

12 February 2016

Independent Communications Authority of South Africa

Attention: Ms Tumishang Makhafola

E-mail: tmakhafola@icasa.org.za, numberingapplications@icasa.org.za

Dear Ms Makhafola

Draft Regulations for a Code of Conduct on Premium Rated Services

1. WASPA has noted the publication by the Authority of Draft Regulations for a Code of Conduct on Premium Rated Services (“**the Draft Code**”) under section 69(2) of the Electronic Communications Act 36 of 2005 (“**the ECA**”).
2. As is set out below, WASPA’s members have a substantial interest in this consultation and we have set out our submissions on the Draft Code below.
3. WASPA records its agreement with the position of the Authority that effective regulation of PRS will increase consumer confidence in the PRS industry and that this will ultimately be to the benefit of such industry. This is an accurate reflection of WASPA’s experience of regulating the non-voice PRS industry over the past 11 years.

General submissions

4. The Authority has engaged with WASPA on a number of occasions and is aware of WASPA and its self-regulatory initiatives within the non-voice premium rated services (“**PRS**”) and value-added services market, including those delivered by SMS, MMS, USSD and IVR and covering content subscription services, direct marketing, adult services, child-oriented services, contact and dating services, promotional competitions and other forms of PRS and related matters.
5. WASPA has been an active member of the Industry Numbering Forum (“**INF**”) since its formation.
6. As is to be expected there is significant overlap between the provisions of the Draft Code relating to non-voice PRS and the provisions of the WASPA Code of Conduct. WASPA notes that several provisions of the Draft Code of Conduct have been drafted with close reference to a prior version of the WASPA Code of Conduct¹ (which has now been substantially revised).
7. While WASPA will review its Code of Conduct subsequent to the publication of the final PRS Code and make the necessary amendments, we wish to engage further with the Authority on the alignment between the PRS Code under the ECA and WASPA’s Code of Conduct.
8. In particular, WASPA seeks to explore:
 - 8.1. The establishment of a co-regulatory relationship in respect of PRS;

¹ Version 12.4, see <http://waspa.org.za/coc/12-4/>, This version was replaced by a completely revised Code on 26 May 2014. A full history of revisions to the WASPA Code of Conduct is available from <http://waspa.org.za/coc/archive/>

- 8.2. The expansion of the current WASPA Code of Conduct to include provisions relating specifically to voice PRS and which are in line with the final PRS Code.
9. WASPA believes that there are numerous advantages to formalising a co-regulatory relationship between the Authority and WASPA in respect of the regulation of PRS for the benefit of consumers.
- 9.1. WASPA has a proven track record in effectively regulating the non-voice PRS market.
- 9.2. The WASPA Code of Conduct is a dynamic document capable of quick amendment to counter new unethical or unlawful practises. This has – for example – allowed WASPA to review and amend the Code in response to the changing legislative and regulatory environment as was the case with the coming into force of the Consumer Protection Act. The history of revisions of the WASPA Code of Conduct is available from <http://waspa.org.za/coc/archive/>.
- 9.3. The WASPA Code of Conduct and related processes are the product of more than a decade of experience with PRS and consumer complaints. It is accordingly highly-detailed in its approach and in the obligations it sets on PRS providers.
- 9.4. WASPA has an effective consumer complaints resolution process as well as an established brand as a regulator of PRS. The WASPA Code and its communications channels are well-known to consumers of PRS.
- 9.4.1. WASPA has developed a system where the consumer can verify whether a MSISDN has received any WASP services or whether the MSISDN is subscribed to any WASP service – known as the WUQs system.
- 9.4.2. Queries and requests are logged by the user and the system connects directly with the WASP to attend to the query within 48 hours.
- 9.4.3. All MNOs have access to this system to interact with WASPs and to expedite resolution of queries.
- 9.4.4. A total of 292 905 queries were resolved using this system during 2015.
- 9.4.5. The WUQS system allows for speedy resolution of consumer complaints before they have to be escalated to a formal dispute resolution process and as such is a significant consumer protection measure.
- 9.5. WASPA's enforcement of its Code of Conduct is both proactive and reactive.
- 9.5.1. A team of media monitors actively review and test services provided by WASPA members and have the power to require remedial action on any non-compliant services failing which the member will be subject to the formal disciplinary process. This includes print, television, radio and outdoor media as well as website and WAP site monitoring.
- 9.5.2. There is a "heads-up" procedure to request members to discontinue any advertising or services which are not in compliance with the Code, intended to provide quick cessation of potentially non-compliant behaviour. If the member does not comply the matter may be escalated to the formal complaints process.

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- 9.5.3. WASPA has designed systems to assist consumers with lodging complaints and to try and make this as simple as possible (see, for example, <http://waspa.org.za/lodge-a-complaint/>, <http://waspa.org.za/report-spam/>, <http://waspa.org.za/report-unwanted-billing/>).
- 9.5.4. Reactively, an independent secretariat manages the WASPA complaints handling process – a civil procedure framework - to enforce compliance with the WASPA Code of Conduct.
- 9.5.5. A pool of independent ICT lawyers serves as independent adjudicators in respect of complaints escalated to the formal dispute resolution process, while a 3-person appeals panel of ICT lawyers adjudicates on appeals against adjudications.
- 9.5.6. Adjudicators may adjudicate on any matter related to the WASPA Code of Conduct where a complaint has been lodged and may sanction any infraction, which may include fines, suspensions, remedies, refunds, expulsion, or any combination thereof.
- 9.6. Where there is apparent and ongoing consumer harm, WASPA has developed an emergency complaints procedure in terms of which an emergency panel of three WASPA adjudicators may sit to shut down services pending a formal adjudication.
- 9.7. Transparency is promoted through:
- 9.7.1. The public nature of the WASPA Code of Conduct and revisions to it. This includes publication of an annotated version which shows what revisions have been made and explains why this was done.
- 9.7.2. The ability of members of WASPA to participate in its activities, including the working group mandated to review and improve the WASPA Code of Conduct on an ongoing basis.
- 9.7.3. Regular meetings with members to discuss industry issues and any amendments which may be required to the WASPA Code of Conduct.
- 9.7.4. The publication of all adjudications made in respect of formal complaints on the WASPA website (<http://waspa.org.za/coc/complaint-report-archive/>).
- 9.8. The Authority would retain control over the WASPA Code of Conduct through a broad set of standards such as those set out in the Draft Code. Stated differently: the WASPA Code of Conduct could not contain provisions in conflict with the provisions of the PRS Code.
10. Such an arrangement would require entering into a detailed memorandum of understanding regulating the relationship between the Authority and WASPA as well as issues such as reporting requirements from WASPA to the Authority.
11. It would also – in WASPA's respectful view – require that the Draft Code set out the principles of regulation and that detailed provisions regarding compliance with such principles be set out in the (expanded) WASPA Code of Conduct. The provisions in the WASPA Code of Conduct relating, inter alia, to the provision of pricing information, protection of children, subscription services and spam have been developed over time to provide a detailed response to unethical behaviour and currently provide substantial consumer protection and consumer redress. There is a danger of confusing consumers if there is not a clear alignment between the two documents.

12. This relationship – between principle and detail – is already present to a significant degree as shown by the table set out in Annexure A to this submission, which compares two sections of the Draft Code and current version of the WASPA Code of Conduct respectively. This comparison also attests to the overlap between the Draft Code and the WASPA Code of Conduct.
13. It would then be open to the Authority to make membership of WASPA obligatory for licensees who are PRSPs or who carry PRS to their subscribers (as is currently the case with PRSPs wishing to reach mobile network subscribers in South Africa). This would, we submit, have the additional advantage of making compliance with a detailed industry code obligatory: the force and effect of a code of conduct under section 69(2) of the ECA is unclear².
14. WAPA would welcome the opportunity to workshop alignment issues with the Authority.
15. The current version of the WASPA Code of Conduct is available from <http://waspa.org.za/coc/14-3/>.

General provisions

16. WASPA submits that its members are already compliant with sub-regulation 6(3) in that the WASPA Code of Conduct sets out requirements for opting in to PRS as well as requirements for the provision of a working opt-out service and periodical reminder messages.
17. It would therefore be of no constructive benefit for members to comply with sub-regulation 6(4) and communicate a further message with an opportunity to opt-out to subscribers. WASPA note that compliance – while evidencing no benefit – would incur a direct and an indirect cost to members.

Adult services

18. WASPA requests that the Authority consider broadening its definition of an “adult service” to include material which would have been classified as X18 under the Film and Publications Act. This is in line with the approach taken in the Film and Publications Amendment Bill 2015 and with the discussion set out in the South African Law Reform Commission’s Issue Paper on Children and Pornography.
19. WASPA suggests the following amendments to the definition:

“Adult service” means a service containing material or adult experiences not appropriate for any persons under the age of 18 as classified in terms of the Film and Publication Board’s Classification Guidelines issued classified as X18 by the Film and Publications Board-in terms of the Film and Publications Act, Act No. 65 of 1996 or which would have been so classified had it been submitted for classification;
20. The following definitions are set out in the current version of the WASPA Code of Conduct:

22.1. An “**adult service**” is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

22.2. An “**adult content service**” is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

²² For example, regulation 5(1) states that licensees “must encourage” third party PRSPs using their networks to comply with the minimum standards.



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21. WASPA is sure that the Authority is consulting with the Film and Publications Board ("FPB") in respect of the finalisation of the Draft Code and wishes to stress the importance of aligning the Draft Code with the Film and Publications Act, taking into account the Film and Publications Amendment Act 2015 and the proposed online content regulation policy being developed by the FPB.

Transitional arrangements

22. WASPA requests that the Authority allow for a longer period for the alignment of existing agreements with the provisions of the finalised PRS Code of Conduct. One month is not, in our view, sufficient time to review the finalised regulations and then amend relevant agreements and we submit that a period of three months would be more appropriate.

Conclusion

23. WASPA is available to clarify any matter touched on above and thanks the Authority for the opportunity to make submissions in this process.
24. WASPA confirms its willingness to participate in any public hearings relating to this consultation.

Regards

WASPA

Annexure A: Comparison of the provisions of the Draft Code and the WASPA Code of Conduct in respect of subscription services and adult services

Draft Code	WASPA Code of Conduct
<p>10. SUBSCRIPTION SERVICES</p> <p>(1) Promotional material for all subscription premium rated services must prominently and explicitly identify the service as "subscription service", this includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.</p> <p>(2) An advertisement for a content subscription service, which includes examples of the content provided as part of that service, must have at least two (2) examples of the content clearly displayed</p> <p>(3) For a television advert, the voice over must stipulate:</p> <p>(a) confirmation that a service is a subscription service; and</p> <p>(b) the price and frequency of the billing.</p> <p>(4) A subscription service with different billing frequencies must not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.</p> <p>(5) Once a customer has subscribed to a subscription service, neither the amount, frequency of the charges or the frequency of the service may be increased</p>	<p>15. Subscription and notification services</p> <p>Definitions</p> <p>15.1. A “subscription service” is any service for which a customer is billed on a repeated, regular basis without confirming each individual transaction.</p> <p>15.2. A “notification service” is any service where there are ongoing charges for the service that are not individually authorised by the customer, but which are not subscription services, because the billing is not repeated/regular.</p> <p>Record keeping</p> <p>15.3. For all subscription and notification services the member must keep a record of the source of the service initiation request, and all subsequent interactions with the customer. Those records must be made available to the customer, on request. Records must be kept for a period of at least three years after the customer terminates the service.</p> <p>General requirements</p> <p>15.4. A member must not require that a customer join a subscription or notification service in order to claim an existing reward, to be able to redeem existing loyalty points or to claim a similar benefit. (Example of incorrect marketing: “to claim your prize, join this service”.)</p> <p>15.5. A member may offer an incentive for joining a subscription or notification service, provided that it is clear that the benefit only applies once the customer has joined the service. (Example: “if you join this subscription service, you will be entered into a monthly draw for a prize”.)</p> <p>15.6. Once a customer has joined a subscription service, neither the amount and frequency of the billing nor the frequency of the service may be increased without the customer’s explicit permission.</p>



without the customer's explicit permission.

(6) Billing for a subscription service must indicate that the service purchased is a subscription service.

(7) Promotions for subscription services must not appear in publications or other media specifically targeted at children.

(8) It is acceptable to use the "@" sign in place of "at" in any activation message, welcome message or similar communication. Similarly, "u" may be used in place of "you", "b" may be used in place of "be", and "r" may be used in place of "are" or other similar terminology.

15.7. Once a customer has joined a notification service, the amount of the charges may not be increased, nor may the trigger for the notification service billing be altered without the customer's explicit permission.

15.8. Billing for subscription services must not exceed the total amount specified in the pricing information.

15.9. The confirmation step for any subscription service must require an explicit response from the customer of that service. The confirmation step may not be performed in an automated manner in such a way that the process is hidden from the customer.

Subscriptions initiated via a web page

15.10. For all subscription services initiated via a web page, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of three ways:

(i) The customer's mobile carrier may implement the confirmation step.

(ii) The member can provide the customer with a "confirmation page".

(iii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.11. A confirmation page must contain the following information:

(a) the name of the service,

(b) the pricing information,

(c) a customer support number,

(d) instructions for confirming the initiation of the subscription service, and

(e) a link to any applicable terms and conditions.

Additional information about the service may also be included, provided it follows the above information.

Subscriptions initiated via an SMS



15.12. For all subscription services initiated by the sending of an SMS, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can send a "confirmation message" to the customer. The customer must not be charged for the confirmation message.

15.13. A confirmation message must contain only the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for confirming the initiation of the subscription service, and
- (e) (optionally) additional information about the service.

Subscriptions initiated via USSD

15.14. For all subscription services initiated via USSD, there must be an additional specific confirmation step before the customer is billed. This confirmation step must be provided in one of two ways:

- (i) The customer's mobile carrier may implement the confirmation step.
- (ii) The member can present the customer with a confirmation step via USSD.

15.15. The confirmation step must present the following information, in this order:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number, and
- (d) instructions for confirming the initiation of the subscription service.

15.16. The option to unsubscribe must be listed in the top-level menu of any USSD-initiated



subscription service, under the heading "unsubscribe".

Welcome message

15.17. Once a customer has joined a subscription or notification service, an SMS message must immediately be sent to the customer confirming the initiation of the service. This message is referred to as the "welcome message". The customer must not be charged for the welcome message.

15.18. The welcome message must be a single message and may not contain any line breaks or carriage returns. The welcome message must begin with the word "welcome" and then contain only the following additional information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for terminating the service, and
- (e) (optionally) a link to a WAP landing page or a web page describing the service.

Reminder messages

15.19. A reminder SMS message must be sent to a subscription or notification service customer within 30 days of the initiation of the service, and once per calendar month thereafter. This message is referred to as the "reminder message". The customer must not be charged for any reminder message.

15.20. The reminder message must be a single message for each service the customer is subscribed to, and must not contain any line breaks or carriage returns. The reminder message must begin with the word "reminder" and then contain only the following additional information:

- (a) the name of the service,
- (b) the pricing information,
- (c) a customer support number,
- (d) instructions for terminating the service, and



(e) (optionally) a link to a WAP landing page or a web page describing the service.

15.21. Some notification services are of a seasonal nature (example: sports-related notifications). During calendar months where a member does not send the customer any notifications and where no billing takes place, the member is not required to send a monthly reminder message.

Terminating a service

15.22. Any instructions for terminating a subscription or notification service must be clear and easy to understand and should be readily available to customers.

15.23. Any instructions for terminating a subscription or notification service must not be phrased in such a manner as to result in the customer inadvertently terminating services offered by any other service provider.

15.24. A member may not charge any fee for receiving a service termination request. Network fees may still apply.

15.25. If a service termination request received from a customer is unclear, the customer making the request must be provided with sufficient information to be able to terminate any services provided by that member to that customer.

15.26. If a member is unable to immediately act on a service termination request received from a customer, the customer must be informed. (Example: "This may take up to 24 hours to be processed.")

15.27. The processing of any service termination request must not be unreasonably delayed and must be honored within two working days (48 hours).

Terminating a service via SMS

15.28. If technically feasible, a recipient must be able to terminate a subscription or notification service by replying 'STOP' to any SMS sent to the customer regarding that service, including the welcome message and any reminder messages.

15.29. If a 'STOP' reply could pertain to multiple services, either all services must be terminated upon receipt of the termination request, or the customer must be given a clear choice of services to terminate.



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	<p>15.30. If the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the member must honor the unsubscribe request as if the word 'STOP' had been used.</p> <p>Confirmation of termination of a service</p> <p>15.31. Once a customer has terminated a service, a message confirming this must be sent to that customer. This message must specify the service the customer has terminated, and the customer must not be charged for this message.</p>
<p>12. ADULT SERVICES</p> <p>(1) A premium rated services intended for adults may only be advertised in media that is intended for persons over 18 years of age.</p> <p>(2) Any adult service must be clearly indicated as such in any promotional material and advertisements.</p> <p>(3) A premium rated service provider, in the provision of premium rated services aimed at adults, must take appropriate steps to ensure that only persons of 18 years of age or older have access to such services.</p> <p>(4) A premium rated service provider must ensure that confirmation of an end-user's age is obtained prior to the delivery of an adult content service.</p> <p>(5) Marketing messages (including commercial messages) must not be sent to an end-user of an adult service if that end-user has not made use of the service during the preceding three months.</p> <p>(6) Adult services that are provisioned as premium rated services must not contain references that</p>	<p>22. Adult services</p> <p>Definitions</p> <p>22.1. An "adult service" is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.</p> <p>22.2. An "adult content service" is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.</p> <p>Required practices</p> <p>22.3. Any adult service must be clearly indicated as such in any promotional material and advertisement, and must contain the words "18+ only".</p> <p>22.4. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.</p> <p>22.5. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Reasonable steps may include the customer confirming his or her age prior to or as part of initiating the service.</p>



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suggest or imply the involvement/participation of children.

22.6. Marketing messages for an adult service may not be sent to a customer of that service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

22.7. A marketing message sent to initiate or re-initiate adult services may not:

(a) include any graphical or photographic content that includes full frontal images or portrayal of intimate parts of the body; or

(b) include any words or phrases that may be considered profane, including common popular or slang terms for excretory functions, sexual activity and genitalia; or

(c) include any links to any content described in (a) or (b).

Prohibited practices

22.8. Adult services must not contain references that suggest or imply the involvement of children.

22.9. Promotions for adult services must not appear in publications or other media specifically targeted at children.

22.10. Members may not offer adult content which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.

22.11. Marketing material for any adult services may not make use of material which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18.