



**Wireless Access Providers Association.  
Code of Conduct.  
Version 2.2**

**Adopted at Cape Town on \_\_\_\_\_ .**



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## DEFINITIONS

The following terms are defined:

“**Amplifier**” means a device for increasing the power of a radio signal. It does this by taking power from a power supply and controlling the output to match the input signal shape but with a larger amplitude;

“**Association**” means the Wireless Access Providers Association;

“**Authority**” means the Independent Communications Authority of South Africa (ICASA);

“**CCC**” means the Complaints and Compliance Commission of the Authority;

“**Cybercrime**” means any conduct on the Internet or connected with the Internet or Internet usages which constitutes a crime in terms of the South African criminal law, including any conduct punishable in terms of Chapter Xiii of the ECT Act.

“**data subject**” means any natural or juristic person from or in respect of whom personal or business information has been requested, collected, collated, processed or stored;

“**ECA**” means the Electronic Communications Act 36 of 2005;

“**ECT Act**” means the Electronic Communications and Transactions Act No 25 of 2002;

“**electronic communications service**” has the meaning given to it in section 1 of the Electronic Communications Act 36 of 2005;

“**electronic communications network service**” has the meaning given to it in section 1 of the Electronic Communications Act 36 of 2005;

“**Enforcement Authority**” means any governmental department, body or person in the service of such department or body, who has the power or authority to officially investigate any illegal or unlawful conduct or to enforce any law, including the common law;

“**ETSI**” means the European Telecommunications Standards Institute.

“**High Site**” is a telecommunication radio facility that serves users at diverse locations;

“**illegal content or conduct**” means any information in respect of which it is illegal or unlawful to create, possess, publish or copy or perform any conduct that is illegal in terms of the South African common or statutory law;

“**IRB**” means Industry Representative Body

“**ISP**” means Internet Service Provider

“**Management Committee**” means the executive Committee or relevant subcommittee appointed from time to time by the executive committee.

“**Radio apparatus**” is a device that has both a transmitter and a receiver which is combined and share common circuitry or a single housing.

“**spam**” means unsolicited commercial communications that do not comply with the provisions of section 45(1) of the ECT Act;

“**Telecommunications Act**” means the Telecommunications Act No 103 of 1996

## 1. RECOGNITION OF EXISTING NON-COMPLIANCE

- 1.1. The Association recognises that the majority of its members are currently not in full compliance with the provisions of this Code but that they have undertaken by their subscription to the Code to regularise their positions within a period of six months from date of final adoption of the Code.



- 1.2. Members agree to ensure that all new installations from the date of formal adoption of the Code are fully compliant with the requirements of this Code of Conduct.

## **2. LICENSING**

- 2.1. Members shall at all times be in possession of a service licence issued under the Telecommunications Act or an electronic communications network service licence issued by the Authority under the ECA and/or a licence exemption as specifically set out and granted by the Authority under the Telecommunications Act or the ECA.
- 2.2. Probationary members are required to submit proof of application or registration for one or more of the above licence types to the Authority at the time of making application for membership of the Association.

## **3. RADIO APPARATUS**

- 3.1. Members shall only use radio apparatus which has been type-approved and in accordance with the applicable type-approval regulations issued by the Authority.
- 3.2. All radio apparatus shall be labeled with type-approval stickers.
- 3.3. All WAPA members will only buy radio apparatus from vendors who are Associate members and who are fully compliant with this code of conduct, insofar as it applies to such vendors.

## **4. HIGH SITES AND INSTALLATIONS**

- 4.1. All high sites operated by members and installations effected by members shall bear notices clearly stating the name and contact details of such member as well as the contact details of the Association and shall display the WAPA membership logo once such display has been approved by WAPA.
- 4.2. Members will conform to basic WAPA high site requirements, including:
  - 4.2.1. Any antenna with a beam width of greater than 120 degrees is restricted to maximum gain of 6dbi in 2400-2483 MHz;
  - 4.2.2. Any antenna with a beam width of greater than 120 degrees is restricted to maximum gain of 10dbi in 5470-5875MHz;
  - 4.2.3. No Amplifiers may be used; and
  - 4.2.4. Power backup system needs to be in place.
- 4.3. High site inspection teams will be appointed by the management committee from time to time as required and Members are required to provide access to all sites on the giving of 24hrs notice.
- 4.4. Members' electronic communications facilities that will be subject to inspection and approval by WAPA include sites that are shared with any other operators including non-members. The following information must be provided to WAPA by the member and should, after approval from WAPA, be listed on a waterproof notice clearly visible on the high site:
  - 4.4.1. Description of the High sites e.g. Tygerberg, Maastricht.

- 4.4.2. the GPS co-ordinates of high sites;
- 4.4.3. a list of all radio apparatus used on each site, with type approval numbers;
- 4.4.4. Gain, polarity, and beam width of sector antennas and backbone antennas; and
- 4.4.5. a list of the broad range of frequencies used on each site. E.g 2.4Ghz, 5.8 Ghz.

## **5. USE OF UNLICENCED BANDS**

- 5.1. Members, unless issued with licenced spectrum, undertake to operate in compliance with the relevant regulations issued the Authority and strictly within the confines of the Unlicenced bands as set out in the South African Table of Frequency Allocations:
  - 5.1.1. 2400-2483.5Mhz
  - 5.1.2. 5150 – 5350Mhz
  - 5.1.3. 5470 – 5725Mhz
  - 5.1.4. 5725 – 5875Mhz
  - 5.1.5. 17.1-17.3Ghz
  - 5.1.6. 24.0-24.25 Ghz
- 5.2. Any unlicenced use of frequencies outside these ranges will be regarded as a serious offence by WAPA, and an offending member will be asked to comply immediately or face disciplinary action including escalation to the CCC.

## **6. EQUIPMENT VENDORS**

- 6.1. Members who are equipment vendors shall at all times be in possession of a valid licence or permit issued by the Authority authorising them to carry on business as such, e.g. as a registered telecommunication equipment supplier under 1996 Telecommunications Act.
- 6.2. All equipment vendors will commit to only selling type-approved radio apparatus.

## **7. SAFETY**

- 7.1. All members shall ensure that all technicians used to service masts higher than 3m:
  - 7.1.1. are equipped with SABS-approved rope access equipment;
  - 7.1.2. are trained with approved rope access training courses; and
  - 7.1.3. Teams must always consist of at least 2 people.
- 7.2. Members are suitably registered for workman's compensation in terms of the Workmen's Compensation Act and other applicable legislation.

## **8. PROFESSIONAL CONDUCT**

- 8.1. Members shall at all times conduct themselves in a professional manner in their dealings with the public, the recipients or their services, other industry members and the Association.
- 8.2. Members shall be committed to lawful conduct at all times and compliance with all legal requirements and shall co-operate with Enforcement Authorities where there is a legal obligation to do so.

- 8.3. Members shall only hold themselves out as offering products and service levels which are reasonably within their technical and practical capabilities.
- 8.4. Nothing in this Code shall be construed or interpreted as providing any commercial advantage to one member over another and members are strictly prohibited from any bad faith attempt to use the provisions of the Code for the primary purpose of gaining such advantage.

## **9. STANDARD TERMS OF AGREEMENT**

- 9.1. Members shall have Standard Terms of Agreement, including an Acceptable Use Policy (AUP), which can be accessed from their websites containing all information and terms relevant to their relationship with the recipient of their services. Such Standard Terms shall be made available to any potential recipient of the service prior to the commencement of any service agreement.
- 9.2. The Standard Terms of Agreement shall contain:
  - 9.2.1. a commitment that the recipient of the service shall not knowingly create, store or disseminate any illegal content or intentionally conduct itself in an illegal manner in its usage of the Member's services;
  - 9.2.2. An undertaking that no material that infringes copyright will knowingly be created, displayed, published or copied by the recipient of the service;
  - 9.2.3. An undertaking that the intellectual property rights of third parties will not knowingly be infringed.
  - 9.2.4. An undertaking that they will not send nor promote the sending of spam.
- 9.3. The Standard Terms shall contain a right on the part of the Member to take down any content hosted by that Member which it considers illegal or where it has received a take-down notice.
- 9.4. The Standards Terms shall contain a right on the part of the Member to suspend or terminate the services of any recipient of the service that does not comply with these or any related contractual obligations.

## **10. SERVICE LEVELS**

- 10.1. Members may only offer or promise service levels which are reasonably feasible having regard to their technical capabilities, know-how, the area in which services are to be delivered and other practical restraints.
- 10.2. In their dealings with consumers, other businesses and each other, Members shall act professionally, fairly and reasonably.

## **11. CONTENT CONTROL**

- 11.1. There is no general obligation on any Member to monitor the content of the recipients of its service, except as provided in South African law, but a Member is obliged to take action where it becomes aware of any illegal or unlawful content or conduct.
- 11.2. A Member shall not knowingly host or provide links to content that it knows is illegal or unlawful, except when required to do so by law, or engage in conduct that is illegal or unlawful.
- 11.3. Members shall adhere to the Code of Conduct, the Disciplinary Procedure and the decisions of the Association.
- 11.4. Where a Member becomes aware of illegal conduct or content it shall suspend or terminate the recipient of the service's service and report the conduct or content to the relevant Enforcement Authority. In all instances Members shall report such conduct or content and the steps taken to the Association within a reasonable period of time.
- 11.5. Members shall keep a copy or record of all take-down notices received in terms of the ECT Act and materials that have been taken down as a result for a period of three years, unless possession of such materials is illegal, in which case copies should be provided to the relevant Enforcement Authority.

## **12. CONSUMER PROTECTION**

- 12.1. Members are committed to honest and fair dealing.
- 12.2. Members shall comply with all applicable compulsory advertising standards and regulations.
- 12.3. Members commit to ethical consumer practices and, without limiting the generality of the foregoing, to
  - 12.3.1. provide customer support services at least during office hours, preferably 24/7;
  - 12.3.2. provide transparency in respect of their service offerings; including
    - 12.3.2.1. ownership of equipment;
    - 12.3.2.2. embedded leasing and financing of equipment;
    - 12.3.2.3. policy on hardware returns and cancellation procedures;
    - 12.3.2.4. policy on hardware warranties;
    - 12.3.2.5. policy on moving customer equipment;
    - 12.3.2.6. suspension procedures; and
    - 12.3.2.7. provide an efficient mechanism for the resolution of customer complaints.

## **13. PRIVACY AND CONFIDENTIALITY PROTECTION**

- 13.1. Members shall respect the constitutional right of internet users to personal privacy and privacy of communications.
- 13.2. Members shall not deal in or with personal information of data subjects other than for their own needs or with the prior written consent of the data subject.

- 13.3. Members shall respect the confidentiality of electronic mail and messaging.
- 13.4. Members shall only disclose confidential information if obliged to do so in terms of law or with the prior written consent of the data subject.
- 13.5. Nothing in this Code of Conduct shall be construed or interpreted as requiring any Member to provide information which is, in fact, confidential or commercially sensitive without such member receiving written undertakings in respect of the protection of such information or where such disclosure is required by law.

## **14. COPYRIGHT AND INTELLECTUAL PROPERTY PROTECTION**

- 14.1. Members shall respect the intellectual property rights of the recipients of its services and third parties shall not knowingly infringe such rights.

## **15. SPAM PROTECTION**

- 15.1. Members shall not send or promote the sending of spam and will take reasonable measures to ensure that their networks are not used by other for this purpose.
- 15.2. Members must provide a facility for dealing with complaints about spam originating from their networks and must react expeditiously to complaints received.

## **16. PROTECTION OF MINORS**

- 16.1. Members will take reasonable steps to ensure that they do not offer paid content subscription services to minors without written permission from a parent or guardian.
- 16.2. Members undertake to provide recipients of Internet Access with information about procedures, content labeling systems, filtering and other software applications that can be used to assist in the control and monitoring of minors' access.
- 16.3. The above provisions do not apply where the Member is offering services to corporate recipients of their services where no minors have Internet access.

## **17. CYBERCRIME**

- 17.1. Members will take all reasonable measures to prevent unauthorised access to, interception of, or interference with data on its network and under its control.

## **18. COMPLAINTS & DISCIPLINARY PROCEDURE**

- 18.1. The Association has established a Complaints and Disciplinary Procedure that can be used by recipients of the Members' services and third parties and Members agree to be bound by and interact with such procedure.
- 18.2. A copy of the Association's Complaints and Disciplinary Procedure is annexed hereto marked Annexure A and is also published at [www.wapa.org.za](http://www.wapa.org.za).
- 18.3. Members shall create and maintain a link to the Complaints and Disciplinary Procedure from their websites.



- 18.4. Members shall be committed to receive and investigate complaints unless such complaints are frivolous, unreasonable, vexatious or in bad faith.
- 18.5. Members shall make all reasonable efforts to resolve complaints in accordance with their own complaints procedure. If the Complaint cannot be resolved within the time specified in the Member's complaints procedure, the Complaint shall be referred to the Association for a decision.
- 18.6. The Member's complaints procedure shall contain an acceptable turn-around period for dealing with a complaint.
- 18.7. Members undertake to comply with the decisions of the Association.
- 18.8. The Member's complaints procedure shall allow for direct referral of a Complaint to the Association in the event of a Member's transgression of or non-compliance with this Code of Conduct.
- 18.9. The Association may refer any Complaint received to the Member in question for resolution.
- 18.10. The Association shall have the right to investigate any transgression of or non-compliance with the Associations Code of Conduct by a Member.
- 18.11. The Association shall retain records of all disciplinary proceedings for a period of 3 years.

## **19. MONITORING OF COMPLIANCE**

- 19.1. Members shall submit a report to the Association of all steps taken as a result of a take-down notice within a reasonable period of time after a take-down notice has been lodged.
- 19.2. Members shall submit an annual statement to the Association confirming their compliance with this Code of Conduct.
- 19.3. The Association has the right to investigate the conduct and compliance with the Code of Conduct by its Members on its own initiative and to institute disciplinary proceedings if appropriate.

## **20. INFORMATIONAL REQUIREMENTS**

- 20.1. A copy of this Code of Conduct is published on [www.wapa.org.za](http://www.wapa.org.za).
- 20.2. Members shall prominently display the membership logo of the Association in the correct format and manner and shall provide a link to the Code of Conduct from their websites.
- 20.3. Members shall inform their customers and visitors to their websites that the Member is bound by the provisions of this Code of Conduct.
- 20.4. Members shall provide full identifying details on their websites, including but not limited to their registered name, electronic contact details, physical address and telephone and fax details.

## **21. TAKE-DOWN PROCEDURE**

- 21.1. The Association has established a Take-Down Procedure which is in accordance with Chapter XI of the ECT Act. A copy of this Take-Down Procedure is annexed hereto marked Annexure B and is also published on [www.wapa.org.za](http://www.wapa.org.za).
- 21.2. All Members undertake to be bound by and interact with the Take-Down Procedure.
- 21.3. Members must establish their own take-down procedures for unlawful content and activity, and respond within a reasonable time when in receipt of a take-down notification.
- 21.4. Members must retain a record of all take-down notices received for a period of three (3) years unless possession of such materials is illegal.
- 21.5. Members must, within a reasonable period of time, compile and deliver a report to WAPA in respect of all steps taken by that Member in response to receipt of a take-down notice.
- 21.6. Each Member shall appoint the Association as its designated agent for the receipt of take-down notices except where such Member has previously appointed another entity or IRB as its designated agent for such purposes and has provided written proof of such appointment to the Association.
- 21.7. Members shall provide a link to the Take-Down Procedure from their websites.

## **22. REVIEW AND AMENDMENT OF THIS CODE OF CONDUCT**

- 22.1. The Association shall be entitled to review this Code of Conduct from time to time and to amend it where necessary subject to reporting such amendment to the Minister.
- 22.2. Amendments duly made shall be binding on all Members.

## **23. ADMINISTRATIVE MATTERS**

- 23.1. The Association shall create and maintain a website which shall have available for public access at least the following:
  - 23.1.1. the current version of the WAPA Code of Conduct and a version history;
  - 23.1.2. the current version of the WAPA Complaints & Disciplinary Procedure and a version history;
  - 23.1.3. the current version of the WAPA Take-Down and a version history;
  - 23.1.4. an up to date list of the members of the Association distinguished by membership class and including contact details and a hyperlink to the website of such members;
  - 23.1.5. consumer education materials;
  - 23.1.6. a consumer complaint facility.
- 23.2. The Association shall keep a full record of all complaints lodged.
  - 23.2.1. Only complaints that are investigated and/or resolved by the management committee will be posted on it's website for access by the general public.

23.3. Where a complaint or dispute is referred to the Complaints and Compliance Commission then the Association shall provide the relevant full investigative record to the Commission.

## 24. MISCELLANEOUS

- 24.1. All members shall ensure that the logo of the association is displayed on their websites.
- 24.2. Members undertake to exercise transparency, integrity and accountability in their dealings with
- 24.2.1. the public and customers;
  - 24.2.2. each other; and
  - 24.2.3. WAPA.
- 24.3. Nothing in this Code of Conduct shall be construed or interpreted as requiring any member to provide information which is, in fact, confidential or commercially sensitive without such member receiving written undertakings in respect of the protection of such information.
- 24.4. Nothing in this Code shall be construed or interpreted as providing any commercial advantage to one member over another and members are strictly prohibited from any bad faith attempt to use the provisions of the Code for the primary purpose of gaining such advantage.

## VERSION HISTORY

| Version   | Date issued | Date effective | Summary of revisions |
|-----------|-------------|----------------|----------------------|
| Draft 1.0 | 17-11-2006  |                |                      |
| Draft 1.1 | 25-11-2006  |                |                      |
| Draft 1.2 | 26-11-2006  |                |                      |
| Draft 1.3 | 01-12-2006  |                |                      |
| Draft 1.4 | 05-12-2006  |                |                      |
| Draft 1.5 | 08-12-2006  |                |                      |
| Draft 1.6 | 08-01-2007  |                |                      |
| Draft 1.7 | 02-02-2007  |                |                      |
| 2.0       | 05-03-2007  |                |                      |
| 2.1       | 09-03-2007  |                |                      |
| 2.2       | 12-03-2007  |                |                      |

## **ANNEXURE A – COMPLAINTS & DISCIPLINARY PROCEDURE**

The following procedure is applicable where a complaint is initiated against a Member in respect of a breach of the WAPA Code of Conduct.

### **Applicable time-periods**

The following guiding time periods shall apply to the procedure set out below:

- Initial evaluation: 2 – 4 working days from date of receipt of take-down notice by WAPA;
- Factual verification: 1 – 2 working days from the completion of the initial evaluation
- Hearing and delivery of decision: 6 – 8 weeks
- Decision on acceptance or rejection of an Appeal: 5 -7 days

### **Initial evaluation**

1. Complaints must be initiated in writing (including e-mail or through the WAPA website – [www.wapa.org.za](http://www.wapa.org.za)) and must set out:
  - 1.1. the full particulars of the Complainant, including full contact details and the name and contact details of the person authorised to accept all correspondence relating to the Complaint on behalf of the Complainant;
  - 1.2. the particulars of the Member against whom the Complaint is being lodged;
  - 1.3. full particulars of the Complaint including
    - 1.3.1. the sections of the Code of Conduct allegedly breached,
    - 1.3.2. the conduct or failure to act constituting the alleged breach and, where applicable, proof of such alleged breach.
2. Where the Complaint received by the Association does not comply with section 1 above the Association must notify the Complainant in writing of the deficiencies and the fact that, once such deficiencies have been remedied, the Complaint may be resubmitted.
3. Where the Complaint has been initiated against a party which is not a Member of the Association then the Association shall notify the Complainant in writing of this fact and that the Complaint been rejected for this reason.
4. Where the Complaint received by the Association complies with section 1 above and lies against a Member of the Association then the Association shall acknowledge receipt thereof to the Complainant.

### **Factual verification**

5. After notifying the Complainant of receipt of a properly submitted Complaint the Association shall take reasonable steps to verify that the subject matter of the Complaint has already been dealt with as a result of an earlier complaint.

6. If the Complaint has been previously disposed of then the Association shall notify the Complainant in writing of this fact and that the Complaint been rejected for this reason. The Association shall further set out the details of such earlier Complaint and the manner in which it was resolved.
7. If the Complaint has not been previously dealt with then the Association shall forward copies of the Complaint and any supporting documentation to the relevant Member and the Code of Conduct Committee of the Association.

### **Member's response**

8. The relevant Member shall have a period of five (5) working days within which to remedy the Complaint and/or provide the Code of Conduct Committee with a written response to the Complaint, provided that the relevant Member may, in writing and with full reasons therefore, request an extension of a further five (5) working days within which to remedy the Complaint and/or provide the Code of Conduct Committee with a written response to the Complaint. The granting or refusal of any extension shall be at the sole discretion of the Code of Conduct Committee and the extension request should be received not later than 24 hours prior to the expiry of the initial five (5) day period.

### **Hearing of the Complaint**

9. Upon the expiry of the period for the delivery of the Member's response or any extension thereto, the Code of Conduct Committee shall proceed to consider the matter in accordance with this Complaints Procedure and on the basis of the provisions of the Code of Conduct, the Complaint, the response (if any) and such further materials as may be called for or acquired.
10. In considering the Complaint the Code of Conduct Committee must observe the principles of natural justice.
11. In considering the Complaint the Code of Conduct Committee may:
  - 11.1. co-opt onto the Committee any independent expert which it believes will contribute to the proper resolution of the Complaint;
  - 11.2. of its own initiative undertake such investigations as it sees fit for the proper resolution of the Complaint;
  - 11.3. refer the matter for investigation and/or decision by a third party qualified to do so, subject to the proviso that the Code of Conduct Committee shall apply its mind properly to the matter;
  - 11.4. request that the Complainant and/or the relevant Member provide additional information which is relevant to the resolution of the Complaint. In doing so the Code of Conduct Committee must specify reasonable time periods for the provision of such information and must specify that a failure to provide the information requested within the

specified time period will result in the Complaint being resolved without reference thereto and the possibility that an adverse inference may be drawn.

- 11.5. consider any other complaints made against the relevant Member;
  - 11.6. consider any other complaints made by the same Complainant.
12. The Code of Conduct Committee shall attempt to complete its hearing and deliberation as soon as is reasonably possible after the matter has been referred to it.

### **Decision of the Code of Conduct Committee**

13. After consideration of the merits of the Complaint in accordance with sections 10 & 11 above the Code of Conduct Committee may make a decision in accordance with one or more of the following:
- 13.1. Dismiss the Complaint;
  - 13.2. Issue the Member with a reprimand;
  - 13.3. Issue the Member with a formal warning;
  - 13.4. Refer the matter back to the Member in order to provide them with a further opportunity to take specified remedial action;
  - 13.5. Order the payment of compensation or the making of restitution to the Complainant;
  - 13.6. Order the Member to take down specified content where the Complaint relates to a take-down notice;
  - 13.7. Suspend the membership of the Member pending compliance / resolution of said breach or complaint. Such suspension may be lifted subject to the giving of written undertakings as specified by the Code of Conduct Committee by the Member;
  - 13.8. Cancel the Member's membership;
  - 13.9. Where it is found that there has been a breach of sections 3.1 or 6.2 order that:
    - 13.9.1. the equipment be sealed on the premises or remanded to the care of WAPA until the equipment is either type approved, or exported out of the country.
    - 13.9.2. the equipment in question be destroyed, and providing proof of such destruction to WAPA.
  - 13.10. Escalate the Complaint to the Complaints and Compliance Commission of the Authority;
  - 13.11. Refer the matter to the appropriate Enforcement Authority;
14. In considering the sanction the Code of Conduct Committee shall take into account any previous relevant occasions on which the respondent Member was found to have breached the Code.
15. Once a decision has been made in terms of section 13 above then copies of such decision together with the reasons therefore must be sent to the Complainant, the relevant Member and the WAPA Executive Committee.

16. Proceedings of all Code of Conduct Committee hearings and the decisions made pursuant thereto shall be regarded as public documents and shall be made available on the WAPA website unless otherwise ordered by the Code of Conduct Committee.

### **Appeal against the decision of the Code of Conduct Committee**

17. Any party to a Complaint disposed of in terms of this Complaints Procedure may, where grounds exist for believing that the decision of the Code of Conduct Committee may be incorrect, lodge an appeal with the WAPA Executive Committee within ten (10) days of the sending of notification in terms of section 14 above, failing which the matter will be regarded as completed.
18. Any appeal lodged in terms of section 16 must be in writing and must specify:
  - 18.1. the full particulars of the Appellant, including full contact details and the name and contact details of the person authorised to accept all correspondence relating to the Appeal on behalf of the Appellant;
  - 18.2. the particulars of the decision against which the Appeal is being lodged;
  - 18.3. the detailed basis for the Appeal including reference to any specific findings which are believed to be incorrect.
19. The WAPA Executive Committee shall consider the Appeal and shall, entirely in its own discretion, decide whether to reject the Appeal or whether to refer the matter back to the Code of Conduct Committee for further hearing. This decision, together with reasons therefore, must be communicated in writing to the Appellant, Respondent and Code of Conduct Committee.
20. If the Appeal is rejected then the matter shall be regarded as completed.
21. Where the Appeal is referred back to the Code of Conduct Committee then the matter shall be further disposed of in terms of section 8 and following sections of this Procedure.

### **Urgent procedure in respect of interference issues**

22. Where a complaint is lodged with WAPA by a Member, the Authority or another licensed operator on an urgent basis relating to the alleged causing of interference then the matter shall be resolved on an expedited basis according to the following:
  - 22.1. the member lodging the Complaint must provide full details in writing to the Association;
  - 22.2. the Association shall, as soon as practicably possible after receipt of the Complaint, contact the Complainant and the member alleged to be causing the interference telephonically in order to arrange a site meeting at the earliest possible opportunity;
  - 22.3. such site meeting shall be attended by a suitably qualified WAPA representative who shall take minutes of the site meeting;
  - 22.4. at the site meeting the parties shall take practical steps to verify the Complaint by, inter alia, switching off relevant equipment and ascertaining whether this action causes the interference to cease;



- 22.5. in the event that the Complaint is accurate as regards the source of the interference the parties and the WAPA representative shall there and then agree, in good faith, on a practical plan for the further resolution of the matter taking into account the following:
- 22.5.1. the nature of the interference and the ease or difficulty with which it may be remedied;
  - 22.5.2. whether the interference is arising, directly or indirectly, from a breach of the WAPA Code of Conduct;
  - 22.5.3. the commercial implications of the interference if it allowed to continue;
  - 22.5.4. the commercial implications of switching off equipment causing interference;
  - 22.5.5. such other factors as may be relevant in the circumstances.
- 22.6. The attending WAPA representative shall provide a full report of the meeting to both parties and the WAPA Code of Conduct Committee as soon as possible after the conclusion of the site meeting.
- 22.7. The lodging of a complaint in terms of this section 21 shall not act as a bar to the lodging of any related complaint in terms of the Complaints and Disciplinary Procedure.
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## **ANNEXURE B – TAKE-DOWN PROCEDURE**

Section 77 of the ECT Act sets out the legislative framework for take-down notices as follows:

“77. (1) For the purposes of this Chapter, a notification of unlawful activity must be in writing, must be addressed by the complainant to the service provider or its designated agent and must include-

- a. the full names and address of the complainant;
- b. the written or electronic signature of the complainant;
- c. identification of the right that has allegedly been infringed;
- d. identification of the material or activity that is claimed to be the subject of unlawful activity;
- e. the remedial action required to be taken by the service provider in respect of the complaint;
- f. telephonic and electronic contact details, if any, of the complainant;
- g. a statement that the complainant is acting in good faith;
- h. a statement by the complainant that the information in the take-down notification is to his or her knowledge true and correct; and

(2) Any person who lodges a notification of unlawful activity with a service provider knowing that it materially misrepresents the facts is liable for damages for wrongful take-down.

(3) A service provider is not liable for wrongful take-down in response to a notification.”

The following Take-Down Procedure is to be followed by all WAPA Members on receipt of a take-down notice or notice purporting to be a take-down notice.

1. A copy of a take-down notice received directly by a Member must be forwarded to [info@wapa.org.za](mailto:info@wapa.org.za) within 24 hours of receipt thereof.

### **Applicable time-periods**

2. The following guiding time periods shall apply to the procedure set out below:
  - 2.1. Initial evaluation: 2 – 4 working days from date of receipt of take-down notice by WAPA;
  - 2.2. Factual verification: 1 – 3 working days from the completion of the initial evaluation
  - 2.3. Acceptance of take down notice: 1-2 working days from completion of factual verification\
  - 2.4. Verification of Member Response: as set out in the relevant sections

### **Initial Evaluation**

3. Where WAPA receives a take-down notice, either directly or forwarded from a Member, it shall take initial steps to verify:
  - 3.1. whether it is the designated agent of the Member in respect of which the take-down notice has been issued;
  - 3.2. if so, whether the take-down notice, complies with the requirements of section 77(1)(a)-(g) as set out above.
4. Where WAPA is not the designated agent as set out in 2.1 then
  - 4.1. where the recipient of the take-down notice is a member of the Association, WAPA shall
    - 4.1.1. identify the designated agent in respect of the Member and forward the take-down notice to such designated agent;
    - 4.1.2. inform the issuer of the take-down notice (“the Complainant”) and the Member of the action taken.
  - 4.2. where the recipient of the take-down notice is a not member of the Association, WAPA shall inform the Complainant of the fact that
    - 4.2.1. WAPA is not the designated agent in respect of the recipient;
    - 4.2.2. the recipient is not a member of WAPA; and
    - 4.2.3. WAPA cannot take the matter further.
5. Where the take-down notice does not specify the service provider in respect of which it is issued then the Association shall take reasonable steps to ascertain whether the unidentified service provider is a Member of the Association and shall communicate the outcome of this process to the Complainant. If the recipient is identified as a Member of WAPA it shall proceed further in terms of section 2 above.
6. Where an initial check in terms of section 2.2 above reveals that the Complainant has not complied with section 77(1) then the Association shall notify the Complainant:
  - 6.1. that the take-down notice is deficient;
  - 6.2. of the specific reasons for such deficiency; and
  - 6.3. that the Complainant may resubmit the take-down notice after remedying the deficiency.

### **Factual verification**

7. Where the Association is satisfied that a full and proper take-down notice is before it in respect of a WAPA Member for which it is the designated agent, then the Association shall –
  - 7.1. verify that the content which forms the subject of the take-down notice is currently hosted by the Member to which the take-down notice has been addressed;
  - 7.2. verify that the content which forms the subject of the take-down notice is capable of being taken down as required.

8. Where the Association is unable to positively verify either 6.1 or 6.2 it shall inform the Complainant accordingly, providing full reasons and stating that the Association is unable to take any further can in respect of the takedown notice.

#### **Acceptance of take-down notice**

9. Where the Association has satisfied itself that the take-down notice is properly before it, it shall
  - 9.1. forward the take-down notice to the relevant member and request that it provide a written acknowledgement of receipt of the complaint;
  - 9.2. notify the Complainant that the take-down request has been accepted by the Association and forwarded on to the relevant Member for further action.

#### **Verification of Member response**

10. Where the Association receives written confirmation from the relevant Member or verifies for itself that the content complained about has been taken down then it shall inform the Complainant accordingly.
11. The Association must, in the event that it has not received confirmation from the relevant Member that the content complained about has been taken down and not earlier than within 48 hours of acting in terms of section 8 above, take steps to ascertain whether the content has been taken down or not.
  - 11.1. If the content has been taken-down then the Association shall inform the Complainant accordingly.
  - 11.2. if the content has not been taken down send written communication to the relevant Member requesting that it immediately advise the Association of steps taken in response to the take-down notice.
12. In the event that no or an unsatisfactory response is received in reply to a communication sent under section 10.2 then the Association shall, not earlier than 48 hours after the sending of the communication referred to in section 10.2, telephonically contact the relevant Member and enquire as to the steps taken in response to the take-down notice.
13. In the event that the content forming the subject matter of the take-down notice has not been taken down within 24 hours of the completion of the action contemplated in section 11 above, then the Association shall inform the Complainant that
  - 13.1. the Member has failed to respond to the take-down notice or has refused to remove the material as the case may be;
  - 13.2. the Complainant may lay a further complaint against the Member in terms of the WAPA Code of Conduct.