



Wireless Access Providers' Association
Code of Conduct
Version 4.1

Adopted at Cape Town (Online) on 2 April 2014



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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);

“Complaint” means a Complaint lodged under the Association’s Complaints and Disciplinary Procedure;

“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, No. 36 of 2005;

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

“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;

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

“IRB” means Industry Representative Body;

“Member” means a member of the Association;

“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 bulk email.

1. Introduction

- 1.1. The Association’s Code of Conduct sets out the minimum standards of service and behaviour applicable to Members.
- 1.2. Notwithstanding the generality of the above, certain clauses may be of limited or no application in circumstances where the nature of or services provided by the Member or a class of Members renders the limitation of the clause reasonable and justifiable taking into account all relevant factors.



2. Values underpinning the Code of Conduct

- 2.1. Members will honour and respect legislation and regulation, and the spirit behind such legislation and regulation.
- 2.2. Members commit to working together and working with others who follow these values.
- 2.3. Members will go beyond the minimum requirements and strive for excellence, setting a high standard in all business practices.

3. Licensing

- 3.1. Members shall at all times, where required, be in possession of appropriate licensing or licence exemptions issued or recognised by the ECA.
- 3.2. Probationary Members must, where required, submit proof of application or registration for such licensing or licence exemption within two calendar months of being accepted as probationary Members.

4. Radio Apparatus

- 4.1. Members shall only use Radio Apparatus which has been type-approved and such use shall be in accordance with the applicable type-approval regulations issued by the Authority.
- 4.2. All Radio Apparatus shall be labelled with type-approval stickers.
- 4.3. Members are required to buy Radio Apparatus from vendors who are fully compliant with this Code of Conduct, insofar as it applies to such vendors.

5. High Sites and installations

- 5.1. 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 the Association.
- 5.2. Members will conform to the Association's basic High Site requirements, operating within the relevant law and regulations.
- 5.3. In order to ensure compliance with this provision, Members agree to allow the inspection of their High Sites by Association representatives on the giving of no less than ten business days' notice, which will be waived where the inspection is required in terms of a Complaint.
- 5.4. Members' High Sites that will be subject to inspection and approval by the Association include High Sites that are shared with any other operators, including non-members.



- 5.5. The following information must be provided to the Association by the Member and should be listed on a waterproof notice clearly visible on the High Site:
 - 5.5.1. Network Operator Name;
 - 5.5.2. Contact Telephone Number;
 - 5.5.3. Website;
 - 5.5.4. ECNS, ECS and Licence Numbers (if applicable);
 - 5.5.5. The Association's contact details; and
 - 5.5.6. The Association's logo.
- 5.6. Members are also encouraged to list the following information on the waterproof notice on the High Site:
 - 5.6.1. High Site Contact Person / Department;
 - 5.6.2. Description of the High Site;
 - 5.6.3. The GPS co-ordinates of High Site;
 - 5.6.4. A list of all Radio Apparatus used on each High Site, with type approval numbers;
 - 5.6.5. Gain, polarity, and beam width of sector antennas and backbone antennas;
 - 5.6.6. A list of the broad range of frequencies used on each site.

6. Use of Unlicensed bands

- 6.1. Members, unless issued with licensed spectrum, undertake to operate in compliance with the relevant regulations issued by the Authority and strictly within the confines of the licence-exempt bands as set out in Annexure B to the Radio Regulations 2010, as amended.
- 6.2. Any unlicensed use of frequencies outside these bands will be regarded as a serious offence by the Association, and an offending Member will be asked to comply within 24 hours or face disciplinary action including escalation to the Authority.
- 6.3. Members commit to using the licence-exempt bands in a professional manner and with due regard to other users. Members commit further to resolving any interference or other frequency-related disputes expeditiously and in good faith.

7. Equipment Vendors

- 7.1. 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.
- 7.2. All equipment vendors must comply with the current Type Approval Regulations and Labelling Regulations.
- 7.3. All equipment vendors will commit to only selling type-approved Radio Apparatus.



8. Safety

- 8.1. Members must, to the extent applicable, adhere to the Occupational Health and Safety Act, No. 85 of 1993.
- 8.2. This shall include but not be limited to
 - 8.2.1. ensuring that all technicians used to service masts higher than 3 metres are equipped with SABS-approved rope access equipment and are trained with approved rope access training courses;
 - 8.2.2. ensuring that teams always consist of at least 2 people; and
 - 8.2.3. registering for workman's compensation in terms of the Workmen's Compensation Act and other applicable legislation.

9. Professional Conduct

- 9.1. In their dealings with consumers, other businesses and each other, Members shall act professionally, fairly and reasonably.
- 9.2. 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.
- 9.3. 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.

10. Standard Terms of Agreement

- 10.1. Members shall, if relevant, 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.
- 10.2. The Standard Terms of Agreement shall contain:
 - 10.2.1. 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;
 - 10.2.2. An undertaking that no material that infringes copyright will knowingly be created, displayed, published or copied by the recipient of the service;
 - 10.2.3. An undertaking that the intellectual property rights of third parties will not knowingly be infringed.
 - 10.2.4. An undertaking that they will not send nor promote the sending of Spam.

- 10.3. 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.
- 10.4. 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.

11. Service levels

- 11.1. Members may only offer or promise service levels which are reasonably feasible having regard to industry-accepted standards, know-how, the area in which services are to be delivered and other practical restraints.

12. Content control

- 12.1. There is no general obligation on any Member to monitor the content of the recipients of its service, except as provided for in South African law, but a Member is obliged to take action where it becomes aware of any illegal or unlawful content or conduct.
- 12.2. A Member shall not knowingly host or provide links to content that is illegal or unlawful, except when required to do so by law, or engage in conduct that is illegal or unlawful.
- 12.3. 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.

13. Consumer protection

- 13.1. Members are committed to honest and fair dealings.
- 13.2. Members shall comply with all applicable compulsory advertising standards and regulations.
- 13.3. Members commit to ethical consumer practices and, without limiting the generality of the foregoing, to
 - 13.3.1. monitor their communications network, 24 hours a day, 7 days a week;
 - 13.3.2. provide a network operations centre / helpdesk;
 - 13.3.3. provide transparency in respect of their service offerings; including
 - 13.3.3.1. ownership of equipment;
 - 13.3.3.2. embedded leasing and financing of equipment;
 - 13.3.3.3. policy on hardware returns and cancellation procedures;
 - 13.3.3.4. policy on hardware warranties;
 - 13.3.3.5. policy on moving customer equipment;
 - 13.3.3.6. suspension procedures;
 - 13.3.3.7. registration of domain names;
 - 13.3.4. provide an efficient mechanism for the resolution of Complaints.

14. Privacy and confidentiality protection

- 14.1. Members shall respect the constitutional right of internet users to personal privacy and privacy of communications.
- 14.2. 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.
- 14.3. Members shall respect the confidentiality of electronic mail and messaging.
- 14.4. 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.
- 14.5. 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.

15. Copyright and Intellectual Property Protection

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

16. Spam protection

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

17. Protection of minors

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

18. Cybercrime

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

19. Complaints & Disciplinary Procedure

- 19.1. The Association has established a Complaints and Disciplinary Procedure that can be used by Members, recipients of the Members' services and third parties, and Members agree to be bound by and interact with such procedure.
- 19.2. A copy of the Association's Complaints and Disciplinary Procedure is also published at www.wapa.org.za.
- 19.3. Members shall be committed to receive and investigate Complaints unless such Complaints are frivolous, unreasonable, vexatious or in bad faith.
- 19.4. 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 may be referred to the Association for a decision.
- 19.5. The Member's complaints procedure shall contain an acceptable turn-around period for dealing with a Complaint.
- 19.6. Members shall adhere to the Code of Conduct, the Complaints and Disciplinary Procedure and the decisions of the Association.
- 19.7. 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.
- 19.8. The Association may refer any Complaint received to the Member in question for resolution.
- 19.9. The Association shall retain records of all disciplinary proceedings for a period of 3 years.

20. Monitoring of Compliance

- 20.1. 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.
- 20.2. Members shall submit an annual statement to the Association confirming their compliance with this Code of Conduct.
- 20.3. 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.



21. Informational requirements

- 21.1. 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.
- 21.2. Members shall inform their customers and visitors to their websites that the Member is bound by the provisions of this Code of Conduct.
- 21.3. 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.

22. Take-down procedure

- 22.1. 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 A and is also published on www.wapa.org.za.
- 22.2. All Members undertake to be bound by and interact with the Take-Down Procedure.
- 22.3. 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.
- 22.4. 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.
- 22.5. Members must, within a reasonable period of time, compile and deliver a report to the Association in respect of all steps taken by that Member in response to receipt of a take-down notice.
- 22.6. 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.
- 22.7. Members shall provide a link to the Take-Down Procedure from their websites.

23. Review and amendment of this Code of Conduct

- 23.1. 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 where the Association is registered as an IRB.
- 23.2. Amendments duly made shall be binding on all Members.

24. Administrative Matters

24.1. The Association shall create and maintain a website which shall have available for public access at least the following:

- 24.1.1. the current version of the Association’s Code of Conduct and a version history;
- 24.1.2. the current version of the Association’s Complaints & Disciplinary Procedure and a version history;
- 24.1.3. the current version of the Association’s Take-Down Procedure and a version history;
- 24.1.4. 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;
- 24.1.5. consumer education materials;
- 24.1.6. a consumer Complaint facility.

24.2. The Association shall keep a full record of all Complaints lodged.

Version History

Version	Date adopted	Date effective	Summary of revisions
1.0	17 November 2006		
1.1	25 November 2006		
1.2	26 November 2006		
1.3	01 December 2006		
1.4	05 December 2006		
1.5	08 December 2006		
1.6	08 January 2007		
1.7	02 February 2007		
2.0	5 March 2007		
2.1	9 March 2007		
2.2	12 March 2007		
3.0	21 September 2011	21 September 2011	
4.0	12 September 2012	12 September 2012	
4.1	2 April 2014	2 April 2014	

Annexure A – 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 Take-Down Procedure detailed below is to be followed by all Association Members on receipt of a take-down notice or notice purporting to be a take-down notice.

Receipt

1. A copy of a take-down notice received directly by a Member must be forwarded to 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 the Association;
 - 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 the Association 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 the Association is not the designated agent as set out in section 3.1 above, then
 - 4.1. where the recipient of the take-down notice is a Member of the Association, then the Association shall
 - 4.1.1. identify the designated agent in respect of the Member and forward the take-down notice to such designated agent or to the Member itself; and
 - 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, then the Association shall inform the Complainant of the fact that:
 - 4.2.1. the Association is not the designated agent in respect of the recipient;
 - 4.2.2. the recipient is not a member of the Association; and
 - 4.2.3. the Association 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 the Association it shall proceed further in terms of section 3 above.
6. Where an initial check in terms of section 3.2 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 an Association 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 or otherwise under the control of 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 sections 7.1 or 7.2 above, it shall inform the Complainant accordingly.



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; and
 - 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 9 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 11.2 above, then the Association shall, not earlier than 48 hours after the sending of the communication referred to in section 11.2 above, 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 12 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 Association's Code of Conduct.