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## **THE BCCSA'S CODE OF CONDUCT FOR SUBSCRIPTION BROADCASTING SERVICE LICENSEES**

### **Foreword**

- 1 Section 54(1) of the Electronic Communications Act 2005 ("ECA") provides that all broadcasting licensees must adhere to the prescribed Code of Conduct for Broadcasting Services. However, section 54(3) will not apply to a broadcasting licensee if that broadcasting licensee 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, and provided such code of conduct and disciplinary mechanisms are acceptable to the Authority.
- 2 The Position Paper on Subscription Broadcasting Services recognised that the current prescribed Code of Conduct and the BCCSA's Code of Conduct are inappropriate for subscription broadcasting service licensees.
- 3 Accordingly, the National Association of Broadcasters ("NAB") has developed this Code of Conduct for Subscription Broadcasting Service Licensees in accordance with section 54(3) of the ECA.

## Definitions and interpretation

- 4 In this Code, unless the context indicates otherwise, terms have the meaning assigned to them in the ECA, and –
- 4.1 "audience" means the viewers and/or listeners of a subscription broadcasting service;
- 4.2 "BCCSA" means the Broadcasting Complaints Commission of South Africa established by the NAB;
- 4.3 "child" means a person below eighteen years of age;
- 4.4 "child pornography" means any image –
- (a) explicitly depicting a person, real or simulated, who is shown as being under the age of 18 years' –
    - (i) engaged in sexual conduct;
    - (ii) engaged in a display of genitals;
    - (iii) participating in sexual conduct; or
    - (iv) assisting another person to engage in sexual conduct;and
  - (b) which viewed in context and objectively by a reasonable viewer has as its purpose to stimulate sexual arousal in the target audience;
- 4.5 "Code" means this Code of Conduct for Subscription Broadcasting Service Licensees;
- 4.6 "EPG" means an electronic programme guide;
- 4.7 "family viewing" refers to the classification of programming which is suitable for all ages;

- 4.8 "Films and Publications Act" means the Films and Publications Act, 1996;
- 4.9 "subscription broadcasting service licensee" means the holder of a subscription broadcasting service licence issued by the Authority;
- 4.10 "NAB" means the National Association of Broadcasters of South Africa;
- 4.11 "sexual conduct" includes –
- (i) male genitals in a state of arousal or stimulation;
  - (ii) the undue display of genitals or of the anal region;
  - (iii) masturbation;
  - (iv) sexual intercourse, whether real or simulated, including anal sexual intercourse;
  - (v) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any objects;
  - (vi) the penetration of a vagina or anus with any object;
  - (vii) oral genital contact, or
  - (viii) oral anal contact; and
- 4.12 "watershed period" means the period between 20h00 and 05h00.

### **Application of the Code**

- 5 This Code applies to all subscription broadcasting service licensees who are members of the NAB.

All these subscription broadcasting service licensees must –

- 6.1 comply with this Code; and

- 6.2 have adequate procedures in place in order to comply with this Code.
- 7 These subscription broadcasting service licensees must advise their subscribers on a regular basis that –
- 7.1 their subscription broadcasting service is subject to this Code; and
- 7.2 a subscriber may lodge a complaint with the BCCSA if the subscriber believes that a licensee has contravened this Code.

### **Only authorized channels may be broadcast**

- 8 A subscription broadcasting service licensee may not broadcast a channel on its service unless the Authority has authorised the channel in terms of Regulation 3 of the Subscription Broadcasting Services Regulations, published in Government Gazette No. 28452, Notice 152 of 2006 on 31 January 2006.

### **Content which may not be broadcast**

#### Child pornography, bestiality, incest, rape, sexual conduct and violence

- 9 A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context, contains a scene or scenes, simulated or real, of any of the following –
- 9.1 child pornography;
- 9.2 bestiality, incest or rape;
- 9.3 explicit violent sexual conduct;
- 9.4 explicit sexual conduct which violates the right to human dignity of any person or which degrades a person and which constitutes incitement to cause harm; or
- 9.5 the explicit infliction of or explicit effects of extreme violence which constitutes incitement to cause harm.

### Advocating war, violence or hatred

- 10 A subscription broadcasting service licensee may not knowingly broadcast material which, judged within context –
- 10.1 amounts to propaganda for war;
  - 10.2 incites imminent violence; or
  - 10.3 advocates hatred that is based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.

### Exemptions

Clauses 9 and 10 do not apply to –

- 11.1 broadcasts of *bona fide* scientific, documentary, artistic, dramatic, literary or religious programming material, which, judged within context, is of such nature;
- 11.2 broadcasts which amount to a *bona fide* discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- 11.3 broadcasts which amount to a *bona fide* discussion, argument or opinion on a matter of public interest.

### **Watershed period**

- 12 A television or composite subscription broadcasting service licensee, wherever practicable, must avoid broadcasting programming material, including promotional material, which is unsuitable for children and/or contains nudity, explicit sexual conduct, violence or offensive language before the watershed period.
- 13 A television or composite subscription broadcasting service licensee, wherever practicable, must attempt to ensure that the more the broadcasting of programming material is unsuitable for children, the later that programming material must be broadcast after the commencement of the watershed period.

## **Programme classification**

- 14 A subscription broadcasting service licensee, wherever practicable, and having particular regard to the protection of children, must classify the programming it intends to broadcast.

The classification must indicate –

- 15.1 the appropriate age restriction for viewing or listening to a programme; and
- 15.2 whether the programme contains nudity, sexual conduct, violence or offensive language.
- 16 If a Films and Publications Board classification exists in terms of the Films and Publications Act for a film or programme to be broadcast, such classification may be used by a subscription broadcasting service licensee.
- 17 Clauses 14 and 15 of this Code do not apply in relation to channels packaged outside of South Africa. In relation to those channels, a subscription broadcasting service licensee, wherever practicable, must ensure that any programming on those channels, other than programming which would be classified as "family viewing" in the country in which the channel is packaged, is classified. The classification must indicate the appropriate age restriction for viewing or listening to a programme.

## **Information to be provided about programming**

- 18 A subscription broadcasting service licensee must provide clear and consistent information to its audience about the classification thereof, so that its audience may select the programming –
- 18.1 they do not wish to view or listen to;
- 18.2 they do not wish their children to view or listen to.

- 19 A subscription broadcasting service licensee must therefore clearly and consistently indicate in relation to all its programming, other than programming which it would classify as "family viewing" -
- 19.1 the classification thereof in its hard copy programme guide and its EPG; and
  - 19.2 the classification thereof in any material advertising or promoting programming to be broadcast.
- 20 If a programme to be broadcast is classified as anything other than "family viewing", a subscription broadcasting service licensee, wherever practicable, must clearly indicate, immediately prior to the commencement of that programme, the classification thereof.

#### **Parental control mechanism**

- 21 A subscription broadcasting licensee must, wherever practicable, implement adequate mechanisms to enable a subscriber, using a reasonably secure mechanism, such as a PIN number selected by the subscriber, to block a programme, based on the classification of the programme, or a channel, included in its service.
- 22 In order to enable a subscriber to block a programme, based on the classification of the programme, a subscription broadcasting service licensee must, wherever practicable –
- 22.1 capture the programming classification information electronically ("the classification data"); and
  - 22.2 add the classification data to the output signal of the subscription broadcasting service in the transmission broadcast stream received by a subscriber's decoder so that the subscriber's decoder receives a message that the programme being received has a particular classification.

- 23 A subscription broadcasting service licensee must ensure that any decoders which it promotes or sells are capable of allowing a subscriber to block any programme, based on the classification of the programme, or channel included in its service.
- 24 A subscription broadcasting service licensee must inform all its subscribers of the parental control mechanism available and provide the subscriber with a step-by-step guide on how to use it ("parental control guide").

A subscription broadcasting service licensee must –

- 25.1 provide every subscriber a copy of the parental control guide when a subscriber subscribes to its subscription broadcasting service;
- 25.2 ensure that the parental control guide may always be accessed by its subscribers through the EPG;
- 25.3 post a copy of the parental control guide on its website; and
- 25.4 provide a call centre facility to assist subscribers in using the parental control mechanism.

In addition, a multi-channel subscription broadcasting service licensee must –

- 26.1 broadcast brief inserts across a variety of channels on the service from time to time informing subscribers of the parental control mechanism and how the parental control guide may be accessed; and
- 26.2 include the parental control guide on an information channel on the subscription broadcasting service which information channel must be accessible by subscribers at any time.

- 27 If a programme or channel has been blocked due to a subscriber's use of a parental control mechanism, the licensee must –
- 27.1 display a message on the subscriber's screen advising the subscriber that the content has been blocked by the parental control mechanism; and
  - 27.2 enable the subscriber to unblock the programme or channel should the subscriber so wish.

### **News and comments on matters of public importance**

- 28 If a subscription broadcasting service licensee includes in its service news or comment on matters of public importance that it has produced or commissioned, then the following provisions apply to that licensee –
- 28.1 News
    - 28.1.1 Licensees must report news truthfully, accurately and fairly.
    - 28.1.2 News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by –
      - 28.1.2.1. distortion, exaggeration or misrepresentation;
      - 28.1.2.2. material omissions; or
      - 28.1.2.3. summarisation.
    - 28.1.3 Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact must be broadcast fairly with due regard to context and importance. If 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.

- 28.1.4 If there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it must be verified. If such verification is not practicable, that fact must be mentioned in the report.
- 28.1.5 If it subsequently appears that a broadcast report was incorrect in a material respect, it must be immediately rectified and without reservation. 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.
- 28.1.6 The identity of rape victims and other victims of sexual violence must not be divulged in any broadcast without the prior consent of the victim concerned.
- 28.1.7 Licensees must advise viewers in advance of scenes or reporting of extraordinary violence, or graphic reporting on delicate subject-matter such as sexual assault or court action related to sexual crimes, particularly during afternoon or early evening newscasts and updates when children would probably be in the audience.
- 28.1.8 Licensees must employ discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could disturb children and sensitive audiences.

28.2 Comment

- 28.2.1 Licensees may broadcast comment on and criticism of any actions or events of public importance.
- 28.2.2 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.

### 28.3 Controversial issues of public importance

28.3.1 In presenting a programme in which controversial issues of public importance are discussed, a licensee must make reasonable efforts to fairly present opposing points of view either in the same programme or in a subsequent programme forming part of the same series of programmes presented within a reasonable period of time of the original broadcast and within substantially the same time slot.

28.3.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance must be given a right to reply to such criticism on the same programme. If this is impracticable, however, an opportunity for response 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.

### 28.4 Privacy

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

### 28.5 Paying a criminal for information

No payment may 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.

### **Interpretation and amendment of the Code**

This Code is subject to interpretation in the light of changing circumstances.

- 30 This Code may be amended in accordance with clause 11 of the BCCSA Constitution.