

Government Gazette

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No.....

GENERAL NOTICE

NOTICE 767 OF 2007

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**NOTICE OF INTENTION TO MAKE REGULATIONS IN TERMS OF SECTION 4
READ WITH SECTION 69 OF THE ELECTRONIC COMMUNICATIONS ACT
("the ECA") (ACT No. 36 of 2005), SETTING OUT THE CODE OF CONDUCT
FOR LICENSEES.**

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice that it intends making the following regulations in terms of section 4 read with section 69 of the Electronic Communications Act (Act No 36 of 2005).
2. A copy of the proposed regulations is available on the Authority's website (www.icasa.org.za) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, First Floor, Block D between 10h00 and 16h30.
3. Interested persons or organizations are hereby invited to submit written comments or representations with regard to the proposed regulations, to be received by no later than 16h00 on 20 July 2007.

4. Interested persons must submit one hard paper copy and one electronic copy (Word or PDF) or post or hand delivery for the attention of:

Ms Letty Masilo (Researcher)

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Or at

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164 Katherine Street

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**PARIS MASHILE
CHAIRPERSON
ICASA**

Draft regulations for the Code of Conduct for licensees in the electronic communications, broadcasting and postal services

PURPOSE OF REGULATIONS

1. The Council of ICASA intends, under Chapter 12: Section 69(1) of the Electronic Communications Act (ECA), 2005 (Act No. 36 of 2005) making the regulations in this Schedule.

DEFINITIONS

2. In this Code of Practice, unless the context otherwise requires:

"audience" as referred to in this Code means a visual and an aural audience i.e. both television and radio audiences.

"Authority" means the Independent Communications Authority of South Africa established by Section 3 of the Act, (Act No. 13 of 2000).

"broadcaster" means any natural or juristic person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service irrespective of technology used.

"broadcasts intended for adult audiences" as referred to in this Code means broadcasts depicting excessive violence and explicit sexual conduct which excludes broadcasts intended for children.

"Complaints and Compliance Committee" as referred to in this Code means the committee established by the Authority in terms of section 17A of the ICASA Act.

"children" as referred to in this Code means a persons under the age of 18 years.

"ECA" means the Electronic Communications Act, 2005 (Act No. 36 of 2005).

"ICASA Act" means the Independent Communications Authority of South Africa Act, 2000 as amended (Act No. 13 of 2000).

"Postal Services Act" means the Postal Services Act no 124 of 1998 (as amended).

"the Constitution" means the Constitution of the Republic of South Africa, Act No. 109 of 1996.

"watershed period" as referred to in this Code means the period between 10h30 and 05h00 for subscription television. It also refers to the period between 20h00 – 05h00 for free to air and public broadcaster. Such restriction applies only to television services.

SCOPE AND APPLICATION OF CODE

3.1. The Code commits the broadcasting services licensees, the electronic communications services licensees and the postal services licensees to protect the interest of consumers.

3.2. The Code must further promote competition and communication within the industry.

- a) The Code regulates the conduct of licensees in the interest of all customers in the broadcasting, electronic communications and postal sectors.
- b) Code must be incorporated into the corporate strategy of licensees.
- c) The Code must form the basis of individual codes of practice to be developed by licensees for their own businesses and outlets.
- d) The Code must be applied in accordance with relevant legislation and regulations governing the industry.
- e) All Licensees must ensure that the Code is applied consistently and in a uniform manner within the industry.

GENERAL STANDARDS THAT ALL LICENSEES MUST ADHERE TO.**4.1 Key Commitments**

All licensees must:

- a) act fairly, reasonably and responsibly in all dealings with customers.
- b) ensure that all services and products meet the specifications as contained in their licenses and all the relevant laws and regulations.
- c) not unfairly discriminate against customers on the basis of race, sex, disability ethnic background or sexual orientation.
- d) display utmost courtesy and care when dealing with the aged and disabled persons.
- e) provide customers with the required information and guidance.
- f) act honestly and ensure that all service providers whom they do business with, do the same.
- g) keep customer's personal information confidential.
- h) handle customer complaints timeously, and advise about the complaint escalation mechanisms and the role of ICASA.
- i) timeously communicate queuing times and other relevant customer information to customers.
- j) handle cases of financial difficulty considerably.
- k) train employees to ensure that the procedures followed reflect the commitments set out in this code
- l) make copies of this code freely (and readily) available.
- m) be responsible to their customers for a healthy, safe and secure environment when conducting business.

4.2 Use of official languages:

- a) The Licensee must take account of the predominant languages in which the network operator and the service provider operates in.

- b) The Code must be written in plain and understandable language
- c) The Licensees must be able to provide the customer with the Code in any official language upon request.

4.3. Publication of the code:

- a) The code must be written and published in English.
- b) The Licensee must have copies of the Code readily available.
- c) The Licensee must publish the "key commitments" section of the code at all customer service centres and business outlets.

4.4 Duty to inform customers:

- a) The Licensee must inform the customers and potential customers about relevant clauses in their contracts.
- b) The Licensee must inform the customer about changes to the terms and conditions of the contract.
- c) The Licensee must provide the customer with written terms and conditions within a period of seven (7) days after entering into the contract.
- d) The Licensee must provide the customer with written notice within (five) 5 days after making any unilateral changes on the contract. The written notice must set out particulars of the changes.

4.5 Customer confidentiality:

4.5.1 The Licensee must protect the confidentiality of consumer information, and in particular, must-

- a) use the information only for the purpose permitted or required,
- b) report or release that information only to the consumer or prospective consumer, or to another person:
 - i. as directed by the written instruction of the consumer or prospective consumer,
 - ii. an order of a court.

4.6 Basic consumer rights

- a) Licensees must inform customers about their basic consumer rights.
- b) Copies of the Basic Consumer Rights must be made available to customers at all licensee outlets and business outlets.
- c) The Licensee must not:
 - i. discriminate directly or indirectly against the consumer exercising, asserting or seeking to uphold any right, compared to the licensee's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
 - ii. penalize the consumer based on what is reflected on paragraph 4.6 (c) (i)
 - iii. alter, or propose to alter the terms and conditions of an agreement with the consumer, to the detriment of the consumer; or
 - iv. take any action to accelerate, enforce, suspend or terminate an agreement with the consumer, before consulting the consumer.

4.7 Dealing with children, the aged and people with disabilities

The Licensee must ensure that the needs of children, the aged and people with disabilities are taken into account in the provision of services.

4.8 Promotional marketing, advertising and sales practices:

- a) Licensee must ensure that all advertising and promotional material is clear, fair and not misleading.
- b) The advertising and marketing must comply with the relevant legislation relating to advertising and marketing.

4.9 Harmful business practice

4.9.1 Licensees must not engage in the following business practices:

- a) Dishonesty in their dealings with customers and/or other operators
- b) Unfair pricing
- c) Misrepresentation of facts in their dealings with customers

4.10 Right to access and challenge credit records and information

The Licensee must advise the customer within the prescribed time before any prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request

4.11 Complaints handling, resolution and escalation procedures for customers:

- a) All Licensees must publish and make available to customers guidelines relating to enquiries and complaints.
- b) All Licensees must provide customers with information regarding the escalation procedures and processes to the Authority and to the Complaints and Compliance Committee.
- c) All Licensees must provide customers with the address and all other contact details of the Authority and the Complaints and Compliance Committee.
- d) All Licensees must keep and maintain a complaints' register of all complaints received from consumers.
- e) The Complaints register must contain the following information:-
 - i. Case number / Reference
 - ii. Name and Surname of complainant
 - iii. Client Type (i.e. Business / Private)
 - iv. Nature of complaint
 - v. Date complaint was received
 - vi. Date complaint was closed
 - vii. Average turn around time (i.e. case life)
- f) All Licensees must submit the complaints report to the Authority at least once in every six (6) months.

4.12 Operational / implementation and evaluation arrangements.

- a) All Licensees must be responsible for ensuring that their employees are familiar with the contents of the Code.
- b) All Licensees must ensure that customers are aware of the existence of the Code and the content thereof.

- c) All Licensees must display an abridged copy of the Code in their public area so as to make customers aware of its existence and of their rights.
- d) All Licensees must display their complaints handling, resolution and escalation procedures for the customer to notice, including escalation procedures to the Authority (ICASA).

Additional Standards all Broadcasting Services Licensees have to [or must] adhere to.

5.1 Violence

Licensees must not broadcast any material which judged within its context:-

- a) contains gratuitous violence in any form i.e. violence which does not play an integral role in developing the plot, character or theme of the material as a whole.
- b) sanctions, promotes or glamorizes violence.

5.2 Violence against women

Broadcasters must:-

- a) not broadcast material which, judged within its context, sanctions, promotes or glamorizes any aspect of violence against women;
- b) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told;
- c) be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

5.3 Violence against specific groups

- a) Licensees must not broadcast material which, judged within its context, sanctions, promotes or glamorizes violence based on race, nationality ethnic origin, colour, religion, gender, sexual orientation, age, mental or physical disability.
- b) Licensees are reminded generally of the possible dangers of some people imitating violence details of which they see, hear or read about.

5.4 The abovementioned prohibitions are not applicable to –

- a) a *bona fide* scientific, documentary, dramatic, artistic, or religious broadcast, which judged within its context, is of such nature;
- b) broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- c) broadcasts which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

5.5 Children

5.5.1 Broadcasters are reminded that children as defined in section 2 of this code above embraces a wide range of maturity and sophistication and in interpreting this Code it is legitimate for licensees to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.

- a) Broadcasters must not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience.
- b) Broadcasters must exercise particular caution. As provided below, in the depiction of violence in children's programming.
 - c) In children's programming portrayed by real-life characters, violence must, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
 - d) Animated programming for children, while accepted as a stylized form of storytelling which can contain non-realistic violence, must not have violence as its central theme, and must not invite dangerous imitation.
 - e) Programming for children must with due care deal with themes which could threaten their sense of security, when portraying, for example, domestic conflict, death, crime or the use of drugs.
 - f) Programming for children must with due care deal with themes which may invite children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or other dangerous physical acts.

- g) Programming for children must not contain scenes of violence which create the impression that violence is the preferred [acceptable] or only method to resolve any conflict.
- h) Programming for children must not contain realistic scenes of violence which minimize or gloss over the effect of violent acts. Any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators.
- i) Programming for children must not contain frightening or otherwise excessive special effects not required by the story line.

5.6 Watershed period

- a) Programming on television which contains scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences must not be broadcast before the watershed period.
- b) On the basis that there is a likelihood of older children forming part of the audience during the watershed period, licensees must adhere to the provisions of Article 5.9 below (audience advisories) enabling parents to make an informed decision as to the suitability of the programming for their family members.
- c) Promotional material and music videos which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences must not be broadcast before the watershed period.
- d) Some programmes broadcast outside the watershed period will not be suitable for very young children. Licensees should provide sufficient information, in terms of regular scheduling patterns or on-air advice, to assist parents to make appropriate viewing choices.
- e) Licensees must be aware that with the advance of the watershed period progressively less suitable (i.e. more adult) material may be shown and it may be that a programme will be acceptable for example at 23h00 that would not be suitable at 21h00.
- f) Broadcasters must be particularly sensitive to the likelihood that programmes which start during the watershed period and which run beyond it may then be viewed by children.

g) Subscription services

i. Where a programme service is only available to viewers on subscription and offers a parental control mechanism, its availability to children may be more restricted and the watershed period may begin at 20h00.

5.7 Language

a) Offensive language, including profanity, blasphemy and other religiously insensitive material must not be used in programmes specially designed for children.

b) No excessively and grossly offensive language may be used before the watershed period on television or at times when large numbers of children are likely to be part of the audience on television or radio. Its use during the periods referred to above may where practicable, be approved in advance by the licensee's most senior programme executive or the designated alternate.

5.8 Sexual Conduct

5.8.1 Licensees must not broadcast material, which judged within context, contains a scene or scenes, simulated or real of any of the following:

- a) A person who, or is depicted as being under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
- b) Explicit violent sexual conduct;
- c) Bestiality;
- d) Explicit sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm.

5.8.2 Save for 5.8.1(a) above, the prohibition in 5.8.1 (b) to 5.8.1(d) must not be applicable to *bona fide* scientific, documentary, dramatic material, which judged within its context, is of such nature. The prohibition in 5.8.1 (a) must however be applicable to artistic material which judged within its context, is of such a nature.

5.8.3 Scenes depicting explicit sexual conduct, as defined in the Films and Publication Act 65 of 1996 must not be broadcast during the watershed period. Exceptions to this may be allowed in programmes with a serious educational purpose or where the representation is non-explicit and must be approved in advance by the most senior programme executive or a delegated alternate.

5.9 Audience Advisories

5.9.1 To assist audiences in choosing programmes, licensees must provide advisory assistance, which when applicable must include guidelines as to age, at the beginning of broadcasts and wherever necessary, where such broadcasts contain violence, sexual conduct and/or offensive language.

5.9.2 Classification

a) Where a Film and Publications Board classification exists in terms of the Films and Publication Act No. 65 of 1996 ("Films and Publications Act") for the version of a film or programme intended to be broadcast, such classification certification may be used as a guide for broadcasting.

b) No version which has been refused a Film and Publication Board classification certification can be broadcast at any time.

c) In all other instances, the provisions of this Code must apply.

5.9.3 News

a) Licensees are obliged to report news truthfully, accurately and fairly.

b). News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:-

- i. Distortion, exaggeration or misrepresentation.
- ii. Material omissions; or
- iii. Summary

c) Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact and such fact may be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate clearly that such is the case.

d) Where there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it must be verified. Where such verification is not practicable, that fact may be mentioned in the report.

e) Where it subsequently appears that a broadcast report was incorrect in a material respect, it must be rectified forthwith, without reservation or delay. The rectification must be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.

f) The identity of rape victims and other victims of sexual violence must not be divulged in any broadcast without the prior consent of the victim concerned.

g) Licensees must advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children would probably be in the audience.

h) Licensees must employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and sensitive audiences.

5.10 Comment

a) Licensees must be entitled to broadcast comment on and criticism of any actions or events of public importance.

b) Comment must be an honest expression of opinion and must be presented in such manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.

5.11 Controversial issues of public importance

a) In presenting a programme in which certain issues of public importance may be controversial for discussion, a licensee must make reasonable efforts to fairly present opposing points of view either

in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

b) A person whose views are to be criticized in a broadcasting programme on an issue of public importance that may be controversial, s/he must be given an opportunity to reply to such criticism on the same programme. If that may not be possible however, another opportunity for response to the programme must be provided where appropriate, for example in a right to reply programme or in a pre-arranged discussion programme with the prior consent of the person concerned.

5.12 Privacy

Insofar as both news and comment are concerned, broadcasting licensees must exercise caution in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

5.13 Paying for information to a person involved in crime

No payment is to be made to persons involved in crime or to persons who have been engaged in crime in order to obtain information concerning any such behaviour, unless compelling societal and other interests indicate the contrary.

Additional Standards all Electronic Communications Services Licensees have to [or must] adhere to

6.1 Applicable remedies in case of defective products:

- a) The Licensee must not distribute any products that are not durable and reliable.
- b) The Licensee must, in case where the product is defective, clearly state what steps they may take to correct the mistake, with the interest of the consumer in mind.
- c) The Licensee must include the following consumer safeguards in the Code of Conduct as a statement of intent:
 - i. Product Recall
 - ii. Production Modification
 - iii. Product replacement or substitution
 - iv. Compensation
- d) For the duration when the faulty handset is in for repairs, the Licensee must put in place alternative measures.

6.2 Applicable rules in defining suitable degree of customer protection regarding billing complaints:

a) Where the customer lodges a billing complaint, the complaint handling process must be guided by the following general guidelines:

- i. The Licensee may not disconnect the service to the consumer while the investigation of a disputed portion of a bill is still pending.
- ii. The Licensee may reach a determination regarding the billing complaint and communicate it to the complainant within seven (7) working days.
- iii. The Licensee may not disconnect the service until the Licensee has notified the complainant about the results of their investigation and the final decision on the complaint.
- iv. The Licensee may not take adverse collection procedures or assess late charges and/or penalties while the investigation of a disputed billing is still pending.
- v. The Licensee may ensure that the customer is informed well in advance about time for payment before they disconnect him/her.

6.3. Complaints handling, resolution and escalation procedures for customers:

6.3.1 Complaints handling at service provider level.

- a) Customers who experience dissatisfactory communications services must in the first instance lodge a complaint with the service provider concerned.
- b) In the event that the complaint is not resolved within fourteen (14) days, the customer must reduce the complaint to writing and submit the complaint to the manager of the establishment or organization concerned.
- c) If no resolution can be reached after a period of seven (7) working days, the customer must then escalate the lodged complaint to ICASA for a resolution of the matter. All relevant supporting documentation must accompany the complaint.

Additional Standards all Postal Services Licensees have to [or must] adhere to (including both reserved and unreserved licensed postal operators).

7.1 Harmful business practice

a) Postal operators must not engage in the following business practices:

- i. Packaging of the reserved postal services, in terms of Schedule 1 of the Postal Services Act, in a misleading way to evade the weight and dimension restriction so as to make it suit the requirements of the unreserved postal services.
- ii. Conducting business in an area reserved for another postal operator.

7.2 Integrity and safety of mail

7.2.1 It is the responsibility of a postal operator to:

- a) Adopt preventative security measures to avoid loss of parcels and mail items.
- b) Be accountable and compensate customers for lost or damaged goods.
- c) Make customers aware of the various products on offer that may be of benefit to them, such as the registering of mail and adequate insurance cover for valuable goods.
- d) Ensure that mail, particularly of a fragile nature, is adequately packaged to protect the integrity of the goods.

- e) Ensure that customers are aware of the risks to them and their goods at the point of sale. Where no compensation is payable for loss of or damage to articles, the consumers must be made aware of this fact prior to the conclusion of the sale.
- f) To take the necessary precautions to ensure the integrity of electronic and postal mail.

7.3 Complaints handling at service provider level.

- a) Customers who experience unsatisfactory communications services must in the first instance lodge a complaint with the service provider concerned.
- b) In the event that the complaint is not resolved, the customer must reduce the complaint to writing and submit the complaint to the manager of the establishment or organization concerned.
- c) If no resolution can be reached after a period of fourteen (14) working days, the customer must then escalate the complaint to a higher level of authority in the organisation for resolution. If still not resolved after a further seven (7) working days, the customer may then approach ICASA for a resolution of the matter. All relevant supporting documentation must accompany the complaint.

Note: The time frame of seven working days is applicable to domestic mail only. For complaints regarding international mail, the operator must be given a total of thirty working days to resolve the complaint.