

Wireless Application Service Providers' Association

Code of Conduct

Version 5.2

2007-06-14

1. Introduction

This document is a code of practice governing the members of the South African Wireless Application Service Providers' Association (WASPA). It is binding on all members and contains accepted procedures to be followed in the event of a complaint lodged against any WASPA member.

1.1. About WASPA

WASPA is an independent, non-profit organisation representing the interests of organisations providing mobile application services in South Africa. The Association aims to provide a neutral forum for members to address issues of common interest and interact with industry stakeholders, network operators and government bodies. WASPA aims to ensure that end-users receive world-class services and industry participants earn a fair return on their investments. The association was founded in August 2004.

Membership of WASPA is voluntary. Voting members are required to have an existing business relationship with one or more of the network operators. All members are required to accept the WASPA Code of Conduct and related procedures as binding.

1.2. Objectives of the Code of Conduct

The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

The Code of Conduct also sets standards for advertising mobile application services, and includes a framework for the provision of adult services, to ensure adequate protection of children from potentially harmful content.

1.3. Revisions to the Code of Conduct

In order to ensure that this Code of Conduct remains relevant in the face of constantly evolving technology, the provisions of the Code are reviewed regularly. The latest version of the WASPA Code of Conduct is always available on the organisation's web site, <http://www.waspa.org.za>.

1.4. Scope of the Code

Unless otherwise specified, this Code of Conduct applies to all wireless application services accessed by a customer in South Africa, transmitted by a wireless application service provider and carried by a South African network operator.

Where the Code addresses services provided by members, it applies only to wireless application services provided by a WASP, and not to other types of services that the member may provide.

1.5. Existing agreements with operators

As well as complying with this Code, WASPA members must also comply with any existing contracts and agreements they have with network operators.

1.6. Applicability of the Code to non-members

Some companies may be required to comply with the WASPA code by virtue of a contract with one or more network operators and/or a contract with one or more voting WASPA members. In such cases, all clauses in the Code of Conduct and the *WASPA Advertising Rules* that are binding on WASPA members shall be deemed to be binding on those companies, irrespective of whether or not those companies are members of WASPA.

1.7. Disclaimer

The members of WASPA, the WASPA Management Committee, all other WASPA Committees, the WASPA Secretariat, WASPA's employees and contractors, and Independent Adjudicators shall not be held liable for any consequences that may arise from the implementation of this Code of Conduct or for the failure to implement the Code. This Code of Conduct does not constitute legal advice, nor is it warranted as legal advice. All members are strongly advised to seek proper legal counsel.

2. Definitions

The terms below have the following meaning throughout this document:

2.1. 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.

2.2. 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.

2.3. An "**adjudicator**" is a person, independent of any member, who is appointed to review formal complaints.

2.4. A "**beneficiary**" is a charity or organisation benefiting from a charitable promotion.

2.5. "**Bundling**" means automatically subscribing a consumer to a subscription service in response to a request from that consumer for a single content item.

2.6. A "**charitable promotion**" is any promotion which has a primary goal of benefiting a registered charitable organisation.

2.7. A "**child**" refers to a natural person under 18 years of age.

2.8. "**Children's services**" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

2.9. A "**commercial message**" is a message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

2.10. A "**competition service**" is any competition or game with prizes or entry mechanism into a draw.

2.11. A "**contact and dating**" service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.

2.12. A "**content subscription service**" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.13. A "**customer**" is a user of a mobile cellular telecommunications service that has indicated a willingness to access or utilise a service provided by a wireless application service provider.

2.14. An "**information provider**" is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

2.15. A "**member**" is a member in good standing of WASPA.

2.16. A "**message originator**" is the entity sending a commercial message and can be any person with a commercial arrangement with a WASP to send commercial messages, or a WASP directly.

2.17. A "**network operator**" is a mobile cellular telecommunication service provider, or any other category of telecommunication service provider as determined by WASPA's Management Committee.

2.18. The "**originating number**" is the number allocated to the WASP by the network operator from which a commercial message is sent.

2.19. A "**person**" means any natural or legal person.

2.20. A "**premium-rated service**" is any service charged at a higher rate than the standard rate set by the network operator for that particular service.

2.21. "**Secretariat**" refers to the persons employed by WASPA to handle the administration of the organisation, including the handling of Code of Conduct complaints.

2.22. "**Spam**" means unsolicited commercial communications, including unsolicited commercial messages as referred to in section 5.2.1.

2.23. A "**subscription service**" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

2.24. "**WASPA web site**" refers to the Internet web site located at <http://www.waspa.org.za>.

2.25. A "**wireless application service provider**" is any person engaged in the provision of a mobile service, including premium-rated services, who signs a WASP contract with a network operator for bearer services enabling the provision of such services.

3. General provisions

3.1. Professional and lawful conduct

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

3.2. Freedom of expression

3.2.1. WASPA and its members respect the constitutional right to freedom of speech and expression.

3.3. Service levels

3.3.1. Members will not offer or promise services that they are unable to provide.

3.3.2. Services must not be unreasonably prolonged or delayed.

3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

3.4. Intellectual property

3.4.1. Members will respect the intellectual property rights of their clients and other parties and will not knowingly infringe such rights.

3.5. Content control

3.5.1. Members must not knowingly transmit or publish illegal content.

3.5.2. If a member becomes aware of illegal content under that member's control, the member must, immediately suspend access to that content. Where required to do so by law, the member must report the illegal content to the relevant enforcement authority.

3.5.3. Members must co-operate with any content orders lawfully issued by enforcement authorities.

3.6. Data protection

3.6.1. Members will take all reasonable measures to prevent unauthorised or unlawful access to, interception of, or interference with any data.

3.7. Decency

3.7.1. Members will not provide any services or promotional material that:

- (a) contains a visual presentation of explicit violent sexual conduct, bestiality, incest or rape or extreme violence which constitutes incitement to cause harm;
- (b) results in any unreasonable invasion of privacy;
- (c) induces an unacceptable sense of fear or anxiety;
- (d) encourages or incites any person to engage in dangerous practices or to use harmful substances;
- (e) induces or promote racial disharmony;
- (f) causes grave or widespread offence; or
- (g) debases, degrade or demeans.

3.8. Number re-use

3.8.1. A service must not be replaced on the same number by another service that might give offence to or might be inappropriate for customers reasonably expecting the original service.

3.9. Information providers

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct.

3.9.2. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.3. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

3.10. Nominated representatives

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

3.11. Provision of numbering information

3.11.1. WASPA members shall provide WASPA, on request, with a list of all short codes, long codes and alphanumeric identifiers assigned for use with that member's services or the services of any of the member's information providers.

3.12. Employee awareness

3.12.1. Members must ensure that any relevant employees are made aware of this Code of Conduct and the requirements and procedures associated therewith.

3.13. Alterations

3.13.1. WASPA reserves the right to make alterations to this Code of Conduct from time to time, following due consultation with members.

3.13.2. WASPA will notify its members and network operators of any alteration to the Code of Conduct.

3.13.3. Any alterations to the Code of Conduct are binding on all members. The current Code of Conduct will always be available on the WASPA web site.

3.13.4. WASPA reserves the right to immediately amend or alter this Code of Conduct if directed to do so by a court of law.

3.14. WASPA identity

3.14.1. Members will abide by any rules and regulations governing the use of any WASPA brand, logo, seal or other identifying mark.

4. Customer relations

4.1. Provision of information to customers

4.1.1. Members are committed to honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.1.6. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.7. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

4.1.8. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.9. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

4.2. Privacy and confidentiality

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

5. Commercial communications

5.1. Sending of commercial communications

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's database, so as not to receive any further messages from that message originator.

5.1.3. Any mechanism for allowing a recipient to remove him or herself from a database must not cost more than one rand.

5.1.4. Notwithstanding 5.1.3, for SMS and MMS communications:

(a) A recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure must be included at the start of any messaging service, for example: "reply STOP to opt out".

(b) Recipients of premium rate or non-replyable messages must have the option to opt out at a cost of R1 or less. This opt-out instruction must be included in every commercial premium rate or non-replyable message, for example. "sms STOP to 32xxx to opt out".

5.1.5. Upon request of the recipient, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained.

5.1.6. Commercial communications may not be timed to be delivered between 20:00 and 06:00, unless explicitly agreed to by the recipient, or unless delivery during this period forms part of the up-front description of the service.

5.2. Identification of spam

5.2.1. Any commercial message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a direct and recent prior commercial relationship with the message originator and would reasonably expect to receive marketing communications from the originator; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

5.3. Prevention of spam

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

6. Advertising and pricing

6.1. WASPA advertising rules

6.1.1. In addition to the provisions listed below all members are bound by the *WASPA Advertising Rules*, published as a separate document.

6.1.2. The latest version of the *WASPA Advertising Rules* will always be available on the WASPA web site.

6.2. Pricing of services

6.2.1. All advertised prices must include VAT.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

6.2.4. Pricing contained in an advertisement must not be misleading. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

6.2.5. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

6.2.6. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

6.2.7. For menu-driven services such as USSD, the price for the service must be clearly stated at the top of the first page. Any additional costs associated with specific menu selections must be clearly indicated.

6.2.8. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "Rx" or "Rx.xx".

6.3. General provisions

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

6.3.2. For services which are likely to have a shelf-life of three months or more, a statement must be included in any advertisement that the information given is correct as at the date of publication, and that date must also be stated.

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

7. Children's services

7.1. Parental permission

7.1.1. The terms and conditions for children's services must indicate that the service should only be used with the permission of the child's parent or guardian.

7.1.2. The terms and conditions for children's services must indicate that the service should only be used with the agreement of the person responsible for paying the phone bill.

7.2. Prohibited practices

7.2.1. Children's services must not contain anything that is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty.

7.2.2. Children's services must not include anything that a reasonable parent would not wish their child to hear or learn about in this way.

7.2.3. Children's services must not involve an invasion of privacy of any child.

7.2.4. Children's services must not unduly encourage children to ring or procure other premium rate services or the same service again.

7.2.5. Promotional material for children's services must not make use of adult themes or adult material.

8. Adult services

8.1. Required practices

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

8.1.2. 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.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user's age must be obtained prior to the delivery of an adult content service.

8.2. Prohibited practices

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

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

9. Competitions

9.1. Provision of information

9.1.1. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.1.2. Any promotional material for a competition service must include details of how the competition operates.

9.1.3. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.4. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;
- (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.

9.1.5. The following additional information must also be made readily available on request, if not contained in the original promotional material:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;
- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

9.1.6. Competition services and promotional material must not:

- (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

9.2. Children's competitions

9.2.1. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not offer cash prizes.

9.2.2. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not feature long or complex rules.

9.3. General provisions

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

9.3.2. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.

9.3.3. All correct entries must have the same chance of winning.

10. Contact and dating services

10.1. Provision of information

10.1.1. Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

10.1.2. Providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

10.1.3. Providers of contact and dating services must ensure that customers' contact information is duly protected and not publicly available.

10.1.4. Providers of contact and dating services must obtain explicit consent from a customer prior to making his or her contact information available to third parties.

10.1.5. Promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.

10.2. Restrictions on the service

10.2.1. Members must take reasonable steps to ensure that users of contact and dating services are authorised by the bill-payer to use that service.

10.2.2. Providers of contact and dating services must take reasonable steps to ensure that no children use the services.

10.3. Removal and deactivation of services

10.3.1. When so requested by a customer, the provider of a contact and dating service must ensure that the customer's details are removed from the service at the earliest opportunity and in all cases within 24 hours.

11. Subscription services

11.1. Manner of subscription

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services".

11.1.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be bundled with a request for a specific content item.

11.1.3. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.4. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service.

11.1.5. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.6. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.1.7. Once a customer has subscribed to a subscription service, a notification message must be sent to the customer containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

11.1.8. A monthly reminder SMS must be sent to all content subscription service customers containing the following information:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) The service provider's telephone number.

11.1.9. The monthly reminder SMS must adhere to the following format:

- (a) The monthly reminder must begin with either "Reminder: You are a member of NAME OF SERVICE" or "You are subscribed to NAME OF SERVICE".
- (b) Any marketing for a new service must appear after the cost and frequency of the existing service and the service provider's telephone number.

11.1.10. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.2. Termination of a service

11.2.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.2.2. All subscription services must have a readily available unsubscribe facility which costs no more than one rand.

11.2.3. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'.

11.2.4. Members must ensure that the termination mechanism is functional and accessible at all times.

11.2.5. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use.

11.2.6. If a user ports their number from one operator to another, that number must be removed from all subscription services.

12. Other services

12.1. Charitable promotions

12.1.1. Any promotional material for charitable and/or fundraising promotions must make it clear that network operator fees and administration fees will be deducted from amounts paid.

12.1.2. Promotional material must specify the identity of the beneficiary.

12.1.3. Promotional material must make clear any restrictions or conditions attached to the contribution to be made to the beneficiary.

12.2. Interactive voice response (IVR) services

12.2.1. For any IVR service that costs more than R3 per minute, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must not be of more than 5 seconds in duration, and must use the following format: "Call billed at X rand per minute".

12.2.2. No IVR services may have a false ringing sound at the beginning of the call which might cause the user of the service to believe that the call has not yet started.

13. Complaints procedure

13.1. Lodging of complaints

13.1.1. Any person may lodge a complaint against any member who, in the view of the complainant, has acted contrary to the provisions of this Code.

13.1.2. Any complaint must be lodged with the WASPA secretariat using the contact information published on the WASPA web site.

13.1.3. A complaint must contain the following information:

- (a) the name of the wireless application service provider against whom the complaint is being made, or if the identity of the service provider is not clear, the number of the service or other identifying information;
- (b) the full names, address and contact details of the complainant;
- (c) to the extent that the information is known or available, identification of the part or parts of the Code of Conduct which has allegedly been breached; and
- (d) a detailed description of the actions (or inactions) that resulted in the alleged breach.

13.1.4. Any complaint lodged that does not contain the above information may be referred back to the complainant by the secretariat, together with a request to provide the missing information.

13.1.5. The secretariat may initiate a complaint against a member on behalf of WASPA, should it become aware of an apparent breach of the Code.

13.1.6. The secretariat shall have the discretion to make use of either the informal or formal complaint procedure to process any complaints received, subject to clauses 13.2.1. and 13.3.1.

13.1.7. Where the complainant has lodged a complaint or dispute, or instituted an action with any other regulatory body or in a Court, and where the subject matter of that complaint, dispute or action is substantially the same as the subject matter of a complaint lodged by that complainant with the WASPA Secretariat, WASPA may decline to consider and deal with the complaint.

13.2. Informal complaint procedure

13.2.1. In the case of a complaint for which it is feasible for the member to provide a prompt remedy and where no material breach of the Code seems to have occurred, the following informal complaint procedure will be followed.

13.2.2. The secretariat will forward the complaint to the member concerned.

13.2.3. The member has five working days to effect an appropriate remedy.

13.2.4. Thereafter, if the complainant is satisfied that the member has adequately addressed the complaint then the complaint is considered closed and no further action is taken.

13.2.5. If the complainant is not satisfied that the complaint has been satisfactorily resolved, then the formal complaint procedure will be used to handle the complaint further.

13.2.6. The secretariat will maintain a record of any complaints resolved through the informal complaint procedure.

13.3. Formal complaint procedure

13.3.1. In the case of a complaint for which it is not feasible for the member concerned to provide a prompt remedy, or a complaint that has been escalated from the informal complaint procedure, the following formal complaint procedure will be followed.

13.3.2. The member (or members) named in the complaint, or identified by the WASPA Secretariat on the basis of any identifying information included in the complaint, will be notified by the secretariat that a complaint has been lodged and that the formal complaint procedure is being followed.

13.3.3. The secretariat will provide the member with a copy of the complaint, and any additional information relevant to the complaint.

13.3.4. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint.

13.3.5. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond.

13.3.6. Notwithstanding any response from the member, the secretariat will assign the complaint to an adjudicator, and provide the adjudicator with all material relevant to the complaint.

13.3.7. The adjudicator must carefully review:

- (a) the complaint;
- (b) any response the member has made to the complaint;
- (c) the WASPA Code of Conduct;
- (d) any other material relevant to the complaint, as supplied by WASPA.

13.3.8. The adjudicator may ask the secretariat to request that the complainant, the member, or both, furnish additional information relating to the complaint. Specifically, the adjudicator may request that the member respond to any additional breaches of the Code of Conduct discovered during the investigation of the complaint, but which were not specified in the original complaint.

13.3.9. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

13.3.10. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions.

13.3.11. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the member;
- (b) any previous successful complaints of a similar nature.

13.3.12. Once the adjudicator has determined whether there has been a breach of the Code, and any sanctions, the adjudicator will provide the secretariat with a written report detailing these findings.

13.3.13. The secretariat will provide a copy of this report to the relevant member and to the complainant.

13.3.14. The member has five working days to notify the secretariat if it wishes to appeal against the decision of the adjudicator.

13.3.15. Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal process is completed.

13.3.16. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

13.3.17. The secretariat will maintain a record of any complaints resolved through the formal complaint procedure.

13.4. Sanctions

13.4.1. Possible sanctions that may be imposed on a member found to be in breach of the Code of Conduct are one or more of the following:

- (a) a requirement for the member to remedy the breach;
- (b) a formal reprimand;
- (c) an appropriate fine on the member, to be collected by WASPA;
- (d) a requirement, in appropriate circumstance, for the member to pay reasonable and valid claims for compensation;
- (e) suspension of the member from WASPA for a defined period;
- (f) expulsion of the member from WASPA;
- (g) a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;
- (h) a requirement for the member to suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct;
- (i) a requirement to withhold a specified amount or portion of money payable by the member to the information provider.

13.4.2. When determining sanctions, the adjudicator should take note of 13.3.15, and specify any sanctions that will not be suspended if an appeal is lodged. Sanctions that can be specified in this way include:

- (a) Sanctions requiring a member to amend, suspend, or terminate a service being offered in breach of the Code of Conduct;
- (b) Any sanctions imposed as a result of the failure of a member to comply with previous sanctions, as specified in 13.3.16.

13.4.3. In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators to do one or more of the following:

- (a) block a member's access to a specific number for a defined period;
- (b) block a member's access to a specific category of service for a defined period;
- (c) terminate a member's access to a specific number;
- (d) terminate a member's access to a specific category of service;
- (e) withhold a specified amount or portion of money payable by the network operator to that service provider;

- (f) pay some or all of withheld funds to WASPA, as an appropriate fine on the service provider;
- (g) issue a blanket refund to the customers of a service found to be in breach of the Code of Conduct.

13.5. Information provider notices

13.5.1. If the adjudicator has determined that an information provider is operating in breach of the Code of Conduct, and the adjudicator is of the reasonable opinion that the information provider may persist in such breach, whether through the member against whom the complaint was lodged or another member, the adjudicator may instruct the secretariat to issue a notice to WASPA's members.

13.5.2. The notice referred to in 13.5.1. must clearly identify the information provider and the relevant breach or breaches of the Code of Conduct, and must specify a date from which the notice applies.

13.5.3. Any member permitting the information provider to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified in the notice referred to in 13.5.1), after the date specified in the notice, will be automatically in breach of the same part or parts of the Code of Conduct as the information provider. Such members will be subject to sanctions determined by the adjudicator in accordance with section 13.4, read in conjunction with section 13.3.11.

13.6. Appeal process

13.6.1. Any member found to have breached the Code of Conduct by an adjudicator has the right to appeal for a review of the adjudicator's decision, and/or a review of the sanctions imposed by the adjudicator.

13.6.2. Once the secretariat has been notified that a member wishes to appeal a decision, that member has ten working days to supply the secretariat with any additional information it deems relevant to the complaint.

13.6.3. The secretariat will inform the complainant that the service provider has lodged an appeal against the adjudicator's decision.

13.6.4. The secretariat will convene an appeals panel, consisting of three adjudicators. No person who could be considered to represent either the complainant or the service provider concerned may sit on the appeals panel.

13.6.5. The appeals panel must consider the evidence provided to the adjudicator, the adjudicator's decision and any additional information provided by the service provider.

13.6.6. On the basis of the evidence presented, the panel will decide whether there has, in fact, been a breach of the Code.

13.6.7. If the panel determines that there has, in fact, been a breach of the Code, then the panel must review the sanctions recommended by the adjudicator.

13.6.8. The panel may maintain the same sanctions recommended by the adjudicator, or may determine such other sanctions, as it deems appropriate given the nature of the breach and the evidence presented.

13.6.9. Once the panel has determined whether there has been a breach of the code, and reviewed any associated sanctions, the panel will provide the secretariat with a written report detailing these findings.

13.6.10. The secretariat will provide a copy of this report to the relevant member and to the complainant.

13.6.11. The member must, within five working days, comply with any sanction imposed.

13.6.12. The failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

13.6.13. The member may not request a further review of the panel decision or request a further appeal.

13.6.14. The secretariat will maintain a record of any complaints panel proceedings.

13.7. Emergency procedure

13.7.1. Where it appears to the secretariat that a breach of the Code has taken place that is serious and requires urgent remedy, the 'emergency procedure' will be used.

13.7.2. The member concerned will be notified by the secretariat that the emergency procedure has been invoked.

13.7.3. The secretariat will convene an emergency panel, consisting of at least three persons. No person who could be considered to represent the member concerned may sit on the emergency panel.

13.7.4. As soon as reasonably possible, the emergency panel will determine if a breach of the Code has taken place that requires urgent remedy, and prescribe such remedy.

13.7.5. Where urgent remedy is required, the secretariat will notify the relevant member's nominated representative that the emergency procedure has been invoked and that urgent remedy is sought.

13.7.6. The member concerned must comply with the urgent remedy as soon as practicable. Failure to do so constitutes a breach of this Code.

13.7.7. The secretariat may also advise the relevant network operator or operators to block a member's access to a specific number or a specific service.

13.7.8. Once the emergency procedure has been completed, the breach of the Code will be reviewed using the formal complaint procedure above. If, during the formal complaint procedure, the urgent remedy exercised above is deemed to be inappropriate, it may be reversed.

13.7.9. Neither WASPA, the WASPA secretariat, nor any WASPA member can be held liable for any damages whatsoever as a result of exercising the emergency procedure.

14. References

- The SMS Code, developed by the Marketing Federation of South Africa and others.
- Advertising Guidelines, MTN, November 2004.
- Comprehensive WASP Advertising Guidelines, Vodacom, November 2004.
- The Wireless Application Service Provider Handbook, Executive Version 6, published by Vodacom Connect, 29 July 2003.
- Notice inviting comment on proposed guidelines for recognition of industry representative bodies in terms of Chapter XI of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), *Government Gazette*, 8 September 2004.
- The Internet Service Providers' Association's code of conduct; <http://www.ispa.org.za/code>, version dated 25 June 2003.
- Code of Practice, Tenth Edition, Independent Committee for the Supervision of Standards of Telephone Information Services, United Kingdom, January 2004.

- The Advertising Standards Authority of South Africa, Code of Practice and Procedural Guide; <http://www.asasa.org.za>.
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15. Table of Abbreviations

The following abbreviations are used in this document and in the *WASPA Advertising Rules*.

CSD	Circuit Switched Data
GPRS	General Packet Radio Services
IVR	Interactive Voice Response
MMS	Multimedia Messaging Service
MO	Mobile Originating
MT	Mobile Terminating
PRS	Premium Rate Service
PSMS	Premium Short Message Service
SMPP	Short Message Peer to Peer
SMS	Short Message Service
SMSC	Short Message Service Centre
USSD	Unstructured Supplementary Service Data
VAT	Value Added Tax
WAP	Wireless Application Protocol
WASP	Wireless Application Service Provider
WASPA	Wireless Application Service Providers' Association
