



WASPA Submission

on the

Films and Publications Amendment Bill, 27 of 2006

1. Introduction

The Wireless Application Service Providers' Association welcomes the opportunity to make this submission concerning the proposed amendments to the Films and Publications Act, Act 65 of 1996.

WASPA respectfully requests an opportunity to make an oral presentation to the Committee, concerning the Bill.

1.1. About WASPA

The Wireless Application Service Providers' Association is an unincorporated industry association comprised of members providing wireless application services. It was established by its members as an independent body and voluntary association acting in the interests of those who provide mobile application services over public networks in South Africa and generally dealing with matters related to the provision of mobile services and information in RSA and Southern Africa.

WASPA has adopted a Code of Conduct as a code of practice governing the members of WASPA. It is binding on all WASPA members and contains accepted procedures to be followed in the event of a complaint lodged against any WASPA member. Membership of WASPA is voluntary, with members required to have an existing business relationship with one or more of the mobile network operators. Members are also required to accept the WASPA Code of Conduct and related procedures as binding.

The primary objective of the 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 of Conduct 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 three mobile networks have made either membership of WSPA or adherence to its Code of Conduct, compulsory for all WASPs connecting to its network, with effect from Commencement Date.

1.2. Structure of this submission

WASPA's comments on the proposed regulations are divided into five sections:

- this Section 1;
- Section 2, which contains some general comments on the Bill;
- Section 3, which contains some specific comments on the proposed Classification Committees
- Section 4, which contains some specific comments on the proposed amendments to Section 24 of the Bill; and

- Section 5, which contains our contact details.

1.3. Definitions

In this submission the following expressions and words have the meanings assigned to them and derivative expressions and words will have a corresponding meaning:-

- 1.3.1. "Act" means the Films and Publications Act, Act 65 of 1996;
- 1.3.2. "Bill" means the Films and Publications Amendment Bill, 27 of 2006;
- 1.3.3. "Board" means the Films and Publications Board, created in terms of the Act;
- 1.3.4. "Committee" means the Parliamentary Portfolio Committee on Home Affairs;
- 1.3.5. "ISP" means an Internet Service Provider, as defined in the Act, namely "any person who carries on the business of providing access to the Internet by any means";
- 1.3.6. "GSM" means the Global System for Mobile Communications, a set of open technical standards for digital mobile telephony and data exchange;
- 1.3.7. "PAJA" means the Promotion of Administrative Justice Act, Act 3 of 2000 (as amended);
- 1.3.8 "SMS" means the GSM Short Message Service over SS7;
- 1.3.9. "SS7" means GSM Signalling System 7;
- 1.3.10 "TCP/IP" means the two most important protocols in the Internet protocol suite, namely the Transmission Control Protocol (TCP) and the Internet Protocol (IP). The Internet Protocol is a data-oriented protocol used for communicating data across a packet-switched network, in terms of which data is encapsulated inside one or more packets. The Transmission Control protocol allows applications on networked hosts to create connections to one another, over which they can exchange data in packets. The protocol guarantees reliable and in-order delivery of data from sender to receiver;
- 1.3.11 "USSD" means GSM Unstructured Supplementary Services Data;
- 1.3.12. "WASP" means a Wireless Application Service Provider;
- 1.3.13. "WASPA" means the Wireless Application Service Providers Association; and
- 1.3.14. "WAP" means the GSM Wireless Application Protocol.

2. General Comments on the Bill

WASPA notes its appreciation of the opportunity to comment on the Bill, prior to the promulgation thereof. There are a number of issues that are of concern to WASPA and its members and the opportunity to raise these with the Committee is appreciated.

2.1. Definition of "interactive computer game"

The Bill contains a definition of "interactive computer game" which may be unclear.

In common usage, a "computer game" or a "PC game" refers to a game that is played on a personal computer. "Console game" refers to one that is played on a device specifically designed for the use of such game, while interfacing with a standard television set (such as the Sony Play Station Consol or Microsoft Xbox consol). "Video game" (or "videogame"), in places where the term is used, has evolved into a catchall phrase that encompasses the aforementioned along with any game made for any other device, including, but not limited to, mobile phones, PDAs (personal digital assistants), advanced calculators and the like.

WASPA is uncertain of the extent to which the interactive nature of the game is the determining factor as to whether it falls within the definition of "interactive computer game" or whether it is the fact that such game is capable of being played on some sort of hardware with computing functionality (personal computer, consol, mobile phone or the like). Furthermore, game development is rapid and WASPA recommends that technology neutral terms should be used, as far as possible. As such WASPA recommends that the definition of "interactive computer game" be amended to read:

‘**game**’ means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players,

2.2 Whether interactive computer games should be treated as films or as publications

The Act currently provides that computer software which is not a film, is a publication.

The Bill seeks to amend this in respect of interactive computer games (or "games" as WASPA has proposed), which would create a new category of content, treated in a manner very similar to the manner in which films are treated by the Act.

WASPA understands the key differentiator between the manner in which films are treated under the Act and the manner in which publications are treated under the Act to be due to a number of factors, including:

- the fact that films are often displayed to large audiences in cinemas as well as through television broadcasting;
- the greater impact that films have compared to publications, particularly on the youth; and
- the attraction of films to all sections of the public, while publications tend, by their nature, to be targeted at a specific audience.

Games on the other hand are far closer in their impact to publications and as such, WASPA recommends that games be treated as publications for the purposes of the Act.

2.3 Pictures distributed by electronic means – film or publication?

There is internal inconsistency in the Act in that multi-media content distributed via mobile networks onto mobile phones could be regarded both as –

- a film in that it may contain “a picture intended for exhibition through the medium of any mechanical, electronic or other device”; and
- a publication in that it may be “a message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet” where “visual presentation” includes “a drawing, picture, illustration, painting, photograph or image or any combination thereof, produced through or by means of computer software on a screen or a computer printout”.

This inconsistency has the effect of confusing both WASPAs and content providers as to the nature of content intended for mobile phones and WASPA recommends that this inconsistency be resolved by providing that such content is a publication and not a film.

In addition, more and more mobile phones are becoming capable of accessing data networks, such as the Internet.

2.4 Proposed Section 4A

The proposed Section 4A(d) refers to “support for the **organisation**”, however the term “organisation is not defined.

WASPA recommends that the term “organisation” be replaced with the phrase “Board”, which is defined in the Act.

WASPA is further of the view that the proposed Section 4A(e) is not grammatically correct and could be improved by changing it to read:

- (e) establish **the** classification office and appoint officers to manamge the classification office, in consultation with the Minister with regard to terms and conditions of employment of such officers;

Section 4A(f) contains a term “classifiers”, which is not defined and a preferable term may be “officers of the classification office”. The same comment applies equally in respect of the proposed amendment of Section 10(1) of the Act (Section 11 of the Bill).

2.5 Spacing in proposed Sections 16 and 18

The proposed Section 16(4)(a)(ii) and Section 18(3)(a)(ii) both suffer from a typographical error in that the phrase “unless, judged within context on a matter of public interest”. This phrase should return to the outline level of the clause, as at the end of Section 16(4)(b) and Section 18(3)(b).

In the case of Section 18(3)(a)(ii), the phrase should not only apply to films but also games.

2.6 Section 23 to apply to games

WASPA submits that the exemption in Section 23(2) of the Act (as proposed to be amended) also apply to games (or interactive computer games, should WASPA’s recommendation in this regard not be followed). WASPA submits that different content types should be treated uniformly and distributors or creators of games should be capable of applying for such exemption.



This could be achieved by either inserting the phrase “film or game” at each place the word “film” currently appears, or by recognising games as either a category of film or of publication, as WASPA has recommended above.

3. Specific comments on Classification Committees

3.1 Classification Committees & Their Practical Implementation

WASPA is cognisant of the purported intention at **Section 10(1)** of the Bill to create 'Classification Committees'. All references to Section of legislation below, are to the proposed Section in the Bill.

WASPs, it appears, would submit content requiring approval to one of these Classification Committees so as to obtain a rating for each item of content they wish to distribute.

It is a matter of record that WASPA has engaged on numerous occasions and in good working spirit with the Board in numerous *fora* in order to derive an acceptable solution that balances the legislative intent of classifying certain types of content with the practical exigencies of implementation.

The creation of what appears to be a multitude of 'Classification Committees' is a product of many of these valuable discussions.

WASPA PROPOSES THAT ALL REFERENCES TO THE SUBMISSION OF A FILM, PUBLICATION OR INTERACTION COMPUTER GAME TO 'THE BOARD' SHOULD RATHER BE TO 'THE BOARD OR ONE OF ITS CLASSIFICATION COMMITTEES'.

However, with many WASPs having literally hundreds if not thousands of potentially classifiable items, WASPA is still concerned with the practical implementation of these Classification Committees, specifically the need to balance implementation of the legislative intent with foreseeable practical realities, such recognising rapidly expanding content bouquets and publication platforms.

These concerns are outlined below.

3.1.1 Roles Of The Board & Classification Committees

3.1.1.1 Relationship between the Board & Classification Committees -- Oversight or Supervisory Roles?

It is not clear from the legislative text what the relationship between the Board and the Classification Committees is. It is also not clear how any potential 'conflicts' between the Board and a Classification Committee may be handled, if and when they arise.

Specifically, the proposed **Section 10(1)** indicates that the Classification Committee may perform the functions referred to them by the CEO of the Board in terms of the proposed **Section 16(3)** and **Section 18(2)** as well as the duties assigned to them in terms of the proposed **Section 16(4)** and **Section 18(3)**.

In addition, the proposed **Section 18(2)** says that a decision of a Classification Committee:

"shall for the purposes of the Act be a decision of the Board."

The proposed **Section s4A(4)(b)** of the Bill says that Compliance Officer(s) may be created, but does not indicate specifically whether their roles will be in on an oversight or supervisory basis, It is the respectful view of WASPA that the Compliance Officer(s) should exercise an oversight role over the various Classification Committees, thus indicating that each Classification Committee

should possess a degree of independence of thought and action, for example in being able to determine certain of its own processes and procedures within the strictures determined by the legislation.

WASPA wishes to request that these relationships be clarified in the text.

3.1.1.2 Co-Regulatory 'Oversight' Approach Proposed

Oversight = Co-regulatory

WASPA submits that with the envisaged extreme volumes of content to be classified especially in the fast growing mobile sector, efficiencies would be maximised if the interaction between the Board and the Classification Committee and the lines of authority between them be based not on a supervisory role, but *rather* on a periodic oversight basis, with the Board and/or Compliance Officer randomly checking the competencies and classification decisions of the a Classification Committee.

A **supervisory** role would be characterised by more normative regulatory approach that would see the Board having a more hands-on, daily role in the modus and decisions of the Classification Committee's.

An **oversight** role would instead be characterised by a (preferred) co-regulatory relationship between the Board and a putative Classification Committee that gives the Classification Committee with a certain degree of independence via delegation. This is WASPA's preferred position.

Oversight by the Board/Compliance Officer over a WASPA-run Classification Committee rather than supervision would be a natural extrapolation of the successful self-regulatory technique WASPA has employed and enjoyed since its founding in August 2004.

In addition, the distinction highlighted between an **oversight** and **supervisory** relationship between the Board and a Classification Committee is, WASPA submits, an important distinction that foreshadows the necessary debate as to whether the Classification Committees will have the necessary resources and competencies to provide sector-specific and commerce-friendly services without derogating from legislative intent – viz classification of certain types of content.

This oversight is characteristic of a **true co-regulatory co-operative paradigm** between the state (with its natural interest in upholding the law) and self-regulatory bodies that have the proven level of competency in having interests of consumers and their members at heart.

In addition, this co-regulatory approach has precedent in the UK, Singapore & Germany where the mobile sectors self-regulatory bodies are themselves responsible for content classification. These relationships are outlined *infra* at **3.2..**

WASPA would thus propose that the text be altered to reflect the delegated powers a Classification Committee would have, and as such where the Board would have purely an oversight role over the Classification Committees.

3.2 International Precedent For Sector Specific Co/Self Regulatory Content Classification Committees

3.2.1. United Kingdom - Independent Mobile Classification Body (IMCB)

In January 2004, the mobile operators in the UK published a Code of Practice for the self-regulation of new forms of content on mobiles. One of the commitments in the Code was that the mobile operators would appoint an independent classification body to provide a framework for classifying commercial content that is unsuitable for customers under the age of 18. IMCB performs this function and is a subsidiary of ICSTIS, the UK's Premium Rate services regulator.

IMCB operates under a contract between itself and the mobile operators. It has no powers conferred on it by law. It has been established in accordance with the UK Code of Practice for the self-regulation of new forms of content on mobiles (published by the mobile operators in January 2004).

If providers of commercial content do not classify their content correctly and in line with the framework, they may be in breach of their contract with the mobile phone operator, who will then enforce the IMCB's classification requirements.

[See <http://www.imcb.org.uk>]

3.2.2 Singapore

In Singapore, three of the mobile operators have developed a self-regulatory code of conduct regarding content called the "Voluntary Code for Self-regulation of mobile content in Singapore"

[See www.ideas.singtel.com/main/Code.pdf]

3.2.3. Federal Republic of Germany

Germany has adopted a co-regulatory or regulated self-regulatory framework for content classification. This is part of the "Interstate Treaty on the Protection of Minors and Human Dignity in the Media".

It establishes a supervisory body called the "Commission for the protection of minors in the media" (Kommission für Jugendmedienschutz, or KJM) comprising of twelve experts nominated by the regulatory authorities, supervising broadcasters and the supreme juvenile welfare authorities of the federal government and the states.

The KJM has to ensure compliance with norms defining the protection of minors, recognize and license institutions of voluntary self-supervision, and approves technical measures such as content filtering and rating systems.

3.3. PROPOSAL: Creation of Content-Class Classifications & Sector Specific Classification Committees

3.3.1. Content-Class Classification

WASPA has noted in **3.1.1.2 supra** that it is unclear how the classification process will operate on a practical level when confronted with a huge content bouquets submitted by multiple providers.

In particular, it is the nature of the competitive exigencies of WASPs that they ordinarily have hundreds or thousands of items of digital content in small files at their disposal as supplied by content suppliers in South Africa and abroad. Most, some, or all of the derived content may be offered to the public for sale via 'wireless devices'.

This level of classifiable volume is unlike other sectors requiring content classification, where they may count their classifiable inventory in dozens of items. The large volume of classifiable content particular to the mobile industry means that each, for example, interactive game, image, or other classifiable content would first have to be electronically loaded on a wireless device and checked for compliance. An average inventory of a WASP may contain 2,000 interactive games plus thousands of animated images – all of which will require classification. The inventory of these classifiable items will also change on an almost daily basis, yet all this content must have a classification in order that it is legally distributed.

This volume represents a time, resource and cost challenge to any classification body and we submit that on a practical and economic basis, a sector-specific co-regulatory Classification Committee will be best suited to handling this.

Furthermore, many of the content items are compatible with only a limited number of devices or phones. It will be necessary for the Board to have a plethora of devices available in order to test content on devices with which it is compatible.

Example:
Classification Of Interactive Games:

Background Scenario:

We present as an example the instance of the classification of a small interactive game of an average 100 Kilobyte file size that could be loaded on a Symbian Operating System-based GSM mobile telephone. These games may be sold at between R10 & R30. The average is R20 and has been used as the basis of the calculations that follow.

Depending on the delivery mechanism used, the mobile operators may sometimes take up to 50% of the gross retail cost of the game (including VAT), leaving the content provider with between R10 and R15 to distribute between itself and the game developer. In many cases the latter is a 50/50 deal, leaving the content provider with between R5 and R7.50 in income. From this income the content provider must cover the running costs and advertising costs of its business.

The margins are thus razor thin.

Cost of Classification:

As far as cost of classification of for example interactive games played on a GSM mobile telephone is concerned, we note in particular that the Act does not make a distinction between the file sizes of games, even though GSM mobile telephones generally have limited storage capacity so that a 'small' game (as indicated above, an average of 100Kb) is costed by the Board at the same rate as a large DVD-based game (from 4,7GB and up to 17GB capacity – that is 4,7 x 1,000,000,000bytes and upwards compared to 100 000 bytes that is 4.7 million times greater size than the average mobile game) played on a Playstation or similar high-end dedicated gaming device.

At the current rate of R1 347.50 for the classification of an interactive computer game, an inventory of 10,000 games would require an upfront cost of around R13,470,000 just for their classification.

This is clearly uneconomical and many WASPs would have to cease trading.

Volumes:

The sheer scope and complexity of these bouquets however makes individual classification of each item impractical, specifically because of the retrieval, loading, testing and classification procedure that would be required for the classification of (hundreds if not thousands) individual items

3.4. Proposal: Sector-Specific Classification Committees

WASPA submits that sector competencies should be considered by when devising the workings and composition of particular Classification Committees. *In casu*, there are specific technical and sometimes arcane competencies that may be required to provide services to a particular sector, especially one where the technical parameters change on a regular basis.

In this respect, **Sector-Specific Classification Committees** would provide a seamless ability to provide the Classification services required.

WASPA would submit that it be so designated, if necessary, as a Sector-Specific Classification Committee, in particular with exclusive self-regulatory powers over the classification of mobile and wireless-related content, but subject to the oversight of the Board, as indicated above.

To indicate the proactive nature of WASPA in this regards, the WASPA Advertising Rules (attached) which have been in force since 1 January 2006 **already** indicate that the Film & Publication Board classification guidelines be followed.

In this capacity, WASPA would be most suited to issue the content-class Classifications described in **3.3.1. supra**.

Practical Solution:

WASPA submits that what would be more equitable on a resource, efficiency and cost basis is the creation of Content-classes as well as sector-specific Classification Committees mentioned *supra*.

Envisaged Classification Procedure:

1. In respect of content classes, an applicant could submit to the sector-specific Classification Committee a portable storage medium containing large sets of content it wants classified, for example interactive games with possible ratings of PG13, R18 etc, and video clips and animations falling within the definition of "film" with the Act that are similarly to be classified.

To enable efficient content indexing, games, images or any other classifiable content would be placed in appropriately named folders on the storage medium.

2. The applicant would submit on the application form that the content so presented to the Classification Committee is correctly classified. The declaration would be subject appropriate sanctions in case of fraud or similar intentional misrepresentation.
3. Taking cognisance of the thousands of items that may be on the storage medium, the Classification Committee would of necessity only randomly check the storage medium contents for compliance with the purported classifications, as declared to the Classification Committee by the applicant.
4. Based on its assessment, the Classification Committee would then issue a content-class classification for the items presented to it.

3.5. Stakeholder Roles

In summary, WASPA proposes that the relationship between the Board & the Compliance Officers(s) be characterised by the following principles, enunciated in subsequent Regulations.

- a) The Board would have periodic oversight and auditing capabilities over this classification process, intervening only where there is an obvious procedural and legal breakdown that may generally compromise the Classification process.
- b) In cases of extreme *mala fides* or incompetence, the classification committees may be dissolved and its decisions placed under review.

3.6. Classification Committee Funding & Running Costs

The cost and who shall bare the cost of training and remunerating members of the Classification Committee is not clear from the text.

This is possibly indicative of the (as yet) undefined nature of the relationship the committee members have to the Board, *in casu* whether:

- a) Each member of a Classification Committee is directly employed by the Board and thus directly remunerated by the Board in terms of an employment contract, **or**
- b) The Classification Committee is independently constituted -- but with oversight by the Board – and *in casu* then whether the training and employment costs are instead borne by an independent Classification Committee 'unit' that is self-funding via contributions from an industry association like WASPA as well as revenue derived via Classification costs to those applying for classification of their content.

The alternative is that as Classification Committee costs may be described as a co-regulatory endeavour between the Board and say a designated industry body, then costs (and revenue) could be shared between the Board and the industry body.

3.7 Difficulty of Displaying Classification Decisions Regarding Films & Interactive Games [Section 18A(1)(a) & Section 18A(2)]

Interactive games delivered via mobile phone do by their very nature not exist in a saleable 'off-line' form like for example a DVD-based product available for sale in a store or online. Instead they are usually only available via a representation on an electronic menu or via a content-booklet. In many cases it is an electronic menu version on a small mobile phone screen only.

Thus WASPA find the instruction in **Section 18A(1)(a)** practically problematic, *viz* that the distributor must:

“display the following certificate conspicuously and clearly visible on or through the cover or packing of the cassette or holder of the film or interactive computer game”

It appears from this section that a raft of information must be presented to indicate the classification.

Now on a mobile phone screen, this is in most cases impossible although on the newer type of smartphones more difficult than impossible. The vast majority of mobile telephones are in the



former category though.

WASPA is pleased however to note that some prescriptive latitude is given by **Section 18A(2)** which allows the Board to **prescribe** By regulation specific formatting criteria as well as the 'manner of the display of certificates of classification'.

Since **Section 10(2)** indicates that a decision of a Classification Committee is a decision of the Board, it is submitted that the Classification Committee be given the mandate and latitude to devise what criteria need to be applied in respect of the display criteria.

4. Specific comments on the proposed changes to Section 24 of the Act

4.1 Display of classification reference number and age restriction [Section 24A(5) and (6)]

The nature of mobile content advertising makes display of both the certificate difficult in a manner usually associated with physical distribution, very difficult.

WASPA looks forward to interacting with the Board regarding the exact methodology to be employed, however as these Regulations exist at present, display is not possible.

See further Section 3.7 above.

4.2. Reasonable Steps Required For Age Verification [Section 24B(3)]

The proposed **Section 24B(3)** indicates that any person who has control over a film, interactive game or publication which contains depictions, descriptions 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 shall be guilty of an offence.

WASPA has once again long been proactive in its approach and has since the implementation of its Code of Conduct on 1 September 2005 and its Advertising Rules on 1 January 2006 that **age verification is required** for access to any age-restricted content.

As such WASPA is in broad agreement with this clause.

However, WASPA recognises that there exist technological impediments to providing a ubiquitous and indeed any fool-proof methods of age verification, and would thus **caution** that the term 'all reasonable steps' be interpreted widely, to allow for the technology to catch up to the purpose of the **Section 24B(3)** text.

The impending requirement brought about by the **Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002** that all owners of all South African-based SIM cards be identified and placed in a national register may assist in this endeavour, as these identity details would naturally capture the confirmed age of the SIM card user and so create a natural age verification system. However, the aforementioned Interception Act and specifically the proposed changes to Section 40 thereof currently before Parliament, does permit a registered person to supply a mobile phone instrument or SIM card to an immediate member of his or her family, which may be a child or dependent under the age of 18 years.

4.3. Obligations of Internet Access and Service Providers [Section 24C(1)]

4.3.1. Definitional Ambiguities

The heading of **Section 24C(1)** indicates that certain supervisory obligations are placed on 'Internet access & service providers'.

WASPA is in agreement that the protection of children is a national priority, but is concerned with the technical obligations placed on its members in the light of technological constraints and the small-screen nature of the displays. WASPA is also concerned that it is not clear from the proposed text of Section 24C, as to exactly whom Section 24C is intended to apply to.

Firstly, it is currently the exclusive the remit of the licensed mobile telephone operators in terms of

enabling legislation to provide “access” to the Internet since they have the transmission towers and leased line facilities to do so.

Secondly, it is not obvious whether the wording ‘Internet access and service providers’ should be understood as meaning ‘Internet Access Providers and Internet Service Providers,’ or just ‘Service Providers’ without the use of the appellation ‘Internet’. The latter would certainly fall within the remit of our members who, indeed, are classed as Wireless Application Service Providers (note the absence of the word “Internet”).

That said, if the import of the text is to include ‘Internet service providers’, then WASPA submits that this effectively **exempts** WASPs from the majority of the provisions in Section 24C(1), as currently the majority of WASP services involve using SMS messages (using what is termed SS7 technology) rather than Internet access and service provision, which uses TCP/IP technology (and which fits in with the definition of the Internet in the ECT Act of 2002).

4.3.2 Issues Relating To Practical Implementation of Section 24C on mobile phones:

However, even if the definitional problems that create uncertainty as to scope of **Section 24C** are cured by adequate definitions, and as such **DO** explicitly include WASP-based services, then the practical application of some of the obligations in Section 24C are partially impossible when applied to small mobile phone screens, simply because the wording in **Section 24C** is skewed towards larger, personal computer and similar display systems.

Examples are indicated *infra*.

4.3.2.1. *Internet Safety Messages [Section 24C(1)(b)]*

We note that **Section 24C(1)(b)** refers to an obligation to “prominently display on their home pages and pages of such services Internet safety messages, including chat-room safety messages, in a language that will be clearly understood by children.”

It is trite to point out that, unlike access to PC-based Internet systems, there is no ‘Home Page’ when dealing with SMS-related messaging making implementation of this section problematic.

There is also no indication of what an “Internet Safety Message” is, particularly in the light of the use of similar services on mobile phones.

Clarity on this is requested.

4.3.2.2. *Provision Of Filtering Software [Section 24C(1)(e)]*

We note that **Section 24C(1)(b)** instructs that subscribers must be provided with:

‘software designed to filter or block their children from access to web sites containing pornographic materials and information on the installation and use of such software’

WASPA wishes to point out that if WASPs are included in this peremptory provision, that current technology and financial impediments would make it difficult if not impossible to fulfil the requirements of this section.

In particular,

Current technology availability means that the main access to ‘adult services’ is achieved via

mobile subscribers using SMS-based methods, with only fractional access via 'web based facilities', (or WAP-based facilities).

Other than a dramatic PIN-based lock on a keypad that would allow only incoming calls to a mobile phone, there is no ubiquitous filtering software currently available on the market worldwide that is compatible to all mobile phones that would block access to 'web sites' or any other mobile-based facility for that matter.

Based on estimates of up to 30 million (and growing) mobile users in South Africa, the financial costs of providing this software would be crippling.

WASPA thus submits that in light of the above, that the practical implementation of this provision may be problematic.

Alternatives are suggested below.

4.3.2.3. *Use of Server-Based Filtering Controls*

WASPA, the mobile networks, and some third party providers have however also long been proactive in the age verification arena, cognisant of their legal and moral obligations to protect minors from access to age-inappropriate content.

WASPA through its enforceable self-regulatory Code of Conduct and its Advertising Rules has since 1 September 2005 insisted that its members follow age-verification rules where available. Any infraction of these rules may be met with a sanction instituted by a WASPA adjudicator. (See www.waspa.org.za for a list of sanctions already instituted.)

Some of the local mobile networks for example have created their own internal classification systems that sometimes exceed the requirements in the existing Act. They have in fact capped access to certain content at a non-sexual level, as well as allowing anyone who has parental or guardianship rights over a mobile subscriber to block access by that subscriber to adult content using either an easy keystroke system that accesses a server-based blocking system.

4.3.2.4 *Parental Blocking System*

WASPA wishes to refer the Committee to the **parental blocking system** on Vodacom by simply dialling for free *111*8# on their (Vodacom-based) mobile phones. Blocking of access to adult services by parents of children with mobile phone is done instantaneously, and results are announced with the message:

"Parental control for 082-xxx-abcd successfully activated. To unblock, please present your ID/passport to your service provider to prove you are over 18 years old"

There are similar systems provided by third parties and WASPs. Again by demonstration we refer the Committee to the parental blocking system at www.mobisafe.co.za which also provides a server-based blocking facility.

In effect, the best method of blocking access by minors using mobile phones to age-inappropriate services is via a Server-based solution rather than a locally-based solution that requires technical competencies by the user for the installation of universally-compatible mobile phone blocking software.

WASPA is naturally cognisant of the need to include all technology environments in

Section 24C(1)(e) without making the provisions financial and technology onerous on service providers and subscribers alike.

4.4. New Draft of Section 24C(1)(e)

WASPA would thus request that the draft Section 24C(1)(e) be amended in the following way:

(e) **where technologically possible**, provide to all their subscribers **[software] with facilities** designed to filter or block their children from access to **[web sites] electronic material** containing pornographic material, and information on the installation and use of such **[software] facilities.**

Section 24C(1)(e) would thus read:

(e) where technologically possible, provide to all their subscribers with facilities designed to filter or block their children from access to electronic material containing pornographic material, and information on the installation and use of such facilities.'

4. Contact information

Should the Committee or any other relevant Committee require any further input from WASPA, please contact us using any of the details listed below:

Leon Perlman
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