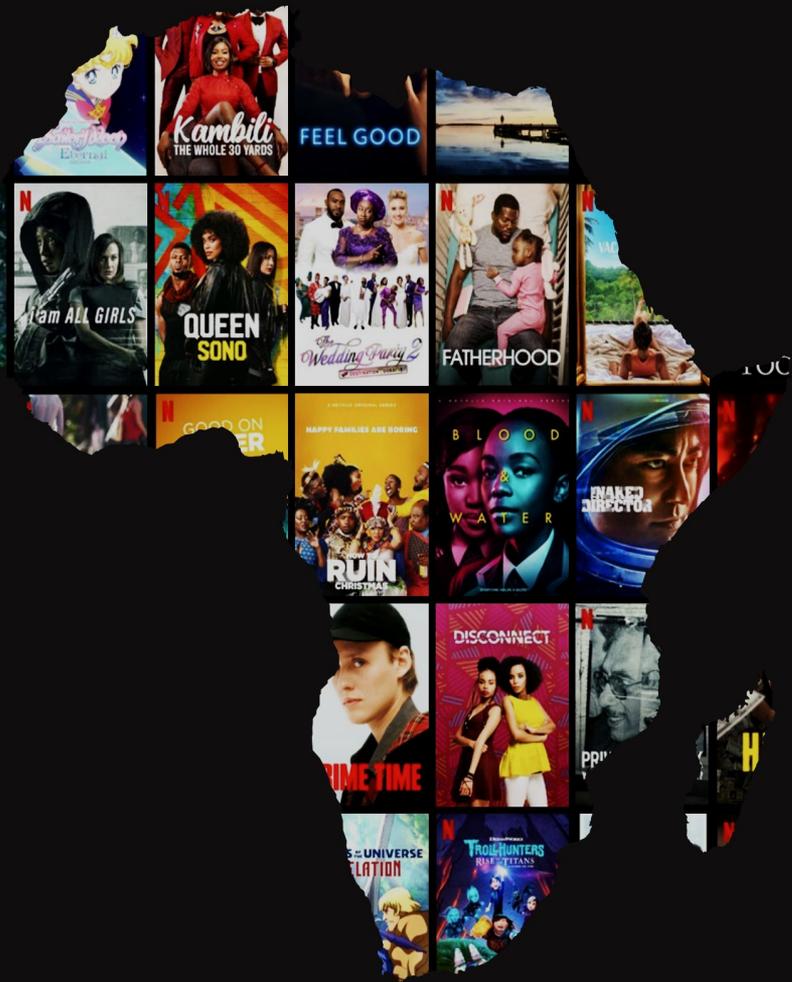


Netflix

Presentation on CAB/PPAB

14 March 2023

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01. About Netflix



About Netflix

- Netflix is a streaming service with 230 million members in 190 countries enjoying TV series, documentaries and feature films across a wide variety of genres and languages.
- Launched in South Africa in 2016.
- We have built an audience globally and in SA by finding and creating the best stories-working with local partners to give our members more options for watching local content.
- Members can choose what they want to watch and watch as much as they want, anytime, anywhere, on any internet-connected device, without commitments.



02. Investment of Netflix in SA



Economic Impact of Netflix Activities in RSA

- Since 2016, we have invested **over ZAR 2 billion** in local South African content and talent;
- At the 2022 4th Annual South African Investment Conference, we committed to investing more than **R900 million** into the local AV sector;
- **Project Panda - largest Netflix production project in Africa**-total local spend: **ZAR 1.2 billion**:
 - **ZAR 721 million** spent on **625 SMMEs**;
 - **1,000 FTE jobs** created;
 - **youth employed: 46% under age of 36**
 - **67%** are from PDI groups;
 - **ZAR 7.6 million dedicated training budget** for 30+ beneficiaries





Economic Impact Of Netflix Activities In RSA

100+ Local Titles-Films and TV Series

Netflix has invested in licensed titles, co-productions & commissioned original content

Capital injection & socioeconomic value

2/3 of production spend is outside film+tv industry

A world map with a dark background. South Africa is highlighted in a bright red color. The rest of the world is in a dark grey color.

In 2022, **over 75% of viewing** of local content occurred outside of South Africa.

Eighty-eight countries had at least one South African title place in their Weekly Top 10.*

Local Content, Watched Globally

- **Eight titles** from South Africa have placed on the global Weekly Top 10*



Amandla
3 weeks
50+ countries



Blood & Water: Season 2 & Season 3
1 week
15+ countries



Collision
2 weeks
45+ countries



Ludik: Season 1
1 week
5 countries



Savage Beauty: Season 1
2 weeks
10+ countries



Silverton Siege
2 weeks
80+ countries



Wild Is the Wind
2 weeks
60+ countries

*Weekly Top 10 covers data from July 2021 to February 2023



03. Views: CAB & PPAB

A world map with a dark red background. The map shows the outlines of continents and countries. Several countries are highlighted in a lighter shade of red, including the United States, Canada, Mexico, the United Kingdom, France, Germany, Italy, Spain, India, and Australia. The text is overlaid on the map.

Will the CAB and PPAB accomplish their goals?

Do they support sector growth AND ensure fairness for authors and performers?

How will the Bills impact South Africa's standing as a destination for investment?

The Bills are an obstacle to growth of the AV sector - which will be to the detriment of local artists and other stakeholders.

- We **support the goal of updating copyright law** to protect the interests of authors and performers.
- **But** the Bills will hinder this goal.
- The Bills impose **unworkable and globally unprecedented obligations** which will:
 - impede investment;
 - shrink the audiovisual sector; and
 - harm the interests of the stakeholders the Bills intend to protect.

The Bills are at odds with investment drivers and fundamental legal pillars for production of audiovisual works

Audiovisual works are expensive and high risk. At a minimum, legal framework must allow for:

- Consolidation of rights in the producer;
- Legal and economic certainty;
- Contractual flexibility.

The Bills eliminate or impede all of these essential elements.

Royalties

Provision

Sections 6A and 8A (CAB):

Authors of literary works and performers in audiovisual works are entitled to share in royalties received by the copyright owner.

While authors can “opt out” of this and decide to receive payment in other ways, but performers cannot “opt-out”.

Adverse Impact

- Royalty obligation likely be detrimental: It would restrict **upfront lump sum payments** which many creators depend on.
- Producers will shoulder bigger risks due to future payment obligations - even if they fail to make a profit.
- The royalty model is extremely uncommon for audiovisual works. Also poses a challenge for subscription VOD services, which do not monetize individual titles, but rather earn revenue through subscription fees that provides access to a broad catalogue of content.

Alternative Approach

Principle of fair remuneration for authors and performers. There are different means to ensure fair remuneration which legal systems around the world have adopted - which preserve flexibility.

25-year limitation on assignment

Provision

Section 22(3) of CAB: certain authors and performers cannot grant rights for longer than 25 years.

Adverse Impact

Creators are prevented from bargaining for the value of the full term of their rights under copyright. Producers will likely pay less because they are obtaining less than full value.

After 25 years, a film or TV program may need to be **removed from distribution** because rights have expired. This could prejudice the interests of other creators who have contributed to overall work.

No impact study - this was an issue identified in the context of music.

Incompatible with international treaties.

Alternative Approach

This provision should be deleted, or exclusion of application to audiovisual works. Again, there are alternative legal mechanisms which could be implemented to protect authors and performers from ensuring they receive value for the assignment/licensing of their works.

Reporting obligations

Provision

Section 8A(6) of the CAB and Section 4(c) of the PPAB impose extensive registration and reporting requirements of “any act of commercial use of a copyright work” subject to criminal penalty for intentional failure to do so. Heavy fine (minimum 10% of turnover, or prison!)

Adverse Impact

- Impossibility of compliance - thousands of works, millions of uses.
- Significant administrative costs for producers given multiplicity of works, thousands of right holders, many acts of commercial uses.
- Would apply even if no remuneration is due, or if use of contribution is insignificant (extras).
- Would be disproportionate in relation to the goals. Reporting systems would likely cost millions to implement and run.
- No evidence of corresponding proportional benefit for creators.
- Loss of investment in content - diverted in setting up monitoring/compliance - would cost millions (studies in Germany and Netherlands).

Alternative Approach

A more balanced solution (eg: through agreements, which are industry-driven) that entitles principle authors and performers to see information about the commercialization of their rights, on request. Proportionality is key.

Ministerial power to set contractual terms

Provision

Section 39(c) of CAB and **Section 8D(3) and (4) of PPAB** allow the Minister to make regulations that would prescribe compulsory and standard contractual terms in agreements for licensing and assignment of rights.

Adverse Impact

- Creates a cloud of legal and economic uncertainty, and may complicate decisions to invest in new projects.
- Would make it impossible to set terms that are appropriate for the unique circumstances of each production.
- Far out of step with international norms and practices.

Alternative Approach

Contractual terms need to take into account industry specificities, set by industry - each project is different - tailored to specific production types, depending on genre, format, budget etc.

In Summary

- ★ Netflix remains excited about opportunities for growth and further investment in local content and production, but remains concerned about the impact of the Bills on sector growth.
- ★ Imposition of mandatory contractual terms, one-size-fits-all “royalty” models, limiting the ability of producers to obtain rights will deter investment and jeopardize sustainable producer SMEs.
- ★ The Bills have failed to consider differences within the creative sector: AV sector, music, publishing - each operates differently - a flexible framework is needed. A comprehensive socioeconomic impact assessment is needed.

Thank You

