

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 522

Pretoria, 22 December 2008
Desember

No. 31753

CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Independent Communications Authority of South Africa***General Notices*

1580	Electronic Communications Act (36/2005): Draft Code of Conduct for Broadcasters	3	31753
------	---	---	-------

GENERAL NOTICE

NOTICE 1580 OF 2008



**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
DRAFT CODE OF CONDUCT FOR BROADCASTERS ISSUED IN TERMS OF SECTION 54
OF THE ELECTRONIC COMMUNICATIONS ACT NO 36 OF 2005**

- (1) The Independent Communications Authority of South Africa ("the Authority") hereby prescribes regulations, in terms of section 4(4) read with section 54 of the Electronic Communications Act (Act 36 of 2005), as amended, being the Code of Conduct for Broadcasters.
- (2) A copy of the draft regulations is available on the Authority's website at <http://www.icasa.org.za> and in the ICASA Library at 164 Katherine Street, PinMill Farm, Sandton Block D, between 08h30 and 16h30, Monday to Friday.
- (3) Interested persons are invited to submit written comments or written representations with regard to the proposed regulations, to be received **by no later than 16h00 on the 20th of February 2008** by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of :

Ms Leomile Pholosi

Independent Communications Authority of South Africa

Private Bag X10002

Sandton

2146

Delivery address: ICASA, Block A, Pinmill Farm, 164 Katherine Street, Sandton.

Where possible, written representations should also be e-mailed to:
lpholosi@icasa.org.za.

Enquiries can be directed to: **Ms Leomile Pholosi** at 011 566 3247/3259

- (4) Persons making written representations are requested to indicate if they wish to make oral submissions in the event that ICASA decides to conduct oral hearings in terms of Section 4(6) of the Act. The oral hearings may be held during the second week of March 2009.
- (5) All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on the payment of the prescribed fee.
- (6) At the request of any person who submits written representations pursuant to this notice, ICASA may determine that such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act 3 of 2000, as amended. If the request for confidentiality is refused, the person making the request will be allowed to withdraw such representations or portion thereof.
- (7) With respect to written representations or portions thereof determined to be confidential in terms of paragraph 6 above, ICASA may direct that the public or any member or category thereof, shall not be present while any oral submissions relating to such representations or portions thereof are being made; provided that interested parties shall have been notified of this intention and allowed to object thereto. The Authority will consider the objections and notify all interested parties of its decision.

PARIS MASHILE
CHAIRPERSON



DRAFT CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES 2008

WHEREAS

Section 54(1) of the Electronic Communications Act 2005 ("ECA") provides that the Authority, as soon as is reasonably possible after the coming into effect of the ECA, must, subject to the ECA, review existing regulations, and prescribe regulations setting out a code of conduct for broadcasting service licensees; and

subject to the next paragraph, all broadcasting service licensees must adhere to the code of conduct for broadcasting service licensees as prescribed; and

the Code does not apply to a broadcasting service licensee which is a member of a body which has proved to the satisfaction of the Authority that its members subscribe and adhere to a code of conduct enforced by that body by means of its own disciplinary mechanisms, provided such code of conduct and disciplinary mechanisms are acceptable to the Authority and, provided further that the Authority has exclusive jurisdiction to apply sections 56,57,58 and 59 of the ECA concerning elections;

the Authority hereby publishes draft regulations of the Code referred to in section 54(1) of the ECA for comment.

1. Definitions

Unless the context indicates otherwise, the following words in these Regulations have the meanings ascribed to them hereunder:

"audience" means both television and radio audience;

"Authority" means the Council of the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority Act 13 of 2000 ("ICASA ACT");

"broadcaster" means a broadcaster licensed in terms of the ECA;

"child pornography" means any description or visual image, real or simulated, however created, explicitly depicting a person who is or who is depicted as being under the age of 18 years (a) engaged in or participating in sexual conduct; (b) engaged in an explicit display of genitals; or (c) assisting another person to engage in sexual conduct which, judged within context, has

as its predominant objective purpose, the stimulation of sexual arousal, in contrast to aesthetic feeling, in its target audience;

"children" means persons under the age of 18 years;

"ECA" means the Electronic Communications Act No. 36 of 2005;

"ICASA Act" means the Independent Communications Authority of South Africa Act 13 of 2000, as amended;

"sexual conduct" means: (i) the display of genitals or of the anus; (ii) masturbation; (iii) sexual intercourse including anal sexual intercourse; (iv) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus; (v) the penetration of a vagina or anus with any object; (vi) oral genital contact; or (vii) oral anal contact;

"watershed period" means the period between 21h00 and 05h00 for free-to-air television broadcasters and 20:00 and 05:00 for subscription television broadcasters.

2. Broadcasters must ensure that all broadcasts comply with this Code and are further required to have adequate procedures in place to so comply. All broadcasters must ensure that relevant employees and programme-makers, including those from whom they commission programmes, understand the contents and significance of this Code. All broadcasters should also have procedures for ensuring that programme-makers can seek guidance from the Code.
3. The Authority has in terms of section 17E of the ICASA Act the power to impose sanctions, including fines, on broadcasters who do not comply with this Code of Conduct. The maximum fine which may be imposed is R150 000.

Violence

4. Broadcasters must not broadcast material which, judged within context
(1) contains gratuitous violence in any form, that is, violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or
(2) sanctions, promotes or glamorizes violence or unlawful conduct.

5. **Violence and Hate Speech against specific groups**

(1) Broadcasters must not broadcast material which, judged within context, sanctions, promotes or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

(2) Broadcasters must not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

6. Regulations 4 and 5 do not apply to:

- (1) a broadcast which, judged within context, amounts to a *bona fide* scientific, documentary, dramatic, artistic, or religious broadcast;
- (2) a broadcast which amounts to a discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- (3) a broadcast which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest.

Children

7. Children as defined in regulation 1 above embraces a wide range of maturity and sophistication, and in interpreting this Code it is legitimate for broadcasters to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.

8. (1) Broadcasters must not broadcast material which is harmful or disturbing to children at times when a large number of children is likely to be part of the audience.
- (2) Broadcasters must exercise particular caution, as provided below, in the depiction of violence in children's programming.
- (3) In children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
- (4) Animated programming for children, while accepted as a stylised form of story-telling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation.
- (5) Programming for children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol.
- (6) Programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys.
- (7) Programming for children must not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.
- (8) Programming for children must not contain realistic scenes of violence which minimise 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.
- (9) Programming for children must not contain frightening or otherwise excessive special effects not required by the story line.

Watershed Period

9. Programming on television which contains scenes of explicit violence and/or sexual conduct and/or nudity and/or grossly offensive language intended for adult audiences must not be broadcast before the watershed period
10. 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 regulation 18 below enabling parents and *de facto* or legal guardians to make an informed decision as to the suitability of the programming for their family members or children for whom they are responsible.
11. Promotional material and music videos which contain scenes of explicit violence and/or explicit threatening violence and/or sexual conduct and/or nudity and/or offensive language intended for adult audiences must not be broadcast before the watershed period.
12. Some programmes broadcast outside the watershed period may not be suitable for very young children. Licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and other *de facto* or legal guardians to make appropriate viewing choices.
13. Television broadcasters may, with the advance of the watershed period, progressively broadcast more adult material.
14. Broadcasters must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may then be viewed by children.

Language

15. Offensive language, including profanity and other religiously insensitive material, must not be broadcast in programmes specially designed for children.

16. No excessively or grossly offensive language should be used before the watershed period on television or at times when a large number of children is likely to be part of the audience on television or radio.

Sexual Conduct

- 17.(1) Broadcasters must not broadcast material which, judged within context, contains a scene or scenes, simulated or real, of any of the following:

- (a) child pornography;
- (b) bestiality;
- (c) 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;
- (d) explicit sexual conduct;
- (e) explicit extreme violence or the explicit effects thereof; or
- (f) explicit infliction of domestic violence.

(2) The prohibitions in sub-regulations 17 (a) to 17 (f) shall not be applicable to *bona fide* scientific, documentary, dramatic or artistic material which, judged within context, is of such a nature; provided that it is broadcast with due audience advisory after the watershed on a sliding scale according to its content.

Audience Advisories

18. To assist audiences in choosing programmes, television broadcasters must provide advisory assistance which, when applicable, must include guidelines as to age, where such broadcasts contain violence, sex, nudity and/or offensive language. The advisory must be visible on the screen for a minimum of 90 seconds at the commencement of the programme and for a minimum of 30 seconds after each advertisement break. Where the frequency of the said subject matters, or any one or some of them, is high, a continuous advisory will be necessary, whether it is broadcast before or after the watershed.

19. The following visual advisory age system must be used: 8, 10, 13, 16 and 18.

In the last three instances the following symbols must be used in accordance with the relevant content: V(violence), L(language), N(nudity) and S(sex). In the case of 8, 10 and 13 a PG (parental guidance) advisory must be used, where necessary. An audio advisory before the commencement of the programme must also accompany the broadcast of a film with an age restriction of 18.

20. Classification by Films and Publications Board

(1) Where a Films and Publications Board classification for a film exists in terms of the Films and Publication Act No. 65 of 1996, such classification may be used as a guide for an advisory to the broadcast of the film.

(2) No film which has an XX classification in terms of the Films and Publications Act may be broadcast.

(3) In all other instances, the provisions of this Code will apply.

21. News

(1) Broadcasters must report news truthfully, accurately and fairly.

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

- (a) Distortion, exaggeration or misrepresentation.
- (b) Material omissions; or
- (c) Summarisation

(3) Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with reasonable 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.

- (4) 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 must be mentioned in the report.
- (5) 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.
- (6) The identity of rape victims and other victims of sexual violence must not be divulged in any broadcast, whether as part of news or not, without the prior valid consent of the victim concerned.
- (7) Broadcasters 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 are likely to be part of the audience.
- (8) Broadcasters must not include explicit or graphic language related to news of destruction, accidents or sexual violence which could disturb children or sensitive audiences, except where it is in the public interest to include such material.

22. Comment

- (1) Broadcasters are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (2) 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.

- (3) Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, it must be stated in the programme.

23. Controversial issues of public importance

- (1) In presenting a programme in which a controversial issue of public importance is discussed, a broadcaster 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.
- (2) A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given the right to reply to such criticism on the same programme. If this is impracticable however, opportunity to respond to the programme should 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.

24. Elections

During any election period, as defined in the ECA, sections 56, 57, 58 and 59 of the ECA and regulations issued in terms thereof apply.

25. Privacy, Dignity and Reputation

- (1) Broadcasters must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest.
- (2) In the protection of privacy, dignity and reputation special weight must be afforded to South African cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away.

- (3) In the protection of privacy, dignity and reputation special weight must be afforded to the privacy, dignity and reputation of children, the aged and the physically and mentally disabled.

26. Paying a criminal for information

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

27. Competitions

- (1) Broadcasters must make known during a broadcast the full cost of a telephone call or a SMS, where audiences are invited on air to react to a programme or competition.
- (2) Broadcasters must specify the proportion of the cost of the call or SMS, as the case may be, which is intended for any specified charitable cause.
- (3) Broadcasters must ensure that audiences who are invited to compete in any competition are made aware on air of the rules of the competition. Such rules must include the closing date and the manner in which the winner is to be determined.
-