person generating the content.</p> <p>When it comes to Radio, when calculating local content, do you mean just the music, recorded skits or 40% of all that put together?</p>	<p>This proposal has no merit, as the definition is easy to understand. End-user simply means the consumer.</p> <p>We calculate local content in line with the parameters outlined in the regulations, including music but excluding news and advertising.</p>	<p><i>No change is required.</i></p> <p><i>No action is required.</i></p>
<p><u>Were Frederick ATG Radio</u></p> <p>Alcohol adverts aired during the watershed period featuring celebrities mislead children by making them think taking alcohol makes them cool. How does the Code address that?</p>	<p>There are sufficient safeguards in the Code on this issue.</p>	<p><i>No action is required.</i></p>
<p><u>Mwai Anthony Mother & Child TV</u></p> <p>With regards to children programming, how explicit is explicit?</p>	<p>The Authority will carry out a national survey on Kenyans' views and attitudes on decency and good taste in broadcasting from time to time.</p> <p>We also check from the complaints received from consumers.</p>	<p><i>No action required on the Code</i></p>
<p><u>Alex Gakuru ICT Consumers Association of Kenya</u></p> <p>We have been put in pains and forced to consume what is aired. When then can we expect to see this instruments</p>	<p>We are looking forward to commence the licensing process in 2 to 3 months' time and our licensees will be required to adhere to the code as one of the licence conditions.</p>	<p><i>No action required on the Code</i></p>

<p>enforced?</p>		
<p><u>Martin Nyakundi</u> <u>Television Viewers and Radio Listeners Association</u></p> <p>Before you license education channels, do you follow up and ensure they are following the curriculum?</p> <p>We appreciate CA for coming up with these tools.</p>	<p>When we license broadcasters, they submit their programme guide to us and we monitor after the content has been aired since checking the content before airing will amount to censorship. You should also use the consumer protection law in cases where you feel that the consumer is not getting quality service.</p>	<p><i>No action required on the Code</i></p>
<p><u>Otieno Adipo</u></p> <p>I urge you to also look at the Music Policy when deciding on the 40% for local content</p>	<p>The Broadcasting regulations leave it at the discretion of the Authority to prescribe local content quotas and we shall therefore endeavor to consult with the Music Policy document before finalizing the Code.</p>	<p><i>The issue of local content quotas was also raised during the public consultation and is addressed in the reviewed code.</i></p>
<p><u>Ken Masiolo</u> <u>Family Media</u></p> <p>We appreciate CA for organizing this event.</p> <p>Why is the Code specific to FTA and not PAY TV? The regulator needs to be fair to both of these groups.</p> <p>-Section 2.4 of the code</p>	<p>We have only started with FTA TV because you don't have to make an effort to receive it and it's largely accessible by all. This, however, is not the last code; we will endeavor to develop more specific codes. Also some of the channels on the PAY platform have already been regulated at the FTA level for proper content.</p>	<p><i>-No action required on the code.</i></p>

<p>penalizes a broadcaster for airing content as is from the source. If a politician spews hate in a public rally that is being aired live, why should the broadcaster be held responsible.</p>	<p>-The broadcaster will be held responsible because it is providing a platform for propagating hate speech and thus failing in the role of protecting the consumer from incitement to violence, hate speech or advocacy of hatred that constitutes ethnic incitement, vilification of others or incitement to cause harm or discrimination.</p>	<p><i>-This provision should remain as is</i></p>
<p>-The term para-psychological in section 2.7 should be defined</p>	<p>-This term has already been defined in the 'DEFINITIONS' section as follows "Para-psychological Programmes" means programmes that are meant to impart behaviours, events or perceptions that are outside normal human understanding;</p>	<p><i>-This provision is already taken care of in the code</i></p>
<p>-Section 2.1 is in conflict with section 2.4 I therefore recommend that section 2.4 be deleted.</p>	<p>-The two sections are not in conflict as implied. Section 2.1 lists the public interest obligations of the broadcaster while 2.4 touches on the obligation of the broadcaster to protect the consumer. Thus no deletions required.</p>	<p><i>-No action required on the code</i></p>
<p>-Section 3.1 should be applicable to PAY TV</p>	<p>-This code is specific to Free TO Air Radio and TV, a separate code will be developed to address PAY TV issues.</p>	<p><i>-No action required on the code</i></p>
<p>-Section 4.2 which stipulates that five hours of radio or TV station programming should be devoted to programmes</p>	<p>- This provision is meant for the general purpose TV stations, although depending on the specialization of a TV</p>	<p><i>-It is recommended that the words 'where applicable' are introduced in section 4.2.1 to take care of channels that deal with niche programming</i></p>

<p>suitable for children is overtaken by time. With over 40 channels on the digital platform why can't CA licence specific stations to deal with children issues or other niche areas?</p>	<p>station, there could be opportunities for niche stations to still meet this requirement. We shall amend the code as recommended to reflect the implementation flexibility for either niche or general programming stations</p>	
<p>-section 5.2.2. <i>For broadcasting stations which provide news as part of their daily programming, news schedules shall be not less than one and half hours of the station's daily programming - Why go this far?</i></p>	<p>-This is one of the public service obligations for broadcasters meant to ensure diversity in news output in order to make broadcasting a market place of ideas. This diversity of output is important for the proper functioning of democracy.</p>	<p><i>-The provision should remain as is</i></p>
<p>Section 5.2.5 <i>Side comments expressing personal opinions while a news item is being reported or delivered are prohibited to prevent the listener from mistaking opinion for news-</i> doesn't help because sometimes experts are brought in during news time to give their opinion.</p>	<p>-This section is addressing side comments from the news presenter and not the invited experts. When experts are brought in they are usually introduced as such thus the consumer is aware that that is the opinion of the expert but not part of the reportage.</p>	<p><i>-The provision should remain as is</i></p>
<p>Section 5.7.3 <i>Subjects of video and voice clips should be clearly identified - wouldn't that be exposing them too much?</i></p>	<p>-No, it will not be over exposure because this is in normal or conventional reporting and not as in the case of investigative reporting which is taken care of in section 5.6.1</p>	<p><i>- The provision should remain as is</i></p>
<p>Section 6.3.3 <i>Personal bias or prejudice in commentaries shall not be allowed to distort</i></p>	<p>-As indicated in 6.3.1 commentaries are encouraged.</p>	<p><i>-The provision should remain as is</i></p>

<p><i>facts</i> - how will CA enforce, everyone has a personal bias</p> <p>Section 7.2.1 <i>The right to privacy of individuals shall be respected. Intrusion into purely personal matters which have no bearing on the public interest is prohibited</i> - it depends on who you are</p> <p>Section 11.2.5 <i>Stations are encouraged to adopt standard operating procedures consistent with this Programming Code to govern the conduct of their news personnel during coverage of crime and crisis situations</i> – it is not clear, please clarify</p> <p>Sections 12.2.4 <i>Broadcasters shall ensure that religious programmes do not misuse any susceptibilities of the audience for such a programme e.g. religious personnel should not misuse religion to exploit audiences by asking them to support them financially or abuse of a person's belief in order to convince that person to change her /his belief and subscribe to the beliefs of the person</i></p>	<p>However, the distortion of facts during the envisioned discussions that is discouraged and not the presentation of personal opinions or biases</p> <p>-Even when dealing with prominent personnel or public figures, if the intrusion into their personal matters has no bearing on the public interest whatsoever, the intrusion is prohibited as it infringes on their right to privacy.</p> <p>-While each broadcaster might have their own internal operating procedures that come into effect during crisis situation reporting, they are advised to align it with the issued guidelines on coverage of crisis situations</p> <p>-In drawing up this Code the Authority has taken into account the objectives of the Act and the fundamental values, rights and freedoms enshrined in the Constitution of Kenya, 2010. While the constitution recognizes and upholds every person's right to freedom of religion and religious expression, the right to freedom of religious expression does not extend to the spreading of false charges or accusations against persons</p>	<p><i>-The provision should remain as is</i></p> <p><i>-The provision should remain as is</i></p> <p><i>- This provision should remain as is</i></p>
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<p><i>challenging her/him. and 12.2.9 Broadcasters shall not engage in proselytism infringes on my right to express my religion freely. Religion is a personal choice and it should be removed from the code.</i></p>	<p>or organizations with different beliefs, maliciously attack, insult, harass, or ridicule other churches, faiths, sects or denominations or their followers merely because of their beliefs. Kenya is a multi-religious nation whose laws guarantee, safeguard and protect the freedom of worship and association.</p>	
<p><u>Christian Broadcasting Stations</u></p> <p>1. Section 3 a. 3.2 4...add” occultic scenes”: to read “Promotional materials and music videos which contain scenes of violence, sexually explicit conduct, occultic scenes/and or offensive language intended for adult audiences should not be broadcast during the watershed period.</p> <p>b. Add a new section 3.2.5: pornographic material should not be broadcast</p>	<p>This submission has merit and should be considered</p> <p>The code has sufficient safeguards on explicit sexual content, use of offensive language and violent material. In addition, the rating and classification of content requirement provides further safeguards against airing of pornography.</p>	<p><i>It is recommended that section 3.2.4 be amended to read:</i> “Promotional materials and music videos which contain scenes of violence, sexually explicit conduct, occultism and/ or offensive language intended for adult audiences shall not be broadcast during the watershed period</p> <p><i>No action is therefore required</i></p>

<p>at any time</p>		
<p>2. Section 12 12.2.2 be removed completely NB. Religious matter are sensitive where ones belief is not another and therefore on what basis shall one be said to accuse another. This is a relative statement and could be abused.</p> <p>If retained, insert the word ‘religious’ to ensure that we leave no room for misinterpretation as to the kind of organization being referred to</p>	<p>Section 12.2.2 of the code leaves no room for misinterpretation as implied. While each religious group has its unique beliefs and exercises it’s right to freedom of religious expression, that right does not extend to the spreading of false charges or accusations against persons or organizations with different beliefs, or to maliciously attack, insult, harass, or ridicule other churches, faiths, sects or denominations or their followers merely because of their beliefs.</p>	<p>No action is therefore required thus: <i>12.2.2 Religious programmes shall not spread false charges or accusations against persons or organizations with different beliefs. Such programmes shall not be used to maliciously attack, insult, harass, or ridicule other churches, faiths, sects or denominations or their followers merely because of their beliefs.</i></p>
<p>12.2.3... add, “as outlined in the Constitution of Kenya”. To read “religious programs shall give due regard to the freedom of religion and religious expressions as outlined in the Constitution of Kenya”.</p>	<p>This is summarily taken care of in Section 1.2 which gives the regulatory framework of the Code to avoid repetition. It states: ‘<i>In drawing up this Code the Authority has taken into account the objectives of the Act and the fundamental values, rights and freedoms enshrined in the Constitution of Kenya, 2010...</i></p>	<p>No action is required on the code</p>

<p>Consider deleting the example in Section 12.2.4.</p> <p>Section 12.2.5 might be misinterpreted when for example a Muslim programme is expected to be aired on a Christian station</p>	<p>The proposal to delete the example in 12.2.4 has merit as the example limits the scope of manipulation to financial gains only and presents an opportunity for misinterpretation</p> <p>Section 12.2.5 should be qualified to exempt specialist religious television services</p>	<p><i>It is therefore recommended that section 12.2.4 be amended by deleting the example and replace misuse with the phrase ‘improperly exploit’ :</i></p> <p><i>Broadcasters shall ensure that religious programmes do not improperly exploit any susceptibilities of the audience.</i></p> <p><i>It is therefore recommended that Section 12.2.5 be amended by introducing an exemption phrase to read:</i></p> <p><i>Broadcasters shall not discriminately treat religious groups over the others in religious programming. This rule shall not apply to stations specializing on religious programming..</i></p>
<p>12.2.6 Rewrite to read: “Religion and religious activities of those belonging to a particular religion shall be interpreted based on the respective religious book and the broadcasters must use their best endeavors to provide accurateness and correctness of the content of religious programs.</p>	<p>Not all religions have or are based on a particular book such as humanists, agnostics, atheists etc.</p>	<p><i>No action is required on the code</i></p>

<p>Section 12.2.7 should be deleted as it is already taken care of in section 12.2.2</p> <p>Section 12.2.9 should be removed</p>	<p>This proposal has merit and should be implemented as retaining section 12.2.7 will amount to a repetition</p> <p>It is proposed that the current definition of proselytism be retained as it only bars the use of force and does not restrict preaching, which is usually done through an appeal and not by force.</p>	<p><i>It is therefore recommended that section 12.2.7 be deleted</i></p> <p><i>No change required in the code</i></p>
<p>Section 14:</p> <p>a. It was agreed that the definition of “occultism” should be reviewed for fair representation among all religions.</p> <p>b. Remove “similar activities” and keep the defined words only.</p>	<p>The scope in section 14 to be summarised to remove aspects already reflected in the guidelines. careful presentation will take care of the concerns raised by broadcasters</p> <p>Deleting “<i>similar activities</i>” restricts the prohibited practises to only the ones mentioned yet we are coming up with futuristic guidelines and standards and new religions are and will be emerging which may not adhere to our culture and moral standards, thus the</p>	<p>The scope in section 14 to be summarised to remove aspects already reflected in the guidelines to read as follows: “Occultism is a belief in the efficacy of various practices based on hidden knowledge about the universe and its mysterious forces. In order to avoid glamourising occultism and to avoid its undesirable consequences to the people of Kenya, the following guidelines shall apply”</p> <p><i>It is recommended that the provision in the Code is retained as is.</i></p>

	phrase needs to be retained to safeguard against such undesired practices.	
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