



Submission to the Independent  
Communications Authority of  
South Africa (ICASA) on the  
proposed regulations under  
Section 69 of the Electronic  
Communications Act: Code of  
Conduct for licensees.

Submission by the Media Monitoring Project

July 2007

## Introduction

The Media Monitoring Project (MMP) welcomes the opportunity to make a submission on Code of Conduct for Licensees, in line with the requirements of Section 69 of the ECA.

MMP is a donor funded independent non governmental organisation that has been monitoring the media in South Africa since 1993. One of MMP's core objectives is to help build a culture of human rights in and through the media. Accordingly MMP operates within the rights based framework of the South African constitution, and wherever possible demonstrates how the rights in the constitution can be used in day to day media practice. A short outline about MMP is attached (Appendix 1). One of the key functions of MMP has been to make policy submissions, and over the last 14 years MMP has made numerous submissions to ICASA (including its predecessor the Independent Broadcasting Authority (IBA)) as well as to individual media, including the SABC and to parliamentary portfolio committees. Most recently MMP made a submission to Parliaments Portfolio Committee on Home Affairs on the Film and Publications Amendment Bill.

In addition, MMP has made submissions on the original Code of Conduct for Broadcasters, as well as on the SABC's editorial policies, where it is worth noting that some of MMP's recommendations were included in the final editorial code currently in operation. Most recently the MMP has developed an editorial code for reporting on children which is being considered for endorsement by the South African National Editors Forum (SANEF) as well as a number of different media houses. MMP has also produced practical resources for journalists to assist them in reporting on race, children, gender and gender based violence as well as children and HIV/AIDS.

All submissions made to the various bodies have been driven by a human rights agenda that seeks to realise, protect and enhance the rights contained in the South African constitution. MMP's submissions have included elements focusing on:

- The right to freedom of expression and access to information;
- Rights to dignity and equality;
- Rights promoting and preventing anti discrimination, on the basis of race, gender, sexual orientation age etc;
- Rights relating to promoting gender equality, and the eradication of gender based violence;
- Rights of people living with or affected by HIV and AIDS;
- Special protection afforded to children.

The current submission is based on the same principles and human rights driven agenda.

### Note on Format of MMP submission

MMP's submission refers to selected sections of the draft code of conduct, and is followed by MMP's suggested changes and or additions.

## 1. Scope of the Code: From Customers to Citizens

Throughout the draft code the terms "consumers" and/or "customers" are used. In particular, the Code commits licensees *"to protect the interests of consumers"* (clause 3.1, p.6), and clause 3.2.a (p.6) limits regulations to *"the interests of all customers"*.

While the majority of licensees may be commercial profit driven entities, the Code also covers SABC, and while it may be a company it also has a significantly broader mandate than the other licensees. According to SABC's Charter, the mandate is to *"encourage the development of South African expression by providing, in the official languages a wide range of programming."* (SABC Editorial Policies, p.2).

Clearly, SABC has a social function to fulfil as a public service broadcaster. Constructing citizens as customers or consumers appropriately implies a diminished, contractual relationship between SABC and the citizens of South Africa, which does not reflect the broader service responsibilities of the broadcaster.

In addition, while other licensees may not have the same SABC mandate, they are likely to influence and impact on people who are not necessarily directly identified as customers. Of particular note are other free-to-air licensees and services easily accessed by the public, though services whose infrastructure underpins services and impacts on the environment also have this capacity.

*Accordingly, MMP submits that throughout the Code the term "Customers" is replaced with "Citizens".*

The use of the term "citizens" instead of "clients" or "consumers" will ensure a more equitable treatment of all people affected and not just identified "customers" of the licensee. Further, by making the Code applicable to Citizens it will recognise SABC's critical broader role.

## 2. Equality: Clause 4.1 Key Commitments

MMP welcomes the broad applicability of this section to all licensees, and MMP's comments are aimed at further entrenching a rights-based approach in the Key Commitments.

### Clause 4.1c

MMP submits that this clause should be structured in line with Clause 9 of the Constitution, which relates to Equality. This would also bring Clause 4.1c in line with existing Editorial Codes, like that of the SABC which has a similar clause. With the additional criteria all people and groups will be protected, respected and included, be they marginalised or mainstream.

*Therefore, the MMP submits that the clause should be amended to include: "race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."*

#### Clause 4.1d

MMP also supports 4.1d, but believes that “respect” should be added to the sentence. Including the term respect will assist in ensuring that attitudes of licensees and their staff do not undermine but support courteous behaviour which may be written into behavioural standards and guidelines.

*MMP submits that the revised clause would read, “display utmost respect, courtesy and care when dealing with the aged and disabled persons.”*

#### Children

One of the key omissions in section 4.1 is references to children. Given the special protection afforded to children in the Constitution as well as in other pieces of legislation, and given the role and power of the media, MMP strongly suggests the inclusion of child focused clauses in section 4.1. As this section is also going to be made one of the most public, it is important that the needs and special protections of children are included.

*Accordingly, MMP suggests including another clause directly below 4.1d and before 4.1e. The clause may read, “exercise extra care and attention in all matters relating to children.”*

The addition of such a clause would further help to bring the Code in line with the Constitution as well as South Africa’s international commitments under ratification of the United Convention on the Rights of the Child. Specifically commitments under article 17 A, which stipulates that the State shall encourage mass media to disseminate information and material of social and cultural benefit to the child, and in the spirit of Article 29, which deals with the development of the child.

#### Clause 4.1h

Clause 4.1h is an essential clause, but MMP offers two additions. Firstly, while the clause requires licensees to handle complaints timeously, and advise about the complaint escalation mechanisms and the role of ICASA, there is no mention made of the importance of publicising the complaints process, nor of ensuring that citizens are provided with clear easily accessible information on how to lodge complaints, as well as where necessary assistance in doing so.

*While these elements are dealt with to some extent in the Complaints section of 4.11, MMP submits that these items be included under the Key Commitments section, or that under 4.11 licensees should also publicise the guidelines for complaints as well as the complaints process itself.*

MMP urges that the elements be included to ensure members of the public know how to complain, who to complain to, what the process is, and the format of complaints.

Secondly, it is imperative that issues of literacy are also included in the Key Commitments section given the low levels of literacy in South Africa, especially of media literacy, and given the growing influence of media on children. The value and importance of informing people about how to engage with the media they are using is highlighted in the Film and Publications Amendment Bill Section 24C.2.E, which requires providers to provide children and parents with information concerning the use of software and tools.

More directly, the importance of media literacy is highlighted in the quotes below:

*When people talk to me about the digital divide, I think of it not so much about who has access to what technology as about who knows how to create and express themselves in the new language of the screen. If students aren't taught the language of sound and images, shouldn't they be considered as illiterate as if they left college without being able to read and write?*

George Lucas, filmmaker (Sept.2004, Edutopia, Life on the Screen)

*Media literacy is concerned with helping students develop an informal and critical understanding of the nature of mass media, the techniques used by them, and the impact of these techniques. More specifically, it is education that aims to increase the students' understanding and enjoyment of how the-media work, how they produce meaning, how they are organized, and how they construct reality. Media literacy also aims to provide students with the ability to create media products.*

Center for Advanced Technology, 1997

While both quotes refer to students and young people, the value of media literacy for young and old cannot be underestimated.

*MMP submits that a clause is added following the current 4.1h to read, "where possible facilitate media literacy through the provision of programmes, or publications, on the informed use as well as benefits of the licensees services and or products."*

While the clause may also fit in with Clause 4.7, MMP submits that it would be best placed under the key commitments section so as to highlight its value and importance.

### 3. Customer Confidentiality: Clause 4.5

MMP submits that, given the growth and expansion of spam and in particular electronic spam and the range of possible broadcast services, a clause is included in the Code to deal directly with this.

There are already extensive laws in place internationally and information on this area, and MMP is does not have the expertise necessary to suggest all elements to be addressed. Accordingly, in addition to the clause proposed, MMP also requests that the Authority direct some of its expertise to ensuring this key issue is fully and comprehensively addressed.

*MMP submits the following clause would cover some of the key areas, "licensees are directed to take all reasonable measures to prevent their services being used for spam and further that the information and details of the members of public are not made available for spam purposes without the express written permission of the person concerned."*

#### 4. Children, the aged and people with disabilities: Clause 4.7

*MMP welcomes the inclusion of this clause, but submits that instead of using the phrase "taken into account", the clause instead applies "extra care and attention are afforded in the provision of services". This would help ensure that the needs of these groups are specifically addressed and are treated appropriately.*

#### 5. The Film and Publications Amendment Bill

The draft Code arrives at an opportune time, with the current Film and Publications Amendment (FPB) Bill being set to go before the National Council of Provinces at the end of July 2007. The concerns in relation to the FPB Bill have been well publicised in the media, including the undermining of ICASA's authority as well as duplication of its role.

*MMP submits that certain sections of the FPB Bill be added to the draft Code. Specifically, MMP submits the addition of the Bill section dealing with the obligations of internet access and service providers, Section 24 C (1-3). This section deals specifically with matters of conduct, and as they fall under ICASA's authority it is logical to locate them in the Code.*

Please find the relevant Section 24 C attached as Appendix 2.

#### 6. Additional clauses applicable to broadcasters

##### Freedom of Expression

The clauses listed in the current draft appear to be generally in line with the previous Code. It is to be noted however, that the same emphasis on the right to Freedom of Expression is no longer contained in the Code as it was in the previous Code's Preamble.

*In light of the recent Supreme Court of Appeal ruling on Freedom of Expression and the media, MMP submits that similar emphasis is placed on the right to Freedom of Expression under the Additional Standards section of the Code.*

##### Children: Clause 5.5

MMP welcomes the specific inclusion of the clause and the view that children make up a diversity of audiences within broadcasting. It is important to note however, that children are afforded special protection under the Constitution and as such should be afforded special protection and extra care in all matters relating to broadcasting.

*MMP submits that the following sentence be added to 5.5.1, "Broadcasters are further reminded that children are afforded special protection under the Constitution and in media and as such broadcasters need to exercise extra care and respect in all matters relating to children."*

##### Freedom of Expression: Clause 5.9

Clause 5.9.2.B represents a small but significant shift away from the previous Code of Conduct, and one that may limit Freedom of Expression. In the previous Code of Conduct, section 33.2 read "No version which has been refused a Film and Publications Board classification certification *should* be broadcast at any

time." (MMP emphasis). The draft Code has changed the word "should" to "can". The change in terminology indicates a subtle shift away from a broadcaster being strongly advised to follow the Film and Publications Board's classification but still able to make the final decision to broadcast, to the final decision being taken away from the broadcaster and placed in the hands of the Film and Publications Board in the current draft.

Given the role and function of the Film and Publications Board, and given the generally reasonable and professional nature of South African broadcasters, it is unlikely that an FPB classification would not be abided by. In addition, a publication may only be refused in terms of the draft Film and Publications Amendment Bill if "it contains visual presentations, descriptions or representations of or amounting to – (i) child pornography, propaganda for war or incitement of imminent violence; or (ii) advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm. Unless, judged within context, the publication is, except with respect to child pornography, a bona fide documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest." (Section 16.4(a))

*While the clauses of the FPB are still subject to significant debate and scrutiny, the central concern is that change of terminology in the Draft Code constitutes a significant threat and invasion of editorial independence of broadcasters. MMP urges that the wording of the original code is utilised, i.e. that the word "should" remains in the current draft Code, as opposed to "can".*

#### News: Clause 5.9.3

MMP notes that the clause of news falls under Audience Advisories, as it did under the previous broadcaster's Code of Conduct.

*MMP submits that News is separate to audience advisories and as such should have its own section.*

*MMP further submits that while the clauses are welcomed, they can and should be in line with international and national best practice. MMP submits that at the end of 5.9.3a, the following sentence is added to read, "Licensees are obliged to report news truthfully, accurately and fairly, and to adhere to the highest ethical standards in news reporting, act independently, and to minimise harm."*

These basic principles have support from Bob Steel of the Poynter Institute.

#### Rape and Sexual Violence: Clause 5.9.3e

Clause 5.9.3e deals with rape and sexual violence, and while welcomed it is imperative that the clause is adjusted to ensure it refers only to adults and that the word "survivors" is added to ensure that not all people who have been sexually assaulted or raped are viewed as victims. It is also imperative that it is not simply consent that is given, but that it is *informed consent*. Consent under certain circumstances, where a person may not know the implications of revealing her/his identity or where they are in a state of severe trauma may result in significant harm to the person concerned, and as such informed consent should be the required standard.

MMP submits that the importance of this clause applying only to adults lies in the protection afforded to children. Section 154 3 of the Criminal Procedure Act

states, "no person shall publish in any manner whatever information which reveals or may reveal the identity of the accused under the age of 18 years or of a witness at criminal proceedings who is under the age of 18 years." While there may be some debate as to when criminal proceedings start, there is a clear ethical boundary that is crossed when the name and/or identity of a child is revealed who is involved in a crime. In addition to this, local best practice examples from print media who do not name any child involved in any form of abuse as a victim or witness, have provided precedent for such a clause to be adopted.

SABC Editorial Policies can also be seen as an example of best practice in this regard, as they specifically exclude naming or identifying an abused child. "SABC is committed to: not identifying child victims of abuse or crime, unless exceptional circumstances indicate it to be demonstrably in the best interests of the child." (SABC Editorial Policies PG: 14).

*Accordingly the MMP submits that clause 5.9.3e is revised to read as follows, "The name and/or identity of adult rape survivors/victims and other adult survivors/victims of sexual violence must not be divulged in any broadcast without the prior informed consent of the survivor/victim concerned."*

While there are a number of clauses relating to children's programming, MMP notes the absence of equally important clauses in relation to News. MMP submits that the following section is therefore added to bring the Code in line with the Constitution as well as local and international best practice. The section is adapted from a draft code of conduct drawn up by the MMP and currently being considered for endorsement by SANEF and adoption by a number of print media titles.

Suggested new clauses: Children in news

MMP submits the following new clauses,

*"Preamble:*

*South Africa is signatory to a range of international treaties which deal with children's rights, including the Convention on the Rights of the Child. The South African Constitution, one of the world's most progressive, gives even more protection to children as a special category than the Convention. South Africa has an Office on the Rights of the Child in the Presidency, a National Plan of Action for children, and laws and regulations that are aimed at children's protection."*

*Unfortunately, as so frequently reported, children are still at risk. They are exposed to some of the most inhuman cruelties and endure the worst forms of abuse. Because children are afforded special protection under the law, and because of the notions of innocence and purity that we attach to them, the violation of children is often very newsworthy.*

*The media plays a very important role in protecting and promoting children's rights and in many instances, in exposing their abuse and their triumphs.*

*The South African Constitution guarantees freedom of expression, including freedom of the press and other media, and access to information. However, these rights do not stand alone. The rights to privacy, dignity, and the specific rights protecting children are also constitutionally guaranteed.*

*Satisfying the public's right to hear stories about and affecting children, while at the same time respecting children's rights to privacy and dignity, is a delicate and difficult balancing act. Thus, journalists reporting on children are confronted with ethical dilemmas of an extraordinarily complex and diverse nature.*

*Broadcasters must adhere to the following principles on reporting on children.*

*Given the challenges in reporting on children broadcasters commit themselves to reporting on children in an ethical manner, and specifically:*

- To seek the truth and report it as fully as possible;*
- To act independently, and;*
- To minimise harm.*

*Further, broadcasters:*

- Believe that the audiences they serve should guard against any practice that may exploit or violate the rights of any child under the age of 18 ;*
- Will encourage reporting on all matters involving children only if the matter is relevant;*
- Will play a positive role in representing children and their rights, and therefore support better attitudes and opinions about children and their rights in readers;*

*Licensees shall accordingly,*

- 1. The dignity and rights of every child are to be respected in every circumstance.*
- 2. In interviewing and reporting on children, special attention is to be paid to each child's right to privacy and confidentiality, to have their opinions heard, to participate in decisions affecting them and to be protected from harm and retribution, including potential harm and retribution.*
- 3. The best interests of each child are to be protected over any other consideration, including over advocacy for children's issues and the promotion of child rights.*
- 4. When trying to determine the best interest of a child, the child's right to have their views taken into account are to be given due weight in accordance with their age and maturity.*
- 5. Those closest to the child's situation and best able to assess it are to be consulted about the diverse ramifications, including potential political, social and cultural ramifications of any reportage.*
- 6. No stories or images will be broadcast that might put the child, siblings or peers at risk even when identities are changed, obscured or not used. When it is editorially necessary to publish a picture of a child, which is potentially harmful to such child, the identity of the child shall be obscured in such a manner that the child cannot be recognised. In this regard, the face of the child shall be blurred or "pixalated" completely. The face alone is not good enough. It should include anything in the image which may identify the child, like a bracelet or picture.*
- 7. In all stories in which a child has been involved in a crime, either as a witness, victim or perpetrator, unless exceptional circumstances prevail and only if there is informed consent from the child involved and the child's caregiver, the child's identity will not be revealed either directly or indirectly.*
- 8. Whenever the identity of a child is disclosed, whether pictorially or in print.*

- a. *The statutory restrictions on the naming or identification of children shall be observed and adhered to. These include, but are not limited to, the General Laws Amendment Act dealing with the publication of matters around civil court proceedings and the Criminal Procedure Act;*
  - b. *The informed consent of the child and parent or guardian of any child shall be sought in all cases where the identity of the child is to be disclosed*
  - c. *Even if the parent or guardian consents to disclosure of the identity of a child, Star shall exercise a cautious discretion, if it may be harmful to the child to publish the identity of the child.*
9. *To prevent harm and possible stigmatisation, a child's HIV status will not be revealed, unless there are exceptional circumstances and informed consent from both the child and caregiver/parent has been attained. If in doubt, this information shall be left out.*
  10. *Negative stereotypes about children based on race, gender, class, culture, and or sexual orientation are particularly harmful for children and will be challenged where possible.*
  11. *Girl and boy children have equal rights and gender based stereotypes will not be perpetuated when reporting on children."*

SABC Editorial Policies also serve to highlight additional areas, which MMP submits should be included in the Code. They deal with issues of reporting gender, grief and distress, privacy and discrimination.

*MMP submits that the following SABC editorial policies be included in the code, with substitution of "licensees" for "SABC".*

*"Gender and representation*

*Democratisation places an important responsibility on the SABC to include in our news services - consciously and with due prominence - the perspectives and opinions of women who are making a crucial contribution to the political, social and economic life of South Africa. This is one of the important criteria for ensuring that the full range of comment is offered, so that our audiences may have a comprehensive overview of issues in order to form their own opinions.*

*News staff should therefore endeavour to ensure fair gender representation in news and information programming.*

*Privacy*

*Promoting the dignity of all South Africans is a cornerstone of our Constitution, and it is for this reason that the Bill of Rights is so central to it. Unlike the private commercial media, the SABC has a special duty to uphold the Bill of Rights and to respect the dignity and private lives of individuals. For this reason, we respect individuals' right to privacy, and as a matter of policy do not violate such privacy unless it is justifiable in the public interest.*

*Reporting on suffering and distress*

*In terms of the SABC Editorial Code we are circumspect in the presentation of brutality, violence, atrocities and personal grief.*

*When covering any accident, disaster or conflict the SABC always gives a full, accurate and factual account of relevant matters such as time, location and casualty figures. In doing so, we avoid causing needless distress or anxiety to*

those who already know of their loss. SABC editorial staff cover accidents and disasters with compassion and sensitivity that is frank and genuine. The consequences of a tragic event or disaster call for considerable sensitivity on the part of the SABC. Reporting on these events should follow well established principles:

- As a rule, intrusive visuals of the dead should not be broadcast unless the story demands it.
- Those injured or grieving should not be put under any pressure to give interviews. As far as reasonably possible, next of kin should not learn bad news from a radio or TV newscast.
- A funeral should be covered only with the permission of the family, and treated sensitively and without intrusion, unless public interest considerations are apparent.
- The time of day of transmission - before or after the watershed - and audience sensibilities should always be considered.
- When the content of a report or programme may upset sensitive viewers or children, a warning to that effect is to be given.

News bulletins should be prepared bearing in mind that children watch TV during the day and early evening, especially in school holidays. This could mean delaying graphic details and visuals of particularly disturbing events until the later bulletins, when it is reasonable to expect parents to be in a better position to monitor their children's viewing.

In its coverage of crime, the SABC avoids sensationalist reports that have no context or explanation. The SABC seeks to report not only on the event, but also the human consequences and the subsequent judicial process.

#### *Discrimination and stereotypes*

Given South Africa's past, and the role of public broadcasting in healing divisions, it is imperative for the SABC not to broadcast programmes that promote discrimination or stereotyping on the grounds of race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or disability. To this end we are committed to avoiding language and images that reinforce stereotypes, and offend communities or individuals.

The SABC is further committed to reflecting diversity positively. We undertake to include in our programming non-stereotypical representations of the disabled, women, black and homosexual people, and of any other South Africans who have often been marginalised by the mainstream media, or represented in narrow and stereotypical terms.

The SABC's policy is as follows:

- To treat every part of society with respect;
- Not to identify people solely by ethnic origin, and to mention colour only when it is relevant to the topic under discussion;
- To avoid any unnecessary reference to disability, as it is often seen as insulting or implying deficiency, and not to use language that could add to such an impression: e.g. "deaf" or "hard of hearing" should be used, and "a person who has a disability" instead of "invalid" or "cripple" or "retarded;"
- To use non-sexist language so as to avoid giving offence, or creating the impression - through repetition - that certain activities are associated with only one sex.

- *Since humour could also create and reinforce stereotypes, our policy is to avoid humour that is excessively exploitative, uncalled for, cruel, or designed to prejudice a person or group.*

*These requirements are not intended to preclude broadcasting of factual material, or views expressed in satirical or dramatic works. Once again, the context in which the language is used is pivotal. Proper scheduling ensures that material with the potential to offend, or that is unsuitable for children, is not broadcast inappropriately.*

#### *Disability*

*We recognise that groups with disabilities often feel marginalized, and that it is a duty of the public broadcaster to promote access by these audience segments to its services and programmes and to ensure that the representation of people with disabilities in our programming is fair.*

*The SABC therefore treats people with disabilities respectfully in its programming, and we are committed to reflecting issues of disability in a way that does not perpetuate harmful negative stereotypes of the disabled.*

*We are also committed to exploring mechanisms for enhancing our delivery to people with disabilities. Where possible, we also strive to involve disabled persons in such initiatives.*

MMP submits that in addition to the disability clause of the SABC that the following sentence is added, "licensees will ensure as far as possible that negative stereotypes about people with disabilities are avoided. Licensees will seek to use appropriate words and terminology when referring to people with disabilities and avoid stereotyped language, for example instead of "wheel-chair bound", "wheel chair user"."

#### *Race*

*In the light of South Africa's history, the SABC takes particular care when dealing with issues of racism, and in depicting race. We are committed to representing issues of race in a way that does not perpetuate negative stereotypes, and that creates awareness of such stereotypes. To this end, we avoid racial identifiers such as divulging race, ethnicity and/or nationality, unless there is a compelling reason to do so.*

*We also undertake to raise awareness of racial discrimination by encouraging debate and discussion of these issues. This goal translates into encouraging a non-racial approach and perspective among our staff and programme makers.*

#### *Gender*

*To consolidate the SABC's commitments in other sections of these policies, the SABC undertakes to strive to ensure that its programming, when judged within context, does not:*

- *promote violence against women*
- *depict women as passive victims of violence and abuse*
- *degrade women and undermine their role and position in society*
- *promote sexism and gender inequality*
- *reinforce gender oppression and stereotypes.*

*Furthermore, the SABC is committed to reflecting and portraying women in their positive societal roles - as independent, intellectual beings; as leaders, decision-*

*makers, academics, agents for change, etc - and to avoid representation of men in roles that bolster gender ascendancy and stereotypes. Gender balance should be sought - positively and actively - in programmes, such as those requiring a range of opinions on issues of public importance."*

Clearly, all clauses would need to be adjusted to ensure applicability to broadcasters, but they cover common and essential areas of importance to all broadcasters. While evidently examples of best practice, a key area which MMP submits may be improved is the clause on gender.

*MMP encourages broadcasters to be cognisant of the various issues around gender inequality and to adopt individual guidelines for news. In this line, MMP submits the following three key principles to be included under the section on Gender:*

- 1. Ensuring more equitable representation of men and women news sources*
- 2. Ensuring diversity of issues and that the gender dimensions of stories are addressed and examined*
- 3. Ensure that additional attention is paid to stories on gender based violence, child abuse, HIV and AIDS, and poverty.*

There can be little doubt that one of the most significant challenges facing South Africa is HIV/AIDS. Accordingly, MMP submits a clause to be included in the Code specifically aimed at dealing with HIV, which can also be drawn from a clause found in SABC's Editorial Policies,

#### *"HIV/AIDS*

*The SABC's policy is not to disclose the HIV status of anyone without their express consent, unless it would be in the public interest to do so. Therefore unless there are compelling public interest reasons, consent to disclosure should be obtained, and if possible should be obtained in writing (in the form of a waiver of the person's right to privacy)*

- Lawful parents may give consent for disclosure of the HIV/Aids status of their minor child, provided it is fully informed consent and that it is demonstrably in the best interests of the child.*
- It is common cause that HIV/Aids is a national tragedy, which afflicts millions of South Africans, with dire social and economic consequences for South African society. It is therefore a matter of overwhelming public interest, and difficult decisions on broadcasts involving those affected by HIV/Aids, and related issues, will engage broadcasters continually. The following should serve as guidelines:*

*The fundamental principles to be applied are that the pandemic should be de-stigmatised, and members of society should be educated to conduct their sex life responsibly;*

- The attendant aims should be to encourage communities to embrace the people living with Aids;*
- To create empathy and understanding for them; not to ostracise the infected, but to accord them dignity as members of society.*

As with other clauses, this clause requires adjustment to ensure applicability to all broadcasters and to remain in line with best practice.

*The clause "Lawful parents may give consent ...demonstrably in the best interests of the child" should be revised to read "A child's HIV status must remain confidential, unless the child wants to reveal her/his status, and through informed consent, is made aware of the potential consequences. Even if the child's caregivers give consent, unless it is demonstrably in the best interests of the child, and unless the child his/herself consents, the child's HIV status should not be revealed. Great care needs to be exercised in preventing the indirect identification of a child through the naming or photographing of a child's school, home, place of care, or through naming the child and/or the child's caregivers or parents." (Reporting on Children in the context of HIV/AIDS, A Journalists Resource, MMP, CI, CSSR and Wits, 2005, p.21)*

## 7. Elections

MMP notes the removal of the relevant elections clause, and submits that the issues previously covered under the clause should again be covered under the revised Code.

Thank you for the opportunity to make this submission. Should you have any questions regarding the contents of this submission, please do not hesitate to contact me.

MMP also requests the opportunity to present an oral submission to the authority, as and when public hearings take place.

Submitted on behalf of the Media Monitoring Project,

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# Appendix 1

## About the MMP

The MMP is a human rights driven, non-governmental organisation specialising in media monitoring with the goal of advancing a media culture, in SA and the rest of the continent, that is critical and fair, free, diverse and ethical.

Because the media has the power to shape people's social, historical and political perceptions of the world, it needs monitoring. This is what MMP has done everyday since 1993, assessing media's performance against a human rights framework and other local and international media.

### a. Mission

The MMP aims to promote the development of a free, fair, ethical and critical media culture in South Africa and the rest of the continent.

### b. Objectives

The core objectives of the organisation are as follows:

- To be the pre-eminent media "watchdog" in Africa;
- To inform and engage media professionals and other key stakeholders to improve the quality and ethics of reporting in Africa;
- To influence the development of robust and effective communication legislation and media codes of conduct in Africa;
- To develop long term strategic partnerships with key organisations.

### c. Activities

The MMP offers a wide range of services to civil society organisations (CSOs), media, government and NGOs in South Africa and other African countries, including:

- Reviewing and analysing the content, selection process and presentation of news reporting to monitor the quality and ethical practices of broadcast, print and online media;
- Distributing regular reports on research findings and highlighting infringements to media duties and responsibilities;
- Conducting in-depth research on specific issues (commissioned reports);
- Developing training materials, tools and best practices on ethical and fair media reporting;
- Submitting proposals and other material for the development or amendment of policies and laws.

The MMP is the leading independent organisation in South Africa that monitors the representation of a broad range of human rights issues in the media. It is also the only organisation that conducts in-depth qualitative and comparative studies in this field. The MMP's expertise is widely acknowledged by media stakeholders, and the MMP is regularly invited to provide comments and presentations on a wide range of subjects within the media.

- (a) report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and
- (b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion,

shall be guilty of an offence and liable, upon conviction, to be sentenced to a fine or to imprisonment for a period not exceeding ten years or both to a fine and such imprisonment.

(3) Any person who has control over any film, game or publication which contains depictions, descriptions or scenes of sexual conduct and who fails to take all reasonable steps to prevent access to such materials by any person under the age of 18 years shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who, by means of any telecommunication system, communicates with, contacts or sends any message to a child, or accesses or attempts to access any information concerning a child, for the purpose of committing or facilitating the commission of an offence under this Act or any other law, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) It shall not be a defence to a charge under subsection (4) that the accused believed that the person was 18 years or older unless the accused took reasonable steps to ascertain the age of that person.

(6) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding ten years or to both a fine and such imprisonment."

#### **Obligations of internet access and service providers**

**24C.** (1) For the purposes of this section, unless the context otherwise indicates—

- (a) **'child-oriented service'** means a contact service and includes a content service which is specifically targeted at children;
- (b) **'contact service'** means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other;
- (c) **'content'** means any sound, text, still picture, moving picture, other audio visual representation or sensory representation and includes any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers;
- (d) **'content service'** means—
  - (i) the provision of content; or
  - (ii) the exercise of editorial control over the content conveyed via a communications network, as defined in the Electronic Communications Act, 2005 (Act No. 35 of 2005), to the public or sections of the public; and
- (e) **'operator'** means any person who provides a child-oriented contact service or content service, including Internet chat-rooms.

(2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall—

- (a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;

- (b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;
- (c) provide mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;
- (d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and
- (e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.

(3) Any person who fails to comply with the provisions of subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.”

**Repeal of sections 25, 26 and 27 of Act 65 of 1996**

25. Sections 25, 26 and 27 of the principal Act are hereby repealed.