

NIGERIA BROADCASTING CODE:

AMENDMENTS TO THE 6TH EDITION



Following the Recommendations of the Committee on the Reform of the National Broadcasting Commission and consequent approval of President Muhammadu Buhari, GCFR, the Board and Management of the NBC conducted a Public presentation of amendments of the 6th edition of the Broadcasting Code to stakeholders including BON, NUJ, the Academia and others at Leola Hotel, Ikeja, Lagos, on Thursday, March 26, 2020.

The amendments of the Code make provisions for Local content in the broadcast Industry. It also makes provisions for increased advertising revenue for local broadcast stations and content producers. It significantly creates restrictions for monopolistic and anti-competitive behavior in the broadcast industry in Nigeria.

ANTI-COMPETITIVE OBJECTIVES

0.2.2.7 a. To maintain and promote fair and efficient market conduct and effective competition in the broadcast industry in Nigeria or, in the absence of a competitive market, to prevent the misuse of monopoly or market power or anti-competitive and unfair practices by broadcasters or licensees or facility providers or equipment suppliers in the broadcast industry; and

b. To establish codes of practice relating to content acquisition, sharing of content rights for rebroadcasting and technical standards for media services; and to regulate standards of fair market and monitor compliance with such codes

WEB/ONLINE BROADCASTING:

2.0.3 All persons who wish to operate web/online broadcasting services in the Nigerian territory shall be registered with the Commission.

2.12.7 Web/online platform owners (IPS) shall bear liability for every content on their platforms

2.12.7.1 Contents on web/online platforms shall conform to the provisions of the Code on programming standards, especially as it relates to hate speech and fake news.

2.12.7.2 Where a service provider or a platform provider breaches any or all of the provisions of the Code on web/online broadcasting, sanctions as provided in the Code, including a take-down order, a block or a shutdown order shall apply.

International Broadcast Signals:

2.12.8 International Broadcasters transmitting signals into the Nigerian territory shall take cognizance of Nigeria's broadcast laws and international principle of reciprocity.

3.15 CHARACTER OF LOCAL CONTENT

3.15.1 The Broadcaster shall ensure that for a programme to qualify as local content, its conceptualization, production, target audience which in every case should be Nigeria, satisfies all the following:

a. The producer of the programme is or their producers of the programme who must be responsible for creative control, monitoring and decision-making pertaining to the programme are Nigerians residing in Nigeria;

b. The director of the program is, or the directors of the program are, Nigerian(s); or

c. The author of the programme is or the writers of the programme are, Nigerian(s);

d. At least 75% of the leading authors and major supporting cast, including voice actors, or on-screen presenters appearing in the programme are Nigerians,

e. A minimum of 75% of program expenses and 75% of post-production expenses are paid for services provided by Nigerians or Nigerian companies, which may be obtained from Programme commissioning, Licensing, Advertising-funded programming, Grants, Co-funding arrangements, commercial sponsorship and financing initiatives, all of which must not be subject to "foreign ownership or arbitrary interference";

f. Where a production is a collaboration with a foreign entity, the producer(s) shall ensure that Nigerian production locations, talents, skills set etc. shall form at least 75% of the entire production.

3.15.2 The local content requirement referred to in 3.15.1 above shall apply to all categories of programming including but not restricted to fiction, series, serials, films, documentaries, arts and educational programmes, news, sports events, games, advertising, tele-shopping or teletext services.

3.16(d) All broadcast licensees shall source their local content programming requirements from independent producers where it is not a direct production of the broadcaster.

3.16(e) Subscription-based services shall ensure that a minimum of 15% of their channel acquisition budget is spent on channels with local content.

MUSIC

3.18.2(e) The Broadcaster shall ensure that payment of royalties for all artistic and musical works is done promptly

3.18.3 Prior to the use of an artistic work by way of publishing performance, production, reproduction, translation, distribution, adaptation, translation, broadcast and/or making of a cinematograph film or a record in respect of a musical by a broadcaster, the broadcaster shall:

a. Obtain the appropriate licence from the owner or exclusive licensee sufficient to authorize the use contemplated and shall pay all applicable licence fees and/or exclusive licensee of the copyright; and;

b. Pay all sums, if any, payable to collective management organization and thereby obtain a clearance that is required as a result of the broadcaster's use of the Sound recording on the Work, immediately after receipt of notice to such effect.

c. Failure to effect payment of the licensee fee and obtain the clearance before prior use by the Broadcaster as described above shall amount to a Class B offence under this code without prejudice to the right owner's right to lodge a report with the Nigerian Copyright Commission for prosecution as well as seek civil remedies where applicable.

d. Any question as to the applicable collective management organisations to receive payment and obtain a clearance shall be made to the Nigeria Copyright Commission whose decision shall be final.

UNCONVENTIONAL REPORTAGE

5.6.0 In contemporary times, the impact of modern technology has significantly enabled Citizens' contributions to journalism, which are beneficial to broadcasting. This genre of Citizens' Reportage deploys such facilities as "User Generated Content" (UGC), providing instantaneous eye-witness account of events. Such technological benefits place further demand on the Broadcaster to be more cautious of its editorial responsibility.

5.6.1 The Broadcaster shall approach with restraints, the use of materials from user generated sources in order not to embarrass individuals, organizations, government or cause disaffection, incite to panic or rift in the society at large.

5.6.2 The Broadcaster shall verify news materials emanating from unconventional sources as fake news is prohibited

5.6.3 The Broadcaster shall ensure that materials from user generated sources meet all provisions of the Code.

5.6.4 The Broadcaster shall ensure that news materials sent in by the public are vetted to ensure editorial responsibility.

5.6.5 The Broadcaster shall ensure that UGC and sources are clearly identified.

5.6.6 The Broadcaster shall avoid infringing privacy rights when materials are sent in from user generated sources.

5.6.7 The Broadcaster shall be particularly careful when handling crises situations, crashes, earthquakes, etc. so as not to cause panic or trauma to relations of victims.

5.6.8 The Broadcaster shall be held liable for any breach of The Code emanating from the use of materials from user generated sources.

SECTION 6 - PRINCIPLE

It is the policy of the Nigerian government to promote local entrepreneurship in the creative industry in Nigeria. In the actualization of this policy the broadcast industry in Nigeria shall promote the full exploitation of Rights to Sports and other programming content for the broad benefit of Nigerians. Therefore, the exclusive exploitation of rights even when acquired is not permissible in Nigeria.

6.0: SPORTS RIGHTS

6.1 Sports are useful in the physical and mental development of a person and germane to broadcasting. Sports serve as instruments of national unity and cohesion.

Since broadcasting is critical to the development of sports, the Broadcaster shall:

(a) Uphold the principles of equity and fairness in the acquisition of sports rights and coverage;

(b) Provide the widest coverage for all sporting activities; and;

(c) Use sport to promote national unity and cohesion by paying special attention to sporting events and national importance.

6.2 ACQUISITION OF SPORTS RIGHTS

6.2.1 Nigeria shall not be bundled in the same basket with other countries in the sale of football rights.

6.2.2 The final bid for the acquisition of rights to sporting events for Nigeria shall be reasonable in comparison with other territories of similar economic indices.

6.2.3 The Broadcaster shall submit the rights to the sporting events to the Commission for ratification within two weeks.

6.2.4 In the event the Broadcaster fails to submit the rights to the sporting events to the Commission as provided in 6.2.3, the rights shall be null and void and the event shall not be broadcast within the Nigerian territory.

6.2.5 To ensure fair and effective competition on all platforms at an agreed fee, rights owner to Live Foreign Sporting Events shall offer the rights to Broadcasters on the different platforms stated below:

- (a) Satellite (DTH)
- (b) Multipoint Microwave Distribution System (MMDS)
- (c) Cable (Fibre Optics)

- (d) DTT (Terrestrial)
- (e) Internet
- (f) Mobile
- (g) Internet Protocol Television (IPTV)
- (h) Radio

6.2.6 In the event that the Broadcaster acquires sports rights for a Live Foreign Sporting Event for the Nigerian territory, that does not take cognizance of the available broadcast platforms stated in 6.2.5, the right shall be made available to Broadcasters on other platforms at commercially agreeable terms.

6.2.7 In the event of a dispute, the parties shall use their best endeavours to resolve their differences amicably. Where the parties fail to agree, the Commission shall arbitrate under the Arbitration and Conciliation Act and its decision shall be binding.

6.2.8 In the broad national interest, exclusivity of sporting rights in Nigeria is prohibited.

6.2.9 Warehousing of sports rights (acquiring rights and not using them) is prohibited.

6.2.10 No Prime Foreign Sports Content shall be transmitted in the Nigerian territory unless the owner of such content has also acquired Prime Local Sport Content of the same category with a minimum of 30% of the cost of the acquiring the Prime Foreign Sports Content.

6.2.11 Advertisement of products and services during prime foreign sports contents shall not be broadcast unless the advertiser equally sponsors, and or advertises such products and services in the broadcast of prime local sports content in the same category, where such local sports contents produced in Nigerian are available.

6.2.12 The provisions of 6.2.10 and 6.2.11 shall be in compliance with other provisions of advertising in the Code.

6.2.13 Where a Broadcaster acquires the broadcast rights to such Prime Local Sports Content as stated in Section 6.2.10 above, such content shall be given the same coverage as other contents in its platform.

6.2.14 In making a determination of compliance or any other relevant matter regarding the stipulated proportion of monies paid for the acquisition of Prime Foreign Sports Content relative to Prime Local Sports Content of the same category, the Commission shall rely on the original or certified true copy of agreements and of other documents by which such contents have been acquired directly from the owner, producers or distributors of broadcast in Nigeria.

6.2.15 In the determination of local sports content of the same category as indicated in Section 6.2.10 above, preference shall be given to local sports content in the strict Preference order of National, State, Local Area and private sports content and in the event that it is proved that the aforementioned order of preference has been breached and/ or a lower category chosen in default or breach of the order of preference stated above, the local sports content requirement would be deemed unfulfilled.

6.2.16 The carriage of any local channel in Nigeria will not be considered in fulfilment of the conditions of Section 6.2.15 above.

6.2.17 A Broadcaster, in relation to the provision of Section 6.2.15 above shall provide the Commission, within 14 days of demand, with the original or certified true copy of agreements and of other documents by which such contents have been acquired.

6.2.18 In the event of the failure, negligence or refusal of the broadcaster to adhere to any of the provisions of Sections 6.2.10 to 6.2.17 above, the Commission shall direct that such content not be broadcast in Nigeria until compliance.

6.2.19 In the determination of local sports content of the same category as indicated in Section 6.2.12 above, preference shall be given to local sports content in the strict reference order of National, State, Local Area and private sports content and in the event that it is proved that the aforementioned order of preference has been breached and/ or a lower category chosen in default or breach of the order of preference stated above, the local sports content requirement would be deemed unfulfilled.

6.2.19 The carriage of any local channel in Nigeria will not be considered in fulfilment of the conditions of Section 6.2.17 above.

6.2.20 A Broadcaster in relation to the provision of Section 6.2.16 above shall provide the Commission, within 7 days of demand, with the

original or certified true copy of agreements and of other documents by which such contents have been acquired.	9.0.1 The Broadcaster or Licensee shall immediately after the coming into force of this Amendment be prohibited from entering into any form of agreement, contract, concerted practices or take any decision which have as their object and intendment the prevention, restriction or distortion of competition in, or in any part of, the broadcast media industry in Nigeria; and for this purpose, no broadcaster or licensee shall enter into any form of broadcasting rights acquisition either in Nigeria or anywhere in the world to acquire any broadcasting right(s) in such a manner as to exclude persons, broadcasters or licensees in Nigeria from sub-licensing the same.	Broadcaster shall ensure access by all Pay TV platforms to premium content in the Sports and News genre to generate effective competition at the wholesale level for such genres.	this Part or of any code of practice has been infringed.
6.2.21 In the event of the failure, negligence or refusal of the Broadcaster to adhere to any of the provisions of Sections 6.2.15 to 6.2.19 above, the Commission shall direct that such content not be broadcast in Nigeria until compliance.		9.1.1.2 In furtherance thereof, a Broadcaster shall offer the Sports and News programme and/or channels to other broadcasters for retail to residential subscribers in Nigeria on the following terms: a. Upon reasonable request in writing b. Within a reasonable time c. On a non-exclusive basis d. Without any undue discrimination; and e. In accordance with the requirements of this section and directions issued by the Commission.	9.1.1.11 Without prejudice to the generality of the foregoing provisions, if the Commission is satisfied that any person is infringing, likely to infringe or has infringed any provision of this Part or of any code of practice, the Broadcaster shall: a. Comply with that provision or cease infringing that provision; b. Pay a fine provided that if the infringement relates to any act or deed to overtly, purposely and/or covertly prevent or restrict any licensed broadcaster from entering into the media market or from obtaining a broadcasting right thereby preventing competition in Nigeria, any broadcast licensee found culpable upon investigation shall be liable to a fine not below the sum N10,000,000 (Ten Million Naira) in addition or apart from any requirement under this section. c. As the Commission considers appropriate or be liable to such others restructuring. d. Comply with the modification or termination of any agreement, decision or concerted practice. e. Comply with the modification or cessation of any conduct in question.
7.8 PRODUCTION OF ADVERTISING FOR LOCAL GOODS AND SERVICES. OBJECTIVE: The intention is to stimulate growth in the advertising spend which accrues to the Broadcast industry through the following: (a) Deliberate utilization of Nigerian human resources, goods, works and services in the industry. (b) Availing all levels of its complexity to involve Nigerian people and expertise. (c) Building capabilities in Nigeria to support increased investment in the technology surrounding Advertising on Broadcast infrastructure and assets. (d) Leveraging existing and future investment in the sector in an effort to stimulate the growth of Nigerian and Nigeria's local enterprise. (e) Ensure that Broadcasters, Channel owners, Content developers and Producers get their fair share of advertising spend.	9.0.2. An agreement by a Broadcaster or a decision which is prohibited by 9.0.1 shall be void. 9.0.3. The Broadcaster shall abide by directives which the Commission may from time to time publish as guidelines to clarify the meaning of "agreement, decisions or concerted practices, which have as their object or intendment, the prevention, restriction or distortion of competition" in the Nigerian broadcast industry and such guidelines or regulations may include but shall not be limited to references to: a. The relevant economic market; b. Global trends in the relevant market; c. The impact of the conduct on the number of competitors in a market and their market shares; d. The impact of the conduct on barriers to entry into the market e. The impact of the conduct on the range of services in the market; f. The impact of the conduct on the cost and profit structures in the market, and/or g. Any other matters, which the Commission is satisfied, are relevant.	9.1.1.3 In determining the charges offered for supply under this section, consideration should be had to the prorated cost of acquisition of the Sports and news programme and/or channels by a subscriber on the platform of the Licensee ("Stipulated Prices") and the retailing thereof to each potential subscriber. In no event shall the charges exceed the Stipulated Prices thereof. 9.1.1.4 The Broadcaster shall provide the Licensee with standard terms and conditions under which offers shall be made further to this section, which shall include at least the following: a. Charges which do not exceed the Stipulated Prices; b. The Minimum Qualifying Criteria for potential purchasers; c. Terms of payment and billing procedures d. The duration of agreements and notice periods.	(j) NATIONAL EMERGENCIES A new provision on mandatory allotment for national emergencies: Section 9.4.3 is amended thus: <i>"The private/Commercial Broadcasters shall ensure that it allots a minimum of 20 percent of weekly broadcast hours to public service programmes on emergencies, current trends and issues. Such programmes shall be given prominence during family belt and shall not be less than 120 minutes per transmission day."</i>
7.8.2 In furtherance of the intent stated above, the Broadcaster (a) shall ensure that all television and radio advertisements for airing on all broadcast platforms, whether on Free or Pay platforms or on channels being up-linked or broadcast from Nigeria and pertaining to products and services manufactured, grown, processed, developed, created and originating from Nigeria, shall be wholly produced in Nigeria. (b) shall not transmit adverts produced by Foreign entities, companies or organizations for the Nigerian market. (c) shall demand compliance with Section 7.8.2 (a) and (b) above and any breach of the above in ensuring compliance shall incur a penalty and such sums shall be invested into the Local Content Development Fund.	9.0.4 It shall be the duty of the Broadcaster to comply with directives that the Commission arising from the power of the Commission to regulate the conduct all Broadcast Licensees. If the Commission concludes in its sole discretion, that a prior or proposed action(s) is likely or shall cause substantial restraint of competition or tend to create monopoly in the Broadcasting Industry. 9.0.5 The Broadcaster shall comply with published guidelines by the Commission which clarify how it shall apply the test of "dominant position" to Broadcasters/licensee, and the guidelines may specify the matters which the Commission may take into account, including but not limited to: a. The relevant economic market; b. Global technology and commercial trends affecting market power; c. The market share of the licensee; d. The licensee's power to make independent rate setting decisions; e. The degree of product or service differentiation and sales promotion in the market, and f. Any other matter which the Commission is satisfied is relevant.	9.1.1.5 The Licensee shall comply with any direction or request for information issued by the Commission for the purpose of ensuring monitoring or investigating compliance with this section. 9.1.1.6 In the event that the Licensee accepts an offer made pursuant to this section, the Broadcaster shall use its best endeavours to enable that the Licensee commence retailing of the programme or channel as soon as practicable possible. 9.1.1.7 In the event of a dispute as to the Stipulated Prices, the Commission shall have the right to conduct a review of the Stipulated Prices further to a complaint by any of the parties thereof and give directives which shall be binding on all parties, within 21 days of being notified of such dispute. 9.1.1.8 The Broadcaster shall comply with directives by the Commission that compel any broadcaster in the broadcast industry to license its broadcast and/or signal rights in any genre of programming to another licensee or broadcaster in Nigeria if the following circumstances are present: a. If the genre of programme(s) enjoys compelling viewership by Nigerians. b. It relates to a product or service that is objectively necessary to be able to compete effectively on a downstream market. c. It is likely to lead to the elimination of effective competition on the downstream markets, and d. The refusal is likely to lead to consumer deprivation.	11.1.5 The broadcaster or broadcast service provider shall ensure that all Set-Top-Boxes are sourced locally to encourage the growth of indigenous industries. 11.5.4 The Broadcaster shall, at times of national emergency comply with any Decryption or Encryption order from the Commission. (b) Amendment to Sanctions Section 15.5.1: (a) Light N200,000.00 – N500,000.00 (b) Heavy..... N500,000.00 – N4,999,000.00 (c) Severe..... N5,000,000.00 and above (c) Furthermore, Section 15.2.2 to be amended to read: The Sanctions for Class B are: (a) Written warning to remedy/rectifies a breach within a reasonable time frame, failing which a penalty shall be imposed; (b) Failure to comply with the Provision of "a" above shall attract a reduction of daily broadcast hours for a given period. The recommencement of full broadcast hours shall be subject to a heavy penalty for public and commercial broadcasters and light penalty for Community broadcasters".
7.9.0 UNPAID ADVERTISEMENT RATES This provision applies to advert placements on all broadcast media to be aired in Nigeria. 7.9.1 (a) The Broadcaster shall notify the Commission of outstanding and unpaid invoices whether issued by itself or on its behalf, any advert on their platform after it has remained unpaid for a period of 45 days. The Commission shall thereafter send a notice of default in its prescribed form, to all of its Licensees with a notice to desist from accepting any form of advertising both from the stated Advertiser and/or their Agency. (a) A Broadcaster shall not broadcast any advert, sponsored programmes or broadcast events of any Agent, Agency or Advertiser in breach of 7.9.1 (a) after the expiration of 60 days thereafter or upon notification by the Commission based on the complaint from other Broadcasters, Licensees or Third Parties of non-compliance. (b) Any Broadcaster in default of compliance with the above provision shall be sanctioned by the Commission. (c) The Broadcaster shall be sanctioned who fails to comply with the following: i. Investigate complaints regarding non-compliance with advertising provisions of the Code; ii. Monitor and stop any advert, sponsored programme or broadcast event which does not comply with regulations contained herein; or iii. Makes a statement that is false in material facts in purported compliance with the provisions in this Section 7.9.1,	9.0.6 A licensee or broadcaster in a dominant position in the broadcast industry shall on the order of the Commission to cease a conduct in that market which has or may have the effect of substantially preventing, restricting and/or distorting competition in the broadcast industry and to implement appropriate penalties and/or remedies. 9.0.7 The Broadcaster shall obey an order prohibiting any conduct on the part of one or more Broadcast Licensees which amounts to the abuse of a dominant position in, or in any part of, the broadcast media industry in Nigeria if in its discretion, it may or would adversely hinder the maintenance and preservation of competition in the media industry in Nigeria. 9.0.11 A broadcaster is in a dominant position when, in the opinion of the Commission, that Broadcaster is able to act without significant competitive restraint from its competitors.	<i>(The Commission in invoking its powers under this subsection will make an assessment whether competitors can create an alternative source or efficient supply, which would be capable to be disposed in the downstream market.)</i> 9.1.1.9 The decision of the Commission shall be binding on all broadcast licensees irrespective of contracts executed to the contrary, as long as the subject matter of the right or license is for broadcasting in Nigeria. 9.1.1.10 The Broadcaster shall be bound by investigation conducted under this section, by the Commission, which its considers that any provision of	Sign: MANAGEMENT
ANTI-COMPETITION	9.1.1 WHOLESALE OFFER 9.1.1.1 For the purpose of ensuring the widest possible distribution and viewership of content considered critical to the success and sustainability of new entrants in the Pay TV industry in Nigeria, the		