

# ISPA Code of Conduct

## A. INTERPRETATION

1. Each ISPA member is required to comply with the Code insofar as those sections of the Code are relevant and applicable to the services provided by that member.
2. This Code applies to Internet services offered by ISPA's members. In cases where a division of a company applied for ISPA membership then the Code only applies to the services and products offered by that division.

## B. FREEDOM OF EXPRESSION

3. ISPA members must respect the constitutional right to freedom of speech and expression.

## C. PRIVACY AND CONFIDENTIALITY

4. ISPA members must respect the constitutional right of Internet users to personal privacy and privacy of communications.
5. ISPA members must respect the confidentiality of customers' personal information and electronic communications. ISPA members must only gather or retain customer information as permitted by law, and must not sell or distribute such information to any other party without the written consent of the customer, except where required to do so by law.

## D. CONSUMER PROTECTION AND PROVISION OF INFORMATION TO CUSTOMERS

6. ISPA members must provide the following information on their web sites: their registered name, email address, telephone and fax numbers and physical address.
7. ISPA members must inform their customers that members of ISPA must uphold and abide by this Code of Conduct. Members' web sites must include a reference to ISPA membership, a prominent copy of ISPA's logo and a link to the section of the ISPA website that contains the Code of Conduct, complaints and disciplinary procedure and the take-down procedure.
8. ISPA members must have policies for acceptable or fair use for their Internet access services. This policy must be made available to customers prior to the commencement of any such service agreement and at any time thereafter, on request.
9. Policies for acceptable or fair use must include:
  - a requirement that the customer will not knowingly create, store or disseminate any illegal content;
  - a commitment by the customer to lawful conduct in the use of the services, including copyright and intellectual property rights; and
  - an undertaking by the customer not to send or promote the sending of spam.
10. In their dealings with consumers, other businesses, each other and ISPA, ISPA members must act fairly, reasonably, professionally and in good faith. In particular, pricing and other material information about services must be clearly and accurately conveyed to customers and potential customers.
11. ISPA members may only offer service levels which are reasonably within their technical

and practical abilities.

12. ISPA members must comply with all compulsory advertising standards and regulations.

## **E. TERMS AND CONDITIONS**

13. ISPA members must make available to customers (and potential customers) any applicable terms and conditions prior to the commencement of any contract. Terms and conditions must include all information and terms relevant to the relationship with the recipient of the service.

14. Terms and conditions must give an ISPA member the right to remove any content hosted by that member which it considers illegal or for which it has received a take-down notice.

15. Terms and conditions must give the ISPA member the right to suspend or terminate the service of any customer that does not comply with the terms and conditions, acceptable or fair use policies, or any other contractual obligations.

## **F. UNSOLICITED COMMUNICATIONS (“SPAM”)**

16. ISPA members must not send or promote the sending of unsolicited electronic communications and must take reasonable measures to ensure that their networks are not used by others for this purpose.

17. ISPA members must provide a facility for dealing with complaints regarding unsolicited electronic communications originating from their networks and must react expeditiously to complaints received.

## **G. CYBER CRIME**

18. ISPA members must take all reasonable measures to prevent unauthorised access to, interception of, or interference with any data on that member’s network and under its control.

## **H. PROTECTION OF MINORS AND VULNERABLE PERSONS**

19. ISPA members must take reasonable steps to ensure that they do not offer any paid services to minors without written permission from a parent or guardian.

20. ISPA members must provide Internet access customers with information about procedures and software applications which can be used to assist in the control and monitoring of minors’ access to Internet content. This requirement does not apply to corporate customers where no minors have Internet access.

21. ISPA members must have processes in place to respond to directives issued by a court in terms of any applicable legislation, including but not limited to:

- the Protection from Harassment Act (No. 17 of 2011); and
- the Maintenance Act (No. 99 of 1998)

22. ISPA members must have processes in place to ensure that they comply with the requirements set out for ISPs in the Films and Publications Act (No. 65 of 1996) as amended.

## **I. LAWFUL CONDUCT**

23. ISPA members must conduct themselves lawfully at all times and must co-operate with law enforcement authorities within the applicable legal framework.

24. ISPA members must respect intellectual property rights and not knowingly infringe such rights.

25. ISPA members must uphold and abide by this Code of Conduct and adhere to the associated complaints and disciplinary procedures.

## **J. UNLAWFUL CONTENT AND ACTIVITY**

26. There is no general obligation on any ISPA member to monitor services provided to customers, but a member is obliged to take appropriate action where it becomes aware of any unlawful content or conduct.

27. ISPA members must not knowingly host or provide links to unlawful content, except when required to do so by law.

28. If an ISPA member becomes aware of conduct or content which has been determined to be illegal, it must suspend or terminate the relevant customer's service and report the conduct or content to the relevant law enforcement authority. The ISPA member must report such cases and any action taken to ISPA within a reasonable period of time.

29. ISPA members must establish a notification and take-down procedure for unlawful content and activity in accordance with ISPA's take-down notification procedure, and respond expeditiously to such notifications.

30. ISPA members must submit a report to ISPA on the steps taken in response to a take-down notice within a reasonable period of time after such a notice is lodged.

31. ISPA members must keep a record of all take-down notices received and any materials taken down for a period of at least three years unless possession of such materials is illegal.

## **K. VOLUNTARY CODES OF BEST PRACTICE**

32. ISPA publishes a number of voluntary codes of practice and best practice documents. ISPA's members are not obliged to comply with these additional codes. If a member has indicated that they are voluntarily complying with any additional codes, then they are required to do so as an extension of this Code of Conduct.

## **L. COMPLIANCE WITH THE CODE OF CONDUCT**

33. ISPA members must receive and investigate complaints made in accordance with this Code of Conduct and any additional codes of practice or best practices a member has voluntarily complied with, unless such complaints are frivolous, unreasonable, vexatious or in bad faith.

34. ISPA members must make all reasonable efforts to resolve complaints in accordance with the complaints procedure.

35. ISPA members must co-operate with ISPA in accordance with the complaints and disciplinary procedures and comply with any decisions taken by ISPA with respect to the Code of Conduct and complaint and disciplinary procedure.

36. ISPA members must submit an annual statement to ISPA confirming their compliance with the Code of Conduct.

37. ISPA members accept that ISPA has an obligation to audit member compliance on an

annual basis and perform regular compliance spot checks, and must co-operate with ISPA during such audits or spot checks.

38. ISPA may investigate the conduct and compliance with the Code of Conduct by members on its own initiative and may, if appropriate, institute disciplinary proceedings as set out in the Code of Conduct complaint and disciplinary procedure.

#### **M. ALTERATIONS**

39. ISPA reserves the right to make alterations to this Code of Conduct from time to time. Such amendments are binding on all ISPA members. The current Code of Conduct will be maintained on the ISPA's website.

<b>Version</b>	<b>Effective date</b>
1.0	2002-09-12
1.1	2007-01-31
1.2	2007-12-02
1.3	2008-02-21
1.4	2008-07-13
2.0	2008-08-22
3.0	2016-06-01