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MEDIA RELEASE

CAUSE FOR JUSTICE AND OTHERS V ICASA, STARSAT AND THE MINISTER OF COMMUNICATIONS

WESTERN CAPE HIGH COURT, CAPE TOWN

5 August 2014

Cause for Justice ("CFJ") is a non-profit human rights organisation. One of our primary objectives is to stand against the abuse and/or misappropriation of constitutional rights and freedoms especially where it occurs at the expense of constitutionally protected persons or groups.

CFJ will for this reason request the High Court to review the Independent Communications Authority of South Africa's ("ICASA") decision allowing StarSat (previously TopTV) to broadcast pornographic channels on SA television. The hearing will take place in the Western Cape Division of the High Court (Cape Town) from **11 to 13 August 2014**. Judge Lee Bozalek has been appointed to preside over the matter.

Prelude to the High Court case

On 28 November 2012 StarSat submitted an application to ICASA for the authorisation of three pornographic channels, namely Playboy TV, Private Spice and Desire TV.

A total of 644 written representations were submitted to ICASA. In excess of 90% of the submission received by ICASA opposed the application. The members of CFJ also provided ICASA with written representations. ICASA also held a public hearing on 14 March 2013, with eight organisations, apart from StarSat, making oral submissions. ICASA authorised StarSat's pornographic channels at the end of April 2013.

CFJ instituted judicial review proceedings during December 2013 to set aside ICASA's authorisation decision. Two other parties also instituted review proceedings against ICASA's decision and all three court cases will be heard in one hearing from 11 to 13 August 2014.

Brazzers TV

According to StarSat's court papers it is currently broadcasting two pornographic channels to approximately 400 subscribers.

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Their papers also disclose that StarSat in December 2013 submitted a new application to ICASA for authorisation of an additional channel, namely Brazzers TV. Brazzers TV, according to StarSat is “essentially a channel name change and re-branding of the previously authorised adult bouquet channel offering ‘Private Spice’”.

Since CFJ was not informed by StarSat or ICASA of StarSat’s new application, CFJ is currently investigating whether this is in fact true and whether the content of the Brazzers TV channel is in violation of BCCSA’s Code of Conduct. CFJ’s legal team requested StarSat on 10 July 2014 to provide evidence that Brazzers TV is only a “re-branding” of the previous Private Spice channel and also for the programme schedules and broadcasting material of Brazzers TV. StarSat has up to the date of this press release refused and/or failed to comply with our aforesaid request, in terms of the Rules of Court.

Arguments included in CFJ’s court application

Some of the arguments raised by CFJ in its court application:

1. ICASA did not follow a fair process in making its decision as is required by the applicable legislation. For instance, ICASA did not give the South African public adequate notice or time to consider and meaningfully respond to StarSat’s application;
2. ICASA did not properly scrutinize the PIN code system which StarSat proposed and implemented. Research has established that the PIN system can be bypassed by young children within 4 hours on average. (After raising this issue in our affidavits, StarSat committed to introduce a more secure system);
3. Actual programme content and information have not yet been disclosed for proper assessment and thus no accurate judgement based on the nature of the pornographic material concerned could have been made up to this point.

Conclusion

CFJ is motivated by an honest and sincere concern for the people of South Africa. We submit that the risk of harm to society from allowing pornography to be broadcast in South Africa, even in a subscription service environment, far outweighs the potential benefit to be gained by the members of our society from having access thereto on their television screens.

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