



# STATE OF CONTENT POLICY

Change with(out) transformation? An analysis of content policy in Kenya



# Table of Contents

Acknowledgements.....	2
Abbreviations and acronyms.....	3
Executive summary.....	5
Introduction.....	7
Methodology.....	13
An analysis of policies and regulations on content in Kenya.....	15
Availability and accessibility of content.....	15
<i>Access to information</i> .....	15
<i>Accessibility</i> .....	17
Liberties and Limitations.....	19
<i>Privacy</i> .....	20
<i>Hate Speech</i> .....	21
Culture and language.....	22
Domains of content.....	24
<i>Regulation</i> .....	24
<i>Local content</i> .....	25
<i>Traditional knowledge</i> .....	27
<i>New forms of content distribution</i> .....	27
Impacts of content policy.....	29
<i>Economic implications</i> .....	29
<i>Human rights implications</i> .....	31
<i>Emerging issues</i> .....	35
Conclusion and recommendations.....	36
<i>Recommendations</i> .....	37



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## ACRONYMS AND ABBREVIATIONS

BAKE	Bloggers Association of Kenya
CA	Communications Authority of Kenya
DNA	Deoxyribonucleic Acid
GAA	Government Advertising Agency
KCAA	Kenya Civil Aviation Authority
KFC	Kenya Film Commission
KFCB	Kenya Film Classification Board
KFS	Kenya Film School
KIMC	Kenya Institute of Mass Communication
MCK	Media Council of Kenya
NCIC	National Cohesion and Integration Commission
NIIMS	National Integrated Identity Management System
SNP	Social networking platform

# EXECUTIVE SUMMARY

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From the colonial to post-independence eras, Kenyan governing authorities have maintained an ambivalent stance concerning content policy. Infrastructural support for various forms of content has been enabled with varying success over the years, but the substance of content receives great scrutiny, is closely regulated, and in some instances has been outrightly banned. Different content-related policies and laws also reveal a dynamic society that is changing in its socio-cultural conventions, growing in its economic output, and uneasily subject to a conservative, sometimes heavy-handed politico-regulatory structure.

The terms ‘content’ and ‘content ‘policy’ are broad in possible interpretation. Aspects of content – such as cyber security and digital content - have been addressed in other reports such as those by Bloggers Association of Kenya (BAKE) (2018) and Global Partners Digital (2016). This document drew from those accounts as it established a working definition of the term ‘content policy’ and developed a guiding framework that enabled a wide understanding within a manageable scope. While acknowledging the multiple forms of policy making- at institutional, individual, and government levels- the document focused on policy-making as undertaken by governing authorities.

This document found that where the Constitution guarantees freedom of expression and of media, it allows us to assume that content – its creation, production, and dissemination – is fundamentally a human right.

Content is also big business, especially with the entry of digital media where there are multiple avenues of generating revenues relating to information. An Entertainment and Media Outlook Report (PwC, 2015) noted that in 2015, Kenya’s entertainment and media industry – source of various forms of content - had grown by 9.1% from the previous year to be worth US\$2.2. billion and was projected to be worth US\$3.3 billion in 2020 (PwC, 2015).



But on the political front, content can be a trouble-maker, in a nation that has transitioned from colonial rule to post-colonial single party rule to evolving multi-party democracy. Socially or politically controversial subjects have led to the banning of plays, television programs or films, as well as detentions and exiling of the content creators. The post-election violence that followed the 2007 election contributed to a sensitivity against hate speech that has been enshrined in the Constitution. Thus the regulation of content receives heightened attention in civil and policy discourse. Laws relating to film, media, access to information, for example have aspects relating to regulating various forms of expression.

There is a tension then about content policy that emerges at the intersection of the economic, political, and human rights points of view. On the whole, content policy in Kenya has achieved great gains in its establishment but receives mixed reviews in how it is implemented. Ngugi (2008) observed that in matters of freedom of expression, our society has experienced great change but little transformation. It is a view that may be extended to various facets of content policy addressed in this document. There are laws enacted in the past two decades that promote an independent press, individual and community rights to information, and copyright and regulatory protections among others. But the implementation of these laws is not always consistent and incidences of media censorship, as well as bureaucratic and other barriers to accessing information speak to some of the prevailing concerns.



## INTRODUCTION

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Various dictionary definitions of the term ‘content’ revolve around the notion of information or ideas captured in documented forms such as a speech, a film, a discussion, a piece of writing, a work of art, a website or other digital medium. Content therefore can take multiple forms and may be produced for public or private consumption. Additionally, ‘content’ may refer to the meaning or substance of that information (Cambridge Dictionary, n.d; Collins Dictionary, n.d.; Merriam-Webster Dictionary, n.d.). The document limited itself to a definition of content as follows: information or ideas created for public consumption and captured in publicly accessible channels, such as digital, analogue and other platforms; and the meaning or substance of the information or ideas captured in those documented forms of expression.

By necessity then, ‘content policy’ covers a wide range of government guidelines and laws relating to different documented forms of expression. The policies are undergirded by a constitutional understanding of what constitutes ‘content’ and how that content is communicated e.g. through language. But they are also informed by the fluid political, economic, and socio-cultural contexts of Kenyan society, with pressures seen between races and ethnic cultures, different generations and religions, political and ideological standpoints, and changing socio-cultural values.

As a nation-state, Kenya is just over 100 years old and its progression through colonial to post-colonial rule has contributed to the nature of its content policy. Since the early 1900s to the present-day, governing authorities have facilitated substantial public and private investments in the physical and regulatory infrastructures that enable content creation, production and distribution. The physical infrastructures have included printing presses, broadcast and telecommunication networks, and mobile telephony. Regulatory institutions and related bodies that support the development of content include the Communications Authority of Kenya, Kenya Copyright Board, Kenya Broadcasting Corporation, Kenya Film Classification Board and the Kenya Film Commission.

In 2018, the government established the National Kiswahili Council, a consultative body designed to coordinate the work of various entities in promoting the language of Kiswahili (Abuoga & Mutere, 1988; Frederiksen, 2006; Hivos, 2016; Karikari, 2007; Ndemo, 2017, Mureithi, 2017)[Ww2] .

Government-led efforts to enable the production of and access to content include the now-defunct Tanda Grants and the Kenya Open Data Portal. The former constituted funding availed to entrepreneurs to provide digital content to Kenyan consumers. The portal is a website that avails government data to the public with the intention to keep government accountable and provide data that may be used by interested parties - such as academics and other government authorities in the study, planning and implementing of programmes. As of this writing, however, the portal's content was limited in scope, and in many cases, dated. The most current information for local county expenditures, for example, was for the 2009/2010 financial year.

The current governing administration has provided other portals, such as the website presentation of the Big Four agenda (<https://www.delivery.go.ke/flagship>) and the Public Procurement Information Portal. The Big Four agenda is the governing administration's focus on affordable housing, food security, manufacturing, and universal health coverage. The Public Procurement Information Portal (<https://www.tenders.go.ke>) was established in 2018 with all public entities required to maintain and update information related to government tenders. The information is not always accurate as seen in the screenshot shown in Figure 1. The date of the notification of the award is January 1, 1970 yet the awarding was in 2018.



Search Tender

Tender Number

Search

### Contracts Details

Contract Details | Tender Details | Awarded Company | Bidders | Evaluators | Inspection/Evaluation

#### Contract Details

Entity Type	State Corporation
Entity Name	Privatization Commission
Tender Reference Number	PC/QUOT/002/2018-2019
Contract Number	1494263
Procurement Method	Request for Quotation
Evaluation Completion Date	20th-Aug-2018
Date Contract Awarded	04th-Sep-2018
Date of Notification of Award	01st-Jan-1970
Date of Notification of Award	01st-Jan-1970
Date of Signature	04th-Sep-2018
Contract Amount	147160
Contract Start Date	04th-Sep-2018
Contract End Date	30th-Sep-2018
Contract Details	Minor repair of washrooms
Evaluation Document	<a href="#">Evaluation Report</a>

*Figure 1: A screenshot of information on a granted tender on the Public Procurement Information Portal.*

At a sub-national level, the County Government of Makueni also adopted open contracting principles and has a portal (<https://opencontracting.makueni.go.ke/>) where information relating to county finances is published. Information on the portal as of December 2019 includes tenders, contractors, procurement plans as well as the source code for the portal.



Separately, access to the content – such as for marginalized groups or persons with disability – has not always been guaranteed. Certain policies and practices have also privileged some languages over others, giving implicit power to those who can produce and distribute content in a particular language (Ghai, 2017; Nabea, 2009). The substance of some of the content produced has broadly also been subject to restrictive or repressive laws and policies. These include the banning or criminalizing a wide range of content, the deeming of certain types of content to be offensive or unsuitable, and the erecting of economic or legislative barriers in content production and distribution.

One illustration of this contradictory approach from policy makers is seen in the provision of approvals to publish or broadcast news but subtle or overt controls exerted by governing authorities over media houses on what can actually be published. This stems from colonial times when authorities were instrumental in the entry and growth of mass media in Kenya, including newspapers, radio, and television. They permitted the launch of independent newspapers but retained control of broadcasting outlets. This control extended into post-independence Kenya when the government continued to own, oversee and dictate content production and dissemination (Mbeke, Ugangu, & Okello-Orlale, 2010; Obonyo, 2011). Even with enhanced constitutional guarantees such as freedom of the media, the government in January 2018 ordered a shutdown of frequencies for four television stations over their defiance to air a disputed content.

There are other ways in which content can be controlled or regulated such as through taxation, information controls, technical controls (such as on digital platforms), legal means, and registration or licensing procedures.

One illustration of these forms of control is seen in actions taken by governing authorities. To preserve the governing status quo, the colonial administration created policies that controlled and limited content creation and distribution, particularly among indigenous and non-white actors. The banning of politically-charged content in theatrical or media forms in the 1970s and 1980s took place in the increasingly controlled post-independence political context in which the content was created.



More recently, the uproar over the film *Rafiki*, a same-sex love story, revolved around the Kenya Film Classification Board's action to ban the film. This echoed the events surrounding the 1980s television programme *Usiniharakishe*, where a scene of two adolescents engaged in a caressing scene created a public outcry and the government's ban on the programme. That a television program of the mid-1980s and a film aired in 2018 suffered a similar fate points to the influence of socio-cultural taboos - in this case public displays of romantic expression and homosexual relationships - in policy-making.

The policies also reflect various purposes, including to provide a framework to guide decision-making, activities, and interactions within the nation. Specific policies play various laws such as embodying and providing for the implementation of constitutional rights granted to citizens, such as the Access to Information (2016) Act. Other policies provide for the protection of particular interests, be it State security (Official Secrets Act) or intellectual property (Copyright Act). Yet others contribute towards ensuring the achievement of particular democratic ideals, such as the freedom of expression and of media.

The entry of digital technologies and their accessibility to wide sections of the public has also introduced new content policy-making entities and aspects. Internet intermediaries such as social networking platforms (SNPs) - including Facebook, Twitter and Instagram - have exercised their right to regulate content on their platforms through community standards stipulated in their terms and conditions. <sup>1</sup> The intent of these standards is to encourage their billions of users globally to engage in positive and respectful interactions, limit abusive or criminal behavior, follow the law, and encourage cyber safety.

<sup>1</sup> See Facebook Community Guidelines, available at: <https://www.facebook.com/communitystandards/>; YouTube Community Guidelines, available at: <https://www.youtube.com/yt/about/policies/#community-guidelines>; Twitter Terms of Service, available at: <https://twitter.com/en/tos>

Policy-making is also not only the preserve of governing authorities, but also of institutions, civil society, and the citizenry. Different media houses, for example, provide in-house policies on how their editorial staff should conduct themselves in the course of their professional duties. On public, digital, and legal fora, civil society and the citizenry have contributed to vigorous critique, debate and awareness raising on matters ranging from language usage and media regulation to the ethics of sharing violent or graphic content online. Groups such as BAKE (2018) and Global Partners Digital (2016) have contributed reports that capture aspects of digital content policy making.

The emergence of particular trends, such as the deliberate misinformation and spread of fake news on digital platforms has raised questions over cyber, personal, and national security, as well as privacy concerns and protection of reputation. Government edicts related to procedures such as licensing or equipment ownership and importation processes also create an uneven economic playing field as well as raise the spectre of infringement of constitutionally guaranteed freedoms such as freedom of expression.

Overall, an assessment of the various content policies that have been generated and used in Kenya indicate that they are established in the context of particular political, economic and socio-cultural contexts. These multiple facets and challenges expose the complexity and fluidity of policy-making in relation to the creation, distribution, and regulation of content.

# METHODOLOGY

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The aim of this policy brief is to address the state of content policy in Kenya, policy issues, and their intersection with economic, political and human rights.

Accordingly, the researchers undertook a literature review of policy, regulatory and scholarly documentation related to the notion of content policy in Kenya. The term ‘content’ was defined as information or ideas created for public consumption and captured in publicly accessible channels, such as digital, analogue and other platforms; and the meaning or substance of the information or ideas captured in those documented forms of expression. ‘Content policy’ was seen to be a wide range of government guidelines and laws relating to different documented forms of expression.

The Kenyan Constitution (2010) was used to establish the legislative framework that guides content-related policies and laws. The researchers used ‘information,’ ‘communication,’ and ‘content’ as search terms and established the terms were referenced in the following sections:

‘information’ (Articles 11, 31, 33, 34, 46, 50, 54, 125, 157, 189, 195, 211, 232)

‘communication,’ (Articles 7, 11, 31, 34, 54, 89)

‘content’ (Articles 24 (2), 34, 220)

The terms ‘information,’ ‘communication,’ or ‘content’ are specifically referenced in constitutional articles related to: culture; language; freedom of expression; freedom of media; access to information; consumer rights; legal matters related to rights to a fair hearing, and the office of the Director of Public Prosecutions; government interactions and obligations; public service values; and persons with disabilities. It is worth noting that some of the provisions require supporting legislation so as to be implemented effectively.



Using the Constitution and the given definitions of ‘content’ as guidelines, the study limited ‘content policy’ to comprise of legislation or government-issued regulatory guidelines relating to documented forms of expression around four key categories namely: accessibility of content; liberties and limitations; culture; and domains of content.

Based on these categories, various laws and policies were purposively sampled. A summary and critique of these laws and policies was then developed, which subsequently informed the discussion on economic, political, and human rights implications of Kenyan content policy. The sampled laws and policies covered are summarized and critiqued in the following section.



# An analysis of policies and regulations on content in Kenya

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This section summarizes and critiques purposively sampled laws or content policy provisions with four areas being addressed, namely: accessibility of content, liberties and limitations, culture, and domains of content.

## Availability and accessibility of content

Accessibility of content has become a potent topic all over the world and the development of regulation around it has caused ripple effects globally. There are three key areas considered under this sub-section: access to information held by the State and other relevant bodies, the citizens' privacy rights that enable them to decide how much information about them should be availed to others, and information related to marginalized groups and persons with disability (PWDs).

### Access to information

The constitutional provision for access to information is contained in Article 35 which guarantees every citizen with the right to information held by the state or individual. The constitutional provision is further supported by the Access to Information Act (2016) which details the nature and process of accessing the information. The act stipulates that the information being sort concerns life or liberty of an individual.

Advocacy for freedom of information dates back to the early 2000s when civil society actors began to push for greater accountability from governing authorities such as through the provision of particular types of information.

The rationale underlying this was the notion of information being a public good under the custody of public entities. The law's intent was to enable greater accountability in government and to limit restrictive laws, for instance the Official Secrets Act, which had carried over from colonial times.

The County Government Act (2012) also has provisions for citizens' right to information at county level. The act requires county governments to engage in public communication, to use multiple means to provide information to the citizenry, to promote freedom of media, and to have offices through which the citizenry may access county-held information as per the provisions of Article 35 of the Constitution. To this end, the Commission on Administrative Justice (ombudsman), has published information officers of all counties as well as some government departments.

However, there are challenges that have been noted in regards to access to information law. For instance, the County Assemblies Act <sup>2</sup> and Public Service Act <sup>3</sup> have been seen to limit the scope of information available for public. Other laws that pose barriers to the accessing of information such as the Powers and Privileges Act (1998), the National Intelligence service Act, the Preservation of Public Security Act, and the Evidence Act. A Freedom House report noted that the Access to Information provision in the Constitution includes exemptions to accessing information that are vaguely defined (Freedom House, 2016).

Further, other challenges related to the Access to Information Act (2016) include that many citizens are not aware about their rights in accessing information nor do they know how to access that information. Some of this that have been reported indicate that state officers sometimes are ignorant or intentionally block provision of information, provide vague or superficial responses, and are not always clear on when the requested information would be provided. Counties like Makueni County administration have an open online tendering portal where one can access information, enabling them to actively participate in running of the local government <sup>4</sup>.

<sup>2</sup> County Assemblies Powers and Privileges Act

<sup>3</sup> Public Service Commission Act

<sup>4</sup> (n.d.). access to education for persons with disability in kenya. Retrieved February 2, 2019, from <http://www.udpkenya.or.ke/wp-content/uploads/2018/09/Policy-Brief-on-Education.pdf>



## Accessibility

Access to content for people with special needs has been an area of concern in the Kenyan space. According to the Kenya National Bureau of Statistics (2017), persons with disability comprise 3.5% of the Kenyan population. The PWDs are nearly evenly divided along gender lines with 49% being female and 51% being male. The breakdown of PWDs by disability is presented in the table below.

Type of disability	Sex distribution		% age distribution	
	Female	Male	Female	Male
Visual	54	46	26	24
Hearing	52	48	14	14
Speech	46	54	11	13
Physical/self care	52	48	32	31
Mental	45	55	9	12
Albino	53	47	0.2	0.2
Others	56	44	8	7
<b>Total</b>	<b>51</b>	<b>49</b>	<b>100</b>	<b>100</b>



The Constitution prohibits discrimination on the basis of disability and spells out the rights of persons with disability (PWD). It also recognises Kenyan sign language among Kenya’s official and national languages and provides that the state shall promote its use. A National Council for Persons with Disability was established to oversee implementation of the rights of PWD.

With regard to content, non-discrimination means that PWD should be able to access content across ICT platforms. The Programming Code, which is administered by KFCB requires broadcasters to “provide sign language insert and subtitles in all newscasts and in all programmes covering emergencies and events of national significance to facilitate enjoyment of the programming by Persons with Disabilities”. This has been implemented in television news broadcasts on free-to-air tv.

ICTs have not been sufficiently leveraged upon to enhance access to content for PWD. For example, websites, including those of public agencies are mostly in English, with limited to no options for PWDs. Many PWDs therefore have to rely on assistants in order to access information on these sites. PWDs therefore face barriers when accessing e-government services such as passport application, business permit application and payments. A policy brief<sup>4</sup> examining gaps in education accessibility for PWD established the need for enforcement mechanism and implementation of policies, and also noted the lack of funding for appropriate learning programs for PWDs.

The 2019 Kenya ICT Policy provides for accessibility for PWDs. Under the policy, government undertakes to among others, provide content in alternative accessible formats to PWDs, review existing regulations on accessibility, promote the development of accessible ICT, promote research and development on ICTs and PWDs, and ensure that PWDs can exercise their information related rights including access to information, freedom of expression and opinion. Implementation of the policy is expected to begin in 2020.

<sup>4</sup> (n.d.). *access to education for persons with disability in kenya*. Retrieved February 2, 2019, from <http://www.udpkenya.or.ke/wp-content/uploads/2018/09/Policy-Brief-on-Education.pdf>



## Liberties and Limitations

Freedom of expression is a core pillar to a country's democracy. The Constitution of Kenya<sup>5</sup> 2010 provides for certain freedoms and limitations as relate to content through various articles within it. Article 33 guarantees the right to seek, receive and share ideas in artistic, creative, academic and research areas. However, this freedom does not extend to spread of hate speech, propaganda, incitement to violence and advocacy for hatred.

Article 34 advocates for freedom and independence of various forms of media, including electronic and print. But this is limited to expressions in article 33(2). Under the Kenya Information and Communication Act<sup>6</sup> (KICA), the Communication Authority of Kenya's function is to protect the right to privacy of all person in regard to broadcasting. It also stipulates that broadcasters should protect the rights to privacy of individuals. KICA also directs that infringement of freedom to expression of any journalist or media should be directed to a tribunal<sup>7</sup>, that adjudicates<sup>8</sup> around matters that arise within multimedia and telecommunication industries.

The Computer Misuse and Cybercrimes Act (2018)<sup>9</sup> defines content data as “the substance, its meaning or purport of a specified communication”. ARTICLE 19 issued an analysis<sup>10</sup> of the act and critiquing this definition as too broad and warning that it could lead to restrictions and surveillance of broad content. The Act criminalises fake news and publication of false information. Other content related provisions include unauthorised interference to a computer system, interception of content data and mutual assistance for interception of content data. A constitutional petition by the BAKE has resulted in the suspension of 26 sections of the Act, pending the hearing and determination of the suit. Judgement is expected in January 2020.

5 (n.d.). Const 2010 - Kenya Law. Retrieved December 5, 2018, from <http://www.kenyalaw.org/lex/actview.xq?actid=Const2010>

6 (n.d.). kenya information and communications act - Kenya Film Classification .... Retrieved December 6, 2018, from [http://kfcf.co.ke/wp-content/uploads/2016/07/Kenya\\_Information\\_and\\_Communications\\_Act.pdf](http://kfcf.co.ke/wp-content/uploads/2016/07/Kenya_Information_and_Communications_Act.pdf)

“Communication and Multimedia Appeals Tribunal – The Judiciary of ....” <https://www.judiciary.go.ke/communication-and-multimedia-appeals-tribunal/>. Accessed 7 Dec. 2018.

“Media sector to change following inauguration of a tribunal – Ministry ....” 30 Jun. 2017, <http://www.ict.go.ke/media-sector-to-change-following-inauguration-of-a-tribunal/>. Accessed 7 Dec. 2018.

7 (n.d.). computer misuse and cybercrimes act - Kenya Law. Retrieved December 7, 2018, from <http://kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/C/Computer%20Misuse%20and%20Cybercrimes%20Act%20-%20No.%2015%20of%202018/docs/ComputerMisuseandCybercrimesAct5of2018.pdf>

8 (n.d.). Kenya: Computer and Cybercrimes Bill 2017 - Article 19. Retrieved December 12, 2018, from <https://www.article19.org/wp-content/uploads/2018/04/Kenya-analysis-April-2018.pdf>

9 (n.d.). computer misuse and cybercrimes act - Kenya Law. Retrieved December 7, 2018, from <http://kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/C/Computer%20Misuse%20and%20Cybercrimes%20Act%20-%20No.%2015%20of%202018/docs/ComputerMisuseandCybercrimesAct5of2018.pdf>

10 (n.d.). Kenya: Computer and Cybercrimes Bill 2017 - Article 19. Retrieved December 12, 2018, from <https://www.article19.org/wp-content/uploads/2018/04/Kenya-analysis-April-2018.pdf>

## Privacy

Article 31 of the constitution covers privacy rights related to property, family, personal affairs or personal communications. Specifically, Article 31 (c) and (d) respectively enshrine an individual's right not to have information relating to family or private affairs unnecessarily revealed, nor the privacy of their communications infringed. The Constitution also binds the country to general international law and signed treaties<sup>11</sup>. Kenya is signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which include privacy as a right.

The right to privacy has been further elaborated in the Data Protection Act, 2019 whose objective is to protect how personal data is collected, stored or used by private and public entities. Some notable provisions of the Data Protection Act include: establishment of the office of the data protection commissioner<sup>12</sup>; provisions on duties of data controllers and processors; elaboration of data protection principles including: user consent, collection limitation, purpose limitation, data minimization, data security and rights of the data subject. It is worth noting that the law has already been challenged in court on among other grounds, procedural improprieties and exemptions for national security (Nyasuguta, 2019).

The law comes after many years of advocacy for a data protection framework to govern the emerging digital economy (KICTANet, 2018). *Okiya Okioti Omtatah versus Communications Authority*<sup>13</sup> challenged the device management system (DMS) project by the Communications Authority (CA). DMS was to be installed in mobile network operator servers to whitelist devices prior to their using communication services. The court found DMS a violation of citizen's right to privacy.

<sup>11</sup> Constitution of Kenya, Article 2 (5) and (6)

<sup>12</sup> Data Protection Act, 2019, Part II

<sup>13</sup> *Okiya Omtatah Okioti v Communication Authority of Kenya & 8 others* [2018] eKLR available at <http://kenyalaw.org/caselaw/cases/view/151117/>

<sup>14</sup> Statute Law Misc. Amend Act, No. 2 of 2018. Available at <http://kenyalaw.org/ki/fileadmin/pdfdownloads/AmendmentActs/2018/StatuteLawMiscellaneousNo18of2018.pdf>.

Privacy International (n.d.) linked extrajudicial killings to unregulated surveillance. In 2018, Parliament amended<sup>14</sup> the Registration of Persons Act, expanding the scope of data collected during registration of persons to include DNA and GPS location data. The collection of data has been rolled out under the National Integrated Identity Management System (NIIMS) – dubbed *Huduma Namba* – and has also generated controversy over the nature, storage, use and safety of individual’s personal information. A 3-judge High Court bench in April 2019 restricted the programme, making it voluntary and prohibiting the government from making a precondition for access to government services. The government was stopped from sharing the data collected with external actors and collection of DNA samples was also suspended pending the hearing and determination of the suit. (Kakah, 2019). Judgement is expected in January 2020.

## Hate Speech

The generality of hate speech is widely used variably by different groups or context. Article 33(2) defines the parameters of hate speech to include ethnic incitement, vilification of others and incitement to cause harm. Advocacy for hatred based on discrimination on grounds such as race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth is also prohibited.

Kenya has had a fair share of experiences on ethnic post-election violence, the worst being after the 2007 elections where over 1200 lost their lives while another 500,000 plus were internally displaced. During the campaigns preceding that election, politicians gave potent speeches referring to communities by use of coded phrases or labels. For example, the Kikuyu and Kisii resident in the Rift Valley were referred to by some Kalenjin politicians as ‘madoadoa’ (‘stains’ or ‘spots’)<sup>15</sup>. Rift Valley was traditionally home to Kalenjin while Kikuyu and Kisii communities had migrated from the colonial period.

Following the post election violence, reform measures included a new Constitution as well as efforts towards national cohesion and integration. The National Cohesion Integration Act establishes the National Cohesion and Integration Commission (NCIC) with the role of enhancing inter-ethnic harmony in the country.

15 (2008, October 22). Legislation, hate speech, and freedom of expression in Kenya .... Retrieved February 3, 2019, from <https://www.pambazuka.org/governance/legislation-hate-speech-and-freedom-expression-kenya>



Following the post election violence, reform measures included a new Constitution as well as efforts towards national cohesion and integration. The National Cohesion Integration Act establishes the National Cohesion and Integration Commission (NCIC) with the role of enhancing inter-ethnic harmony in the country. The Act outlaws hate speech in section 13 as well as incitement in section 65. Although there have not been many high profile prosecutions on hate speech and incitement, the High Court in 2014<sup>16</sup> quashed the appointment of Ferdinand Waititu to a public body due to prior incidences of incitement and hate speech. The court found that the suitability of candidates for appointment into public office could include conduct such as incitement and hate speech.

NCIC conducts peace building campaigns over election periods. They also monitor hate speech on all media, including online. In the last two general elections, CA has issued guidelines on political communication through communication networks. The 2013 guidelines required bulk SMS providers to be able to account for messages sent by candidates through their networks<sup>17</sup>. The 2017 Guidelines extended to communication on social media platforms<sup>18</sup>. BAKE (2017) protested against the guidelines, terming their language ambiguous and overreaching. They also pointed out that they were not licensees of the Authority, therefore not subject to CA's regulation. The Guidelines were issued in conjunction with NCIC.

## Culture and language

The Constitution in the preamble acknowledges the diverse cultures and languages of Kenya. However, the government has traditionally given little attention to cultural aspects (Hivos, 2016). The Constitution now protects culture and requires the state to protect and promote it in different forms. Importantly, the Constitution frames indigenous technologies as part of scientific knowledge that should be accorded legal protection through intellectual property rights and community ownership.

16 Benson Riitho Mureithi v J. W. Wakhungu & 2 others [2014]eKLR from <http://kenyalaw.org/caselaw/cases/view/95114/12> Data Protection Act, 2019, Part II

17 Communications Authority (2013) <https://ca.go.ke/document/public-notice-on-sms-guidelines-for-bulk-messaging/>

18 Communications Authority (2019, June 8). <https://ca.go.ke/.../Guidelines-on-Prevention-of-Dissemination-of-Undesirable-Bulk-a...> Retrieved from <https://ca.go.ke/wp-content/uploads/2018/02/Guidelines-on-Prevention-of-Dissemination-of-Undesirable-Bulk-and-Premium-Rate-Political-Messages-and-Political-Social-Media-Content-Via-Electronic-Networks-1.pdf>



NCIC conducts peace building campaigns over election periods. They also monitor hate speech on all media, including online. In the last two general elections, CA has issued guidelines on political communication through communication networks. The 2013 guidelines required bulk SMS providers to be able to account for messages sent by candidates through their networks . The 2017 Guidelines extended to communication on social media platforms . BAKE (2017) protested against the guidelines, terming their language ambiguous and overreaching. They also pointed out that they were not licensees of the Authority, therefore not subject to CA's regulation. The Guidelines were issued in conjunction with NCIC.

Colonial policy on language reflected concerns such as providing limited education in English to ensure that Africans did not think higher than their designated station, minimising instruction in local languages to reduce local nationalism, and little use of Kiswahili to reduce the chances of Africans developing a national identity. The post-independence government's focus on development and creating a sense of nationhood led to the greater promotion of Kiswahili in different places of official business, including the classroom and government or legislative utterances in parliament and elsewhere (Ghai, n.d.).

To illustrate, soon after independence, the then-Minister for Commerce and Industry said the following in Parliament:

*'I do not agree that vernacular language needs to be promoted. When a child begins to speak, it speaks the language in which it is spoken to by adults. ...it is therefore for us to make a political decision, that in order to bind our future generations together as one nation, we speak to them at that early age in the language we think can form a common basis. The only language that could form that common basis in Kenya today is Swahili.'*

That was Mwai Kibaki, who would later become president in 2003. On introduction of free primary education, he proposed that children be taught in their mother tongue for the first few years" (Ghai, n.d., p. 10).

The Constitution (2010) has taken a more positive approach in recognising the value in the diverse languages spoken nationally, and acknowledges Kiswahili and English as the national and official languages officially. Kenyan Sign Language is also listed among Kenya's national languages. More recently, the emergence of Sheng, a dialect spoken particularly among urban youth, has led to debates about its nonconformity, with some questioning its value away from the street (Mutonya, 2008).

Sheng is widely used in marketing campaigns by commercial, political and religious entities.

However, critics have noted that English has continued to be given greater status over other languages (Ghai, n.d.). The use of mother-tongue in the early years of learning among Africans was part of colonial policy with a limited interest in promoting Kiswahili as a common potentially unifying language. After Independence, there was a move to increase the use of Kiswahili as a national language to unite the disparate ethnic communities in Kenya even as English remained a primary form of official communication (Ghai, n.d.).

The methods through which certain laws and policies are passed on to the citizens are also limited to printed forms such as the Kenya Gazette and media advertisements, which are limited forms of communication. Online interactions on such matters, often in English, such as on social media or Whatsapp groups presume Internet access and English language fluency.

In August 2018, the Cabinet approved the establishment of a National Kiswahili Council in line with article 137<sup>19</sup> of the East African Community Treaty whose main aim is to promote, develop and the use of Swahili. Their contributions remain to be seen.

## Domains of content

### Regulation

The colonial government had several strategies in dealing with the African press. They created publications that were aimed at Africans. Muoria (1948), cited by Frederiksen (2006), dismissed these as not having valuable content. They were distributed freely or sold at very low cost. Another colonial strategy was to harass or co-opt the African press, as they saw fit. “Officials tempered threats and prosecution with offers to editors of money, training, and printing presses” (Frederiksen, 2006, pg. 295). They also saw the African press as unprofessional, with one press officer H.C.E. Downes, categorizing them as the “gutter press of Kenya” (Frederiksen, 2006, pg. 295).

19 [http://www.eala.org/uploads/The\\_Treaty\\_for\\_the\\_Establishment\\_of\\_the\\_East\\_Africa\\_Community\\_2006\\_1999.pdf](http://www.eala.org/uploads/The_Treaty_for_the_Establishment_of_the_East_Africa_Community_2006_1999.pdf)



Control of press continued in independent Kenya (Odhiambo 1998) with government maintaining a policing regime over publications. This was in addition to having monopoly of broadcasting. Statutes that support supervision of content include the Books and Newspapers Act that required publishers to deposit two copies of each title published with the government. In the late 1990s, there was liberalisation of the communications sector where more publications were licenced. Similarly, monopoly of government broadcasting ended with licensing of more broadcasters. Odhiambo (1998) however cautions that the Kenyan media is not truly free as the private actors maintain a close relationship with government.

Article 34 of the Constitution guarantees freedom of the media. It provides that government may not interfere with the media, except to licence broadcasters. This requires self regulation by the industry. Licensing is done by the Communications Authority while regulation of practitioners is carried out by the Media Council of Kenya. This is established by the Media Council Act. The Act also establishes a complaints commission through which the public can register complaints. Some of the dispute resolution mechanisms under the Act include right of reply and apology. Under code of conduct editors are to take responsibility of all content published including advertisements on newspapers.

## Local content

Local content is considered in terms of African moral values as well as culture. To promote family friendly content, KICA mandates CA to develop a Programming Code. The Code among others ensures that material that is unsuitable for children and minors is not broadcast at times when there is likely to be a large audience of young listeners or viewers. It also provides that programmes broadcast during the watershed period (6.00am to 10.00pm) are suitable for family audiences and the transition from family-oriented to a more adult programming after the watershed period is gradual. The Code is administered by KFCB.

Article 19 – a human rights organisation, has critiqued some of the language in the code for being an additional limitation to freedom of expression. For example, code 15.2.3 requires broadcasters to “avoid humour which offends good taste and decency.” Code 7.2.4 provides that the media are under obligation to respect the presumption of innocence. Article 19 argues that presumption of innocence is a duty that binds official authorities and the judiciary and not the media.



Media are bound to report judicial proceedings in line with their professional ethics with their key duty being to bring information to the public. They therefore recommended aligning these sections to international standards.

To increase local content, KICA was amended in 2013 to require broadcasters to have 40% local content. This was to be gradually increased to 60% by 2018. In practice, free-to-air television airs African films, particularly from Nigeria in the daytime. Broadcasters complain that cost of producing content in Kenya is high, making it difficult for them to air more Kenyan material.

The Master ICT plan 2013-2017 in-part is to enable and enhance development of local content. Some of its achievements have been digitisation of education content in 12 subjects, this has also developed more through the objective of the Digital Literacy Programme that looks into facilitating and developing of appropriate digital content. The 2019 ICT policy also aspires to increase local content by among others, removal of exorbitant classification and broadcasting fees<sup>20</sup>.

Vision 2030, economic blueprint, envisions use of digital technologies for development of content to unlock new opportunities. To this end, the draft of National Film Policy defines digital content as any form of content that exists as digital data. The draft policy envisages a film classification regime as opposed to content control. The Kenya Film Commission (KFC) was established in 2015 to promote Kenya as a film destination and also to promote local films. Prior to KFC's establishment, film matters were primarily considered from a regulation perspective.

Kenya currently has a classification regime where films are supposed to be classified for suitability for various audiences. From the colonial period, the country had a censorship model where films and plays were reviewed for suitability prior to public display. Despite moving to the classification model, there are instances when films have been outrightly banned with moral rationale. In 2018, KFCB banned the film for depicting homosexual themes<sup>21</sup>. Banning of *Rafiki* was reminiscent of the 1980s television programme *Usiniharakishie*, where a scene of two adolescents caressing scene led to public outcry and banning of the programme. At the time, Kenya had not adopted a classification regime and KFCB was known as Kenya Film Censorship Board.

<sup>19</sup> Kenya ICT Policy 2019, 6.2.3

<sup>20</sup> See KFCB press statement on *Rafiki* available at <https://kfcg.co.ke/wp-content/uploads/2018/04/CEO-STATEMENT-ON-RAFIKI-RESTRICTION-27-4-2018.pdf><sup>19</sup> Kenya ICT Policy 2019, 6.2.3



It is worth noting that while the board classified the film as ‘restricted’, it prohibited its distribution and showing, effectively banning it. KFCB had previously in 2016 written to Google, seeking take down of a same sex love video on Youtube<sup>22</sup>.

## Traditional knowledge

Articles 11, 14 and 69 (1) of the Constitution call for the protection of culture and traditional knowledge. This is effected through the Protection of Traditional Knowledge and Cultural Expression Act. Enacted in 2016, objectives of the Act include to empower communities to control use of cultural and economically valuable knowledge and expressions through intellectual property right held by the community.

Challenges that emanate from the act include a vague definition of community; difficulty in settling disputes using customary law or any other law when it comes to shared group resources like traditional knowledge and traditional cultural expression; conflict between local and national interest within the act as it allows the government to commercialize traditional knowledge and traditional cultural expressions through compulsory licensing provision in the act; and lack of mechanisms for cross border cooperation for dispute resolution and administration of rights where traditional knowledge and traditional cultural expression is shared across borders.

## New forms of content distribution

In tandem with the expansion of the mobile economy, has been the innovation in content delivery. For example, *Skiza Tunes*, which is the largest call ring back tone scheme, enables customers to buy popular music, memes, poetic and other content for use as call ring back tones to entertain their callers. The tones are charged between Ksh. 30-100 per month, of which artistes receive 30%, through their collective management organisation. By 2018, the platform was generating enough to pay artistes, whose music or other content was sold through the platform, Ksh. 200 million per month.

However, *Skiza Tunes* has faced many challenges. Before 2017, the share for artistes was 22%. Even with the increase, artistes are still calling for more equitable remuneration for their content. The problem of remuneration has many aspects. First, Safaricom, which own the *Skiza* platform takes the lion's share of the revenue. Second, artistes receive their share through their collective management organisations, which use the money for operating expenses, reducing what the artiste finally gets. At the same time, there is no clarity on taxation of royalties, and some artistes have claimed that they are expected to pay income tax. It is not clear why artistes cannot engage directly with Safaricom in supplying content and receiving their share of revenue. (Aceda, n.d; Business Daily 2015; Ojwang 2018).

*Skiza* problems have attracted various proposals from the government, including a bill seeking to have the Kenya Revenue Authority administer artistes' royalties (Vidija, 2016). Artistes and other interested parties have also approached courts for interpretation of the issues of revenue sharing and representation by CMOs.

The *Skiza* case depicts the challenges of new forms of business enabled by digital technologies. With businesses such as video on demand are picking up in the country, there is need for content policies to not only focus on licensing the platforms, but also put in place measures to ensure the welfare of artistes. From their website, video platform *Viusasa* appears to accept direct submission of content by artistes. The platform has not published reports on its activity.

## Impacts of content policy

### Economic implications Economic implications

The creation, distribution, and promotion of content across different sectors have become important contributors to the Kenyan economy as noted by various reports. PwC (2016) indicated that spending in Kenya's entertainment and media industry amounted to US\$ 965 million in 2011, had grown to US\$2.2 billion in 2015, and was projected to increase to US\$3.29 billion in 2020. The sectors captured under these industries included film, books, internet, magazines, music, newspapers, radio, television, and video games.

The Kenya National Bureau of Statistics (2018) noted the contribution of various sectors to the country's gross domestic product. Publishing, broadcasting, and telecommunications combined contributed between 1.2% to 1.5% annually to the GDP between 2013 to 2017, as shown in Table

Type of disability	% age distribution				
	2013	2014	2015	2016	2017
Arts, entertainment & recreation	0.1	0.1	0.1	0.1	0.1
Professional, scientific and technical activities	0.1	0.1	0.9	0.8	0.8
Publishing, broadcasting, other IT activities	0.8	0.7	0.6	0.6	0.6
Telecommunications	0.7	0.5	0.8	0.9	0.9

Source: Kenya National Bureau of Statistics (2018)



The Kenya National Bureau of Statistics (2018) noted that the ICT sector had grown by 11% in 2017, increasing from 9.7% in 2016. The expansion was attributed to expansion of the digital economy through the growth of e-commerce, mobile telephony and other digital activities. Additionally the “sector’s growth was also supported by increased use of the Internet as evidenced by a 6.5% increase in utilization of available bandwidth” (p. 19).

An emerging concern is the use of economic pressure to restrict or control content. In 2015, the Kenyan government launched the Government Advertising Agency (GAA) through which all government media advertising is channeled. The agency is at liberty to distribute government advertisements to media outlets, and this has already been cited as affecting editorial independence, since media needs government advertising for sustainability. The agency owes various media houses an estimated Sh. 2.5 billion in advertising revenue. Senior officials linked to it have been arrested on corruption charges. The government has indicated that it will pay its debts to the media houses even as it has denied that the debt is a means to exert economic pressure on the media. The counter position to this is that the government is a leading advertiser in the media and the GAA intended to muzzle a free press by reducing advertising money, the primary revenue source for commercial media (Matete, 2018; Media Council of Kenya, 2016; Wekesa, 2018).

Kenya’s migration from analogue to digital broadcasting in 2015 came with a steep cost for media owners. Those that did not meet the deadline went to court to unsuccessfully seek extension. The regulatory authority ultimately switched off three companies’ analogue signals, leading to a loss in viewership during the weeks of no transmission and a dip in advertising revenues that led to the companies experiencing significant losses (Media Council of Kenya, 2016). One report noted that revenues from television and radio advertising came to US\$173 million with a projected rise to US\$387 million by 2022 (Standard Reporter, 2018).



It is worth noting that the commercial media dominate the Kenya media landscape with non-profit, community and public media playing a less visible role nationally. However, more recently, online media sites such as *The Elephant* ([www.theelephant.info/](http://www.theelephant.info/)) have begun to emerge, providing alternative types of news including, topical features, news analysis, investigative features, or gossip. Some of these sites depend wholly or partially on donor-funding which is introducing a new type of economic model.

## Human rights implications

The legislative and regulatory framework in which content is created, developed and distributed is linked to the political landscape and to human rights concerns.

Additionally, content preserves cultural heritage and enhances economic and social rights by contributing to the growth and development of the creative economy. Since colonial times, the outcomes of political activities and utterances have had implications on the ideal of freedom of expression. Gadsden (1980), cited by Frederiksen (2006), categorised various newspapers published by Africans in the 1930s and 1940s as part of the radical populist press “which intended to politicize the poor for radical action and came to reject the moderate politics of the educated” (Gadsen, 1980, Pg. 516-518, cited by Frederiksen, 2006, Pg. 293).The banning of indigenous newspapers and other publications before and during the Emergency of 1952 was the colonial authorities response to the political agitations and the fight for independence.

During the years of former President Daniel Arap Moi's regime, authoritarian control over the media was prevalent. Several publications were banned and their editors and/or publishers detained or forced into exile. The publisher of *Nairobi Law Monthly* described how his offices had been raided in 1990 where his computers and clients' files were destroyed. In 1991, he resumed publication but was arrested again and was later charged with sedition. The publisher of *Finance* indicated that his publication was banned in 1990 and 50,000 copies seized. The particular edition seized included a letter by then Opposition leader Jaramogi Oginga Odinga addressed to former President Moi demanding the return of multi-party democracy in Kenya. In the case of *Beyond*, a magazine published in the late 1980s, it was banned in 1988 after it exposed government rigging of elections and its editor was charged with not filing annual sales returns (Kenya Law, 2014). The late Nicholas Biwott, a powerful minister in the Moi years, was awarded Sh. 67.5 million over two years from four cases filed against two bookshops, a newspaper and an individual on various grounds of publishing and distributing defamatory material (Muthoni (2017).

The Constitution (2010) emphasises the ideal of a democratic, people-centred society whose hallmarks include freedom of expression and of media. The contemporary context is one in which citizens and their leaders make utterances in public and private fora relatively freely. Voices critical of government or political leaders find expression on social media and elsewhere.

Following the 2007 post election violence, Kenya's Constitution was crafted to outrightly prohibit hate speech. This is further detailed in the National Cohesion and Integration Act that outlaws hate speech and incitement. Perhaps in response to the mischief of the time, the Act primarily considers hate speech on grounds of ethnicity. Other parameters such as gender or race are not addressed in the Act.



That notwithstanding, the Act has been selectively applied to so called ‘small fish’, mostly at election season. NCIC is seen to mostly react to public pressure in arrest and prosecution of politicians with influence. Mutung’u (2017) argues that NCIC could do more to tame hate speech and save the country from more drastic measures such as an internet shutdown.

Outside the election seasons, the manner in which content cases have been handled leave questions on whether the new constitutional dispensation has led to transformation. Bloggers and journalists were arrested and charged with crimes for content disputed by political and other elites. A 2018 report from Human Rights Watch - *Kenya: Events from 2017-* noted the serious challenges faced by journalists in Kenya including intimidation, harassment, surveillance, threats, arbitrary arrests and assaults. The report linked these actions to the coverage of sensitive topics such as corruption. In other cases where journalist and media houses have faced backlash on social media platforms for publishing gory images.

Contradictions between the Constitution and laws carried over from past administrations, including the colonial regime remain. These laws include the: Official Secrets Act, which can still be used by public officers to deny the provision of information; Public Archives and Document Act, which provides for the relevant public official to classify a document without provision of an appeal; and Defamation Act, which allows for hefty awards which can have a chilling effect on the media.

The judiciary has aided in interpreting the constitutional provisions on content. In 2016, Justice Mumbi Ngugi declared section 29 (b) of KICA unconstitutional<sup>23</sup>. This section created the offence of ‘misuse of an unlicensed telecommunication system’ through sending offensive or false messages. The provision had been used by politicians to target bloggers who published content they disagreed. It was found unconstitutional for its ambiguity.



Criminal defamation which was found in section 194 of the Penal Code was nullified in 2017 following a constitutional petition<sup>24</sup>. Another provision that was similar utilised by the elite, section 132 of the Penal Code , titled, undermining the authority of a public officer was also declared unconstitutional in 2017. The provision was challenged after blogger Robert Alai was arrested and charged for insulting the president<sup>25</sup>.

Besides the political front, making a living from the creative economy in Kenya is difficult. This is partly blamed on historical models of information controls that policed the creative industry to restrict dissenting content. While policy documents such as the 2019 ICT policy promise reforms in the films and creative space, there are still barriers to creative production. These include prior approval that is required in the case of films, high licence, classification and broadcasting fees as well as lack of programmes for formal training. As the creative industry has not been well paying, many discourage the youth from getting into those careers. In addition, national and sub-national government agencies have not invested in public spaces from where creative work can be exhibited (Hivos 2016; Latif 2018; Hevafund 2017)

<sup>23</sup> *Geoffrey Andare v Attorney General & 2 others* [2016] eKLR

<sup>24</sup> *Jacqueline Okuta & another v Attorney General & 2 others* [2017] eKLR

<sup>25</sup> *Robert Alai v The Hon Attorney General & another* [2017] eKLR



## Emerging issues

Emerging technologies are also a new frontier in future content policy-making. The ownership, assembly, operation and testing of drones for example, is guided by regulations issued and gazette by the Kenya Civil Aviation Authority (KCAA) in 2017. Regulation 53 of the Civil Aviation Act (Remote Piloted Aircraft Systems), Regulations, 2017 provide guidance on the gathering or distribution of information gathered by drones. The provision creates limitations to protect the privacy of individuals and their property. News gathering in public spaces is not restricted.

Social networking platforms (SNPs) are regulating content on their platforms. Through community standards, they create content policies that attempt to define allowable content. Twitter for example uses the test of dehumanising language and hateful conduct to take down content. Facebook has more elaborate community standards covering a myriad of issues from racial comments to nudity.

Content regulation by SNPs has been criticised for being under-resourced, inconsistent and conducted in an unfair manner. Globally, there has been move to improve policies on regulation of content that is regarded inappropriate without affecting acceptable content. Some of the current shortfalls of this policies are use of inadequate standard to measure success of content regulation, self-regulation of entities hence creating privatisation of regulation and over emphasis of large internet platform cooperates that determine deference when it come to online content ownership .

Artificial intelligence is increasingly being considered as an alternative and more effective tool for content regulation on SNPs. The Kenyan government reportedly uses automated systems to monitor social media content. It has made requests to these platforms for account information of persons of interest. The multiple possibilities of content gathering and distribution afforded by new technologies will likely require more nuanced and human rights based policy-making in future.

## Conclusion and recommendations

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The nature, creation, distribution and exchange of content has evolved over time. Mass media platforms such as radio, television and newspapers now compete with digital technologies. The digital has enabled individuals as well as institutions to produce content and interact with consumers of their content, sometimes in real time. In Kenya this is aided by infrastructural development in telecommunications in the past few decades to enable printing and broadcast signal transmissions to occur.

Changes have also been felt on the policy side, where the political regimes vary from authoritarian rule to fragile democracy. The implications of this on the handling of content is that on the one hand it has exposed poor governance but on the other, content is policed. In the past, terms such as ‘sedition’ were used broadly over different kinds of content – particularly those exposing wrongdoing such as corruption or calling for political reforms. Today, the Constitution (2010) protects and promotes different types of content.

Through the different epochs, the creative industry survives, despite little policy support. Kenya has produced awarded creatives such as film-maker Wanuri Kahiu, photographer Osborne Macharia, actors Edi Gathegi and Lupita Nyong'o, and writers Yvonne Owuor and the late Binyavanga Wainaina. Many more continue to create content that is consumed on multiple platforms from call back tones, theatre, newspaper pieces, books, radio and television broadcasts as well as online.

The content policy has leaned towards regulation. However, content policy can encompass a wider range of issues so as to encourage creative expression, production of content and distribution even while seeking to provide boundaries through regulation. Clearer policies that provide subsidies for creative industries, copyright protections, and reduction of taxes related to content production among others, could apply in this regard.

## Recommendations

The laws under contention have been flagged in the past and their review should be undertaken. Government agencies should lead in embracing local content holistically, for example through use of local language where appropriate, promotion of Kenyan sign language and translation of documents to all relevant languages. Government agencies should expand the modes of public engagement in processes such as public participation to reflect local cultures.

To achieve the development of policy on local content, government should consume, promote and remove barriers to production of local content.

Government should promote local film making through a radical shift from a heavily licensed model to a more facilitative one. Vocational schools as well as tertiary institutions should offer training in content related skills including production and marketing of local content-related.

Government should intervene in instances where creatives produce work but earn very little compared to intermediaries.

There should be policies that protect and encourage content from particular groups such as persons with disabilities (PWDs), children and the youth, youth, including the creative works that are presented at drama and music festivals. Policies related to content creation, education, commercialization, and community benefit among the various groups would enable protection of copyright and ownership awareness.



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No	NAME	ORGANIZATION	
26.	Wambui Karori	NPI	
27.	Leonard Ngeso Otunga	DOD	
28.	Brenda Gabantu Bii	C.A	
29.	Athena Morgan	ISOC Kenya	
30.	Hellen Kariuki	ISOC Kenya	
31.	Tracy Kendi	BSD Group	
32.	John Paul	FORCE	
33.	Radhia Wanjiru	Student	
34.	Esparenzia Peritah	Student	
35.	Victor Kapiyo	KICTANet/Lawwmark	
36.	Bob Ochieng	ICANN	
37.	Wanaira Muingai	ISOC	
38.	Rapudo Hawi	ISOC Kenya	
39.	Mary Ndegwa	Facebook	
40.	Rachel Nalatan	IAWRT	
41.	Judy Okite	KICTANet	
42.	Antony Mwiti	DOD	
43.	Asha Jaffer	Action Aid	
44.	Ida Ng'ang'a	ISOC	
45.	Grace Bomu	KICTANet	
46.	Grace Githaiga	KICTANet	
47.	Barrack Otieno	KICTANet	
48.	Nzambi Kakusu	KICTANet	
49.	Njuguna Ngarama	Photolife	
50.	Teacher Karis	KICTANet	
51.	John Walubengo	MMU	

