



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 452

Pretoria, 14 February 2003
Februarie

No. 24394



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General Notice

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GENERAL NOTICE

NOTICE 446 OF 2003



INDEPENDENT COMMUNICATION AUTHORITY OF SOUTH AFRICA (ICASA) NOTICE OF THE PUBLICATION OF THE REVISED CODE OF CONDUCT FOR BROADCASTERS

The Independent Communications Authority of South Africa (the Authority) hereby, in accordance with section 78(1) of the Independent Broadcasting Authority Act ("the IBA Act") 1993, as amended, publishes the revised "Code of Conduct for Broadcasters" which replaces section 56(schedule 1) of the IBA Act.

In 1999, the Authority decided to amend the Code of Conduct for broadcasters as it appears in Schedule 1 of the IBA Act. The Authority decided to revise the Code due to two reasons, namely;

- Some of the provisions of the present Code are not consistent with the Freedom of Expression provisions of the Constitution and need to be deleted or amended; and
- Some additional clauses are needed. For example, additional provisions on children are required.

The new Code of Conduct is underpinned by two elements;

1. There is a concept of adequate viewer and listener information. The Authority is of the view that within reason, audiences should be given the responsibility to choose what they wish to see or hear and what material they wish to avoid; and
2. The concept of sensitivity in scheduling. The Authority will require broadcasters to exercise due care in scheduling decisions, especially in relation to children.

The new Code of Conduct comes into effect on 04 February 2003 and applies to all broadcasters, regardless of their mode of delivery.

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Regulations - Code of Conduct

Foreword

1. Section 2 of the Independent Broadcasting Authority Act No. 153 of 1993 ("the Act") enjoins the Independent Broadcasting Authority ("the Authority) to ensure that broadcasting licensees adhere to a Code of Conduct acceptable to the Authority.
2. In terms of section 56(1) of the Act, "all broadcasting licensees shall adhere to the Code of Conduct for Broadcasting Services as set out in Schedule 1". The provisions of that sub-section do not, however, apply to any broadcasting licensee "if he or she 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 mechanism, and provided that such Code of Conduct and disciplinary mechanisms are acceptable to the Authority".

3. Definitions

"audience" as referred to in this Code means a visual and an aural audience i.e. both television and radio audiences.

"broadcasts intended for adult audiences" as referred to in this Code means broadcasts depicting excessive violence and explicit sexual conduct and shall exclude broadcasts intended for children.

"children" as referred to in this Code means those persons below 16 years.

"watershed period" as referred to in this Code means the period between 21h00 and 05h00. Such restriction applies only to television services.

PREAMBLE

4. Freedom of expression lies at the foundation of a democratic South Africa and is one of the basic pre-requisites for this country's progress and the development in liberty of every person. Freedom of expression is a condition indispensable to the attainment of all other freedoms. The premium our Constitution attaches to freedom of expression is not novel, it is an article of faith, in the democracies of the kind we are venturing to create.
5. Constitutional protection is afforded to freedom of expression in section 16 of the Constitution which provides:
 - “(1) Everyone has the right to freedom of expression which includes –
 - (a) Freedom of the press and other media
 - (b) Freedom to receive or impart information or ideas.
 - (c) Freedom of artistic creativity; and
 - (d) Academic freedom and freedom of scientific research.
 - (2) The right in sub-section (1) does not extend to –
 - (a) Propaganda for war;
 - (b) Incitement of imminent violence; or
 - (c) Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm”.
6. Whilst in most democratic societies freedom of expression is recognised as being absolutely central to democracy, in no country is freedom of expression absolute. Like all rights freedom of expression is subject to limitation under section 36 of the Constitution.
7. The outcome of disputes turning on the guarantee of freedom of expression will depend upon the value the courts are prepared to place on that freedom and the extent to which they will be inclined to subordinate other rights and interests to free expression. Rights of free expression will have to be weighed up against many other rights, including the rights to equality, dignity, privacy,

political campaigning, fair trial, economic activity, workplace democracy, property and most significantly the rights of children and women.

8. In the period prior to the transition to democracy, governmental processes neither required nor welcomed the adjuncts of free expression and critical discussion and our country did not treasure at its core a democratic ideal. The right to freedom of expression was regularly violated with impunity by the legislature and the executive. Therefore the protection of this right is of paramount importance now that South Africa is grappling with the process of purging itself of those laws and practices from our past which do not accord with the values which underpin the Constitution.

APPLICATION OF THE CODE

9. All licensees are required to ensure that all broadcasts comply with this Code and are further required to satisfy the Authority that they have adequate procedures to fulfil this requirement. All licensees should ensure that relevant employees and programme-makers, including those from whom they commission programmes, understand the Code's contents and significance. All licensees should also have in place procedures for ensuring that programme-makers can seek guidance on the Code within the licensee's organisation at a senior level.
10. While the Authority is responsible for drafting this Code of Conduct and for monitoring compliance therewith, independent producers or others supplying programme material should seek guidance on specific proposals from the relevant licensee.
11. Under the Act, the Authority has the power to impose sanctions, including fines, on licensees who do not comply with this Code of Conduct.
12. This Code does not attempt to cover the full range of programme matters with which the Authority and licensees are concerned. This is not because such matters are insignificant, but because they have not given rise to the need for Authority guidance. The Code is therefore not a complete guide to good

practice in every situation. Nor is it necessarily the last word on the matters to which it refers. Views and attitudes change, and any prescription for what is required of those who make and provide programmes may be incomplete and may sooner or later become outdated. The Code is subject to interpretation in the light of changing circumstances, and in some matters it may be necessary, from time to time, to introduce fresh requirements.

13. In drawing up this Code the Authority has taken into account the objectives of the Act and the urgent need in South Africa for the fundamental values which underlie our legal system to accommodate to the norms and principles which are embraced by our Constitution.

VIOLENCE

14. Licensees shall not broadcast any material which judged within context:-
 - (i) contains gratuitous violence in any form i.e. violence which does not play an integral role in developing the plot, character or theme of the material as a whole.
 - (ii) sanctions, promotes or glamorizes violence.
15. **Violence against women**

Broadcasters shall:-

- (i) not broadcast material which, judged within context, sanctions, promotes or glamorizes any aspect of violence against women;
- (ii) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told;
- (iii) be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence.

16. Violence against specific groups

16.1 Licensees shall 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.

16.2 Licensees are reminded generally of the possible dangers of some people imitating violence details of which they see, hear or read about.

17. The abovementioned prohibitions shall not apply to –

- (i) *a bona fide* scientific, documentary, dramatic, artistic, or religious broadcast, which judged within context, is of such nature;
- (ii) broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- (iii) broadcasts which amounts to a bona fide discussion, argument or opinion on a matter of public interest.

CHILDREN

18. Broadcasters are reminded that children as defined in paragraph 3 above embraces a wide range of maturity and sophistication, and in interpreting this Code it is legitimate for licensees to distinguish, if appropriate, those approaching adulthood from a much younger, pre-teenage audience.

18.1 Broadcasters shall not broadcast material unsuitable for children at times when large numbers of children may be expected to be part of the audience.

18.2 Broadcasters shall exercise particular caution. As provided below, in the depiction of violence in children's programming.

- 18.3 In children's programming portrayed by real-life characters, violence shall, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
- 18.4 Animated programming for children, while accepted as a stylised form of story-telling which can contain non-realistic violence, shall not have violence as its central theme, and shall not invite dangerous imitation.
- 18.5 Programming for children shall with due care deal with themes which could threaten their sense of security, when portraying, for example, domestic conflict, death, crime or the use of drugs.
- 18.6 Programming for children shall with due care deal with themes which could invite children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, use of matches, the use of dangerous household products as playthings, or other dangerous physical acts.
- 18.7 Programming for children shall not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.
- 18.8 Programming for children shall not contain realistic scenes of violence which minimise or gloss over the effect of violent acts. Any realistic depictions of violence shall portray, in human terms, the consequences of that violence to its victims and its perpetrators.
- 18.9 Programming for children shall not contain frightening or otherwise excessive special effects not required by the story line.

WATERSHED PERIOD

19. Programming on television which contains scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast before the watershed period.
20. On the basis that there is a likelihood of older children forming part of the audience during the watershed period, licensees shall adhere to the provisions of Article 32 below (audience advisories) enabling parents to make an informed decision as to the suitability of the programming for their family members.
21. Promotional material and music videos which contain scenes of violence, sexually explicit conduct and/or offensive language intended for adult audiences shall not be broadcast before the watershed period.
22. Some programmes broadcast outside the watershed period will not be suitable for very young children. Licensees should provide sufficient information, in terms of regular scheduling patterns or on-air advice, to assist parents to make appropriate viewing choices.
23. Licensees shall be aware that with the advance of the watershed period progressively less suitable (i.e. more adult) material may be shown and it may be that a programme will be acceptable for example at 23h00 that would not be suitable at 21h00.
24. Broadcasters must be particularly sensitive to the likelihood that programmes which start during the watershed period and which run beyond it may then be viewed by children.
25. **Subscription services**
 - 25.1 Where a programme service is only available to viewers on subscription and offers a parental control mechanism, its availability to children may be more restricted and the watershed period may begin at 20h00.

LANGUAGE

26. Offensive language, including profanity, blasphemy and other religiously insensitive material shall not be used in programmes specially designed for children.
27. No excessively and grossly offensive language should be used before the watershed period on television or at times when large numbers of children are likely to be part of the audience on television or radio. Its use during the periods referred to above should, where practicable, be approved in advance by the licensee's most senior programme executive or the designated alternate.

SEXUAL CONDUCT

28. Licensees shall not broadcast material, which judged within context, contains a scene or scenes, simulated or real of any of the following:
 - (i) A person who, or is depicted as being under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity;
 - (ii) Explicit violent sexual conduct;
 - (iii) Bestiality;
 - (iv) Explicit 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.
29. Save for 28.(i) above, the prohibition in 28. (ii) to 28 (iv) shall not be applicable to *bona fide* scientific, documentary, dramatic material, which judged within context, is of such nature. The prohibition in 28.(i) shall however be applicable to artistic material which judged within context, is of such a nature.

30. Scenes depicting sexual conduct, as defined in the Films and Publication Act 65 of 1996, should be broadcast only during the watershed period. Exceptions to this may be allowed in programmes with a serious educational purpose or where the representation is non-explicit and should be approved in advance by the most senior programme executive or a delegated alternate.
31. Explicit portrayal of violent sexual behaviour is justifiable only exceptionally and the same approval process as referred to in 30 above must be followed.

AUDIENCE ADVISORIES

32. To assist audiences in choosing programmes, licensees shall provide advisory assistance, which when applicable shall include guidelines as to age, at the beginning of broadcasts and wherever necessary, where such broadcasts contains violence, sexual conduct and/or offensive language.

33. **Classification**

- 33.1 Where a Film and Publications Board classification exists in terms of the Films and Publication Act No. 65 of 1996 ("Films and Publications Act") for the version of a film or programme intended to be broadcast, such classification certification may be used as a guide for broadcasting.

- 33.2 No version which has been refused a Film and Publication Board classification certification should be broadcast at any time.

- 33.3 In all other instances, the provisions of this Code will apply.

34. **News**

- 34.1 Licensees shall be obliged to report news truthfully, accurately and fairly.

- 34.2 News shall 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
- 34.3 Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such fact shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it shall be presented in such manner as to indicate clearly that such is the case.
- 34.4 Where there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it shall be verified. Where such verification is not practicable, that fact shall be mentioned in the report.
- 34.5 Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall 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.
- 34.6 The identity of rape victims and other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.
- 34.7 Licensees shall 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.
- 34.8 Licensees shall 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.

35. Comment

- 35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.
- 35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

36. Controversial issues of public importance

- 36.1 in presenting a programme in which controversial issues of public importance are discussed, a licensee shall 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.
- 36.2 A person whose views are to be criticised in a broadcasting programme on a controversial issue of public importance shall be given a right to reply to such criticism on the same programme. If this is impracticable however, 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.

37. Elections

During any election period, the provisions of sections 58, 59, 60 and 61 of the Act shall apply, and all broadcasting services shall in terms of those sections be subject to the jurisdiction of the Authority.

38. Privacy

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

39. Paying a criminal for information

39.1 No payment shall 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.

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Publications: Tel: (012) 334-4508, 334-4509, 334-4510
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
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