

NAB GUIDELINES FOR ON DEMAND CONTENT SERVICES

PREAMBLE

The National Association of Broadcasters (“the NAB”) is a voluntary association of South African broadcasters, comprising licensed radio and television broadcasters, as well as entities and associates that operate in the sector.

NAB members provide broadcasting services to the public. Some NAB members also provide on-demand content services.

NAB members are concerned with the protection of users of their on-demand content services and have therefore developed these guidelines to assist the public. The guidelines are intended to cover on-demand content services under the editorial control of NAB members. Where appropriate, the Guidelines have been informed by the Broadcasting Complaints Commission of SA (BCCSA) Code of Conduct for Broadcasters.

The NAB is introducing these guidelines on a pilot basis to assess their feasibility and to consider the effectiveness of the complaints handling process for on-demand content services.

THE GUIDELINES

1. Definitions

In these Guidelines, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

“**Act**” means the Electronic Communications Act 36 of 2005, as amended;

“**child pornography**” means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32

of 2007);

“**child**” means a person under the age of 18 years, and **children** shall have the same meaning;

“**EPG**” means Electronic Programme Guide;

“**Films and Publications Act**” means the Film and Publications Act 65 of 1996, as amended;

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

“**NAB**” means the National Association of Broadcasters;

“**NAB Member / Member**” means a member of the NAB who pays an annual membership fee;

“**Signatory**” (Signatories) is a NAB member who has elected to abide by the Guidelines;

“**On-demand content service**” means a service provided by a signatory, under the signatory’s editorial control,

(a) which is provided utilizing electronic communications,

(b) which has the primary purpose of providing audio and /or video content and which has similar characteristics to traditional broadcasting,

(c) which is provided to the public or sections of the public, and

(d) which is delivered on an on-demand basis meaning the user decides when to access the content and the content is available only when selected by the user.

Examples of on-demand content services may include streaming radio services delivered via the internet, catch-up services (delivered via television platforms,

websites or online media players) and television programme archive services.

“sexual conduct” means:

- (a) [male] genitals in a state of arousal or stimulation, real or simulated”;
- (b) undue display of genitals or of the anal region;
- (c) rape;
- (d) masturbation;
- (e) bestiality;
- (f) sexual intercourse [whether real or unintended] with a person or a human corpse, including anal or oral sexual intercourse;
- (g) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, anus, vagina, testicles or penis, with or without any object;
- (h) the penetration of a vagina or anus with any object;
- (i) oral genital contact; or
- (j) oral anal contact.

“user” means a person utilizing the on-demand content service.

2. Violence and Hate speech

2.1 The Signatory must not make available on-demand content which, judged within context, sanctions, promotes or glamorizes violence or unlawful conduct based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability.

2.2 The Signatory must not make available on-demand content which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, religion or gender and that constitutes incitement to cause harm.

3. Exclusions

Clause 2 does not apply to:

- 3.1) On-demand content which, judged within context, amounts to *bona fide* scientific, documentary, dramatic, artistic, or religious content.
- 3.2) On-demand content which amounts to a discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- 3.3) On-demand content which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest.

4. Children

- 4.1 The Signatory must exercise particular caution, as provided below, in the depiction of violence in on-demand content specifically directed at children.
- 4.2 On-demand content specifically directed at children and containing real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot.
- 4.3 Animated on-demand content for children, while accepted as a stylised form of story-telling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation.
- 4.4 On-demand content specifically directed at children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or

alcohol.

- 4.5 On-demand content specifically directed at children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys.
- 4.6 On-demand content specifically directed at children must not contain realistic scenes of violence which create the impression that violence is the preferred or only method to resolve conflict between individuals.
- 4.7 On-demand content specifically directed at children must not contain realistic scenes of violence which minimise or gloss over the effect of violent acts. Any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators.
- 4.8 On-demand content specifically directed at children must not contain frightening or otherwise excessive special effects not required by the story line.
- 4.9 Offensive language, including profanity and other religiously insensitive material, must not be included in content specially designed for children.

5. Sexual Conduct

- 5.1 The Signatory must not make on-demand content available which, judged within context, contains a scene or scenes, simulated or real, of any of the following:
 - (a) child pornography;
 - (b) bestiality;
 - (c) sexual conduct which degrades a person in the sense that it advocates a

particular form of hatred based on gender and which constitutes incitement to cause harm or which violates the right to human dignity of any person;

- (d) explicit sexual conduct;
- (e) explicit extreme violence or the explicit effects thereof; or
- (f) explicit infliction of domestic violence.

5.2 Sub-clause 5(1) shall not be applicable to *bona fide* scientific, documentary, dramatic or artistic material which, judged within context, is of such a nature.

6. User Advisories

6.1 Where on-demand content contains violence, sex, nudity and/or offensive language the Signatory must, where possible, provide advisory assistance including, when applicable, guidelines as to age. The advisory may be a prior audio or visual warning, an advisory on the EPG listing, or a warning within the content itself.

6.2 The following advisory age system may be used: 10, 13, 16 and 18. The following symbols may be used in accordance with the relevant on-demand content: V (violence), L (language), N (nudity), S (sex), PG (Parental Guidance), D (drugs/substance abuse), SV (sexual violence).

7. Classification by Films and Publications Board

7.1 Where a Films and Publications Board classification for a film exists in terms of the Films and Publication Act, such classification may be used as a guideline for an advisory to the film.

7.2 No film which is refused classification or which carries an XX classification in terms of the Films and Publications Act may be provided.

8. News

- 8.1 News must be reported truthfully, accurately and fairly.
- 8.2 News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
- (a) Distortion, exaggeration or misrepresentation;
 - (b) Material omissions; or
 - (c) Summarisation.
- 8.3 Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and such fact must be stated fairly with reasonable regard to context and importance.
- 8.4 Where a report is not based on fact or is founded on opinion, supposition, rumours or allegations, it must be presented in such manner as to indicate, clearly that such is the case.
- 8.5 Where there is reason to doubt the correctness of the report and it is practicable to verify the correctness thereof, it must be verified. Where such verification is not practicable, that fact must be mentioned in the report.
- 8.6 Where it subsequently appears that a report was incorrect in a material respect, it must be rectified forthwith, without reservation or delay. The rectification must be presented with such a degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.
- 8.7 The identity of rape victims and other victims of sexual violence must not

be divulged, whether as part of news or not, without the prior valid consent of the victim concerned.

9. Comment

9.1 Signatories are entitled to make available in their on-demand content, comment on and criticism of any actions or events of public importance.

9.2 Comment must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.

9.3 Where a person has stated that he or she is not available for comment or such a person could not reasonably be reached, this must be stated.

10. Controversial Issues of Public Importance

10.1 In making available on-demand content in which a controversial issue of public importance is discussed, a signatory must make reasonable efforts to fairly present opposing points of view either in the same on-demand content or in other, related on-demand content.

10.2 A person whose views are to be criticised in on-demand content concerning a controversial issue of public importance must be given the right to reply to such criticism in the same or in related on-demand content.

11. Privacy, Dignity and Reputation

11.1 The Signatory must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that the said rights may be overridden by a legitimate public interest.

- 11.2 In the protection of privacy, dignity and reputation special weight must be afforded to South African cultural customs concerning the privacy and dignity of people who are bereaved and their respect for those who have passed away.
- 11.3 In the protection of privacy, dignity and reputation special weight must be afforded to the privacy, dignity and reputation of children, the aged and the physically and mentally disabled.

ANNEXURE A

PROCEDURE

1. The Guidelines will come into effect on 1 October 2017.
2. The Guidelines will initially be in operation for one year from the date specified by the NAB, where after the Guidelines and Procedure may be reviewed by the NAB. Should the NAB decide that no review is necessary, then the Guidelines and Procedure may be extended to a later date or may be extended indefinitely.
3. Notwithstanding the review provided for in paragraph 2, the NAB may amend the Guidelines and Procedure at any time, and must notify members immediately in the event such amendments are made.
4. The Guidelines are entirely voluntary and it is within the sole discretion of NAB Members whether they wish to apply the Guidelines.
5. All Signatories that have agreed to be bound by the Guidelines (the “signatories”) must notify the NAB in writing. Such notification shall specify:
 - a. which On-demand Content Services are to be bound by the Guidelines and
 - b. the name and contact details of the Contact Person who will be responsible for administering the Guidelines and responding to Complaints.
6. Should signatories elect to opt out of the Guidelines, then 2 weeks written notification must be provided to the NAB.

7. Signatories must within 30 (working) days of having notified the NAB that they will abide by the Guidelines:
 - a. Ensure that the guidelines are available on a website associated with the On-demand Content Service.
 - b. Specify the name and contact details of the Contact Person to whom complaints regarding its on-demand Services should be directed
 - c. Take steps to ensure that staff responsible for editorial decisions on its on-demand content services are made aware of the Guidelines.
 - d. Members must keep statistics on all complaints and report them to the NAB at the end of pilot period
8. Complaints are to be resolved by the Signatory concerned. Should complaints be made to the NAB, these shall be referred to the Signatory.
9. Signatories agree to reply to all valid complaints within 30 (working) days. Complaints which are vexatious, vague or irrelevant will not be answered. All Complaints must be made within 20 (working) days from the date the on-demand content was consumed.
10. After an initial trial period of twelve months the NAB will assess whether an external appeals process for complaints should be developed.

ANNEXURE B

(Name of Content Provider)

Complaint/Compliment Form

Before you proceed with a complaint/compliment, please ensure that you have read the On-Demand Guidelines.

Complaints/compliments can be submitted by completing the form below and emailing it directly to (insert content provider email address). Only written complaints/compliments that are received in the format below will be considered. A response will be provided within 30 days.

Required details (anonymous complaints/compliments are not accepted)

Your Name:	
Contact number:	
Email address:	
Date that you are lodging this complaint	
What is the name of the On-Demand Content service you are complaining about?	
Please give the name or description of the content or programme you are complaining about.	
Which section/s of the On-Demand Guidelines does your complaint refer to?	
What date did you access the on-demand content?	

<p>Full complaint – Explain why you believe the content violates the Guidelines</p>	
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