

- (a) Information on issues of cybercrime such as hacking, copyright infringement and fraud and available software to prevent or limit cybercrime;
- (b) Information on spam and available software to prevent or limit spam;
- (c) Information on different types of content and available software to prevent or limit access to unwanted content;
- (d) Information on setting up and managing an internet site and the associated costs.

PART 2

CHECKLIST OF ADEQUATE CRITERIA

ECT Act Section 71
Recognition of representative body
 (2) The Minister may only recognise a representative body referred to in subsection (1) if the Minister is satisfied that-
 (b) membership of the representative body is subject to adequate criteria;

All Applications for Membership to the [Name of IRB] shall comply with the following minimum criteria within 30 days from the date of application:

DOES THE APPLICATION CONTAIN:

1	Professional conduct	
	A commitment to professional and lawful conduct and compliance with all legal requirements?	
2	Standard Terms of Agreement	
	Standard Terms of Agreement containing the minimum requirements prescribed?	
3	Service levels	
	3.1. A commitment for the provision of service levels that are reasonably feasible?	
	3.2. A commitment to act professionally, fairly and reasonably in dealing with consumers, business and other Members?	
4	Content control	
	4.1. A commitment not to knowingly host or provide links to content that is illegal or unlawful or engage in illegal or unlawful conduct?	
	4.2. A commitment to take appropriate action in respect of illegal or unlawful conduct of which it is aware?	

4.3. A commitment to co-operate with any legal requests from Enforcement Authorities?	
4.4. A commitment to adhere to take-down notices?	
4.5. A commitment to store removed materials unless possession of such material is illegal, for a period of three years?	
5 Consumer protection	
5.1. A commitment to honest and fair dealing?	
5.2. A commitment to comply with applicable advertising standards, legislation and regulations?	
6 Privacy and Confidentiality Protection	
6.1. A commitment to respect the privacy of recipients of the service and users, their communications and their confidential information?	
6.2. A commitment to use personal information only for purposes authorised by the data subject?	
7 Copyright and Intellectual Property Protection	
A commitment to respect and not to knowingly breach copyright and other intellectual property rights?	
8 Spam protection	
8.1. A commitment not to send spam and to take reasonable measures to prevent the recipients of their services from doing so?	
8.2. A provision for a complaints facility in respect of spam?	
9 Protection of minors	
9.1. A commitment not to offer services to unassisted minors and reasonable measures to prevent this from happening?	

<p>9.2. A commitment to provide the recipients of internet access with information about procedures, content labelling systems, filtering and other software applications that can be used to assist in the control and monitoring of minors' access, unless Members offer services to corporate recipients of the service, where no minors have internet access?</p>	
<p>10 Cyber crime</p>	
<p>A commitment to take reasonable measures on its network and in connection with data under its control against cyber crime such as hacking and unauthorised interference with data?</p>	
<p>11 Commitment to the Code of Conduct</p>	
<p>A commitment to:</p>	
<p>11.1. Adhere to the provisions of the Code of Conduct of the IRB?</p>	
<p>11.2. Provide information to its recipients of the service about the Code of Conduct?</p>	
<p>11.3. Have a clear reference and link on its website to the Code of Conduct, its membership to the [Name of Industry Representative Body] and the relevant complaints and take-down procedures?</p>	
<p>11.4. Subject itself to the disciplinary procedure of the [Name of Industry Representative Body] and to comply with any decision from the IRB?</p>	
<p>11.5. To comply with take-down requirements as provided for in the ECT Act?</p>	
<p>12 Complaints procedure</p>	
<p>12.1. Complaint procedure published on the IRB's website where Members provide a link to such procedure from their websites?</p>	
<p>12.2. A commitment to receive and investigate all complaints made in terms of the complaint procedure, unless such complaints are frivolous, unreasonable, vexatious or in bad faith, and to comply with any directions and decisions of the IRB?</p>	
<p>12.3. Acceptable turn-around periods for the resolution of complaints?</p>	
<p>13 Monitoring of compliance</p>	

A commitment to comply with the required reporting duties?	
14 Informational requirements	
A commitment to meet the informational requirements stated in 5.14 of the Minimum Requirements for a Code of Conduct.	

PART 3: MONITORING OF CODE OF CONDUCT

Act Section 71

(2) The Minister may only recognise a representative body referred to in subsection ECT (1) if the Minister is satisfied that-

(d) the representative body is capable of monitoring and enforcing its Code of Conduct adequately.

GENERAL

In terms of the ECT Act it is required that the IRB should be capable of monitoring and enforcing its code of conduct in order to receive the necessary recognition (section 71(2)(d)). Effective monitoring and enforcement will firstly be dependent on provisions which are compulsory for all members; secondly a willingness and commitment on the part of the IRB to enforce its Code; and thirdly the financial and human resources to monitor and enforce its Code.

To a large extent the monitoring and enforcement of the Code of Conduct will be reactive rather than proactive, relying on complaints from the public and other interested or affected parties. Because the system will be largely complaints driven, effectiveness will depend heavily on public knowledge of the existence of the Code of Conduct and complaints procedures.

Whether an IRB is capable of doing effective monitoring and enforcing its Code of Conduct will depend on the following aspects:

A. Nature and Independence of the IRB

- 1 Consider whether the IRB is appropriately structured and constituted. The following considerations should be taken into account:
 - 1.1. How representative is the IRB of the industry or the industry sector in which it is operating? The more representative the organisation is, the more weight its control and enforcement will carry.
 - 1.2. How independent and unbiased is the IRB in terms of its membership, management and staffing. If it is controlled by a small number of major players, its effectiveness to monitor,

control and enforce the Code of Conduct could be seriously jeopardised.

- 1.3. Does the IRB have a proper constitution that makes adequate provision for the following aspects?
 - (a) A board or management committee that is regularly elected and can act independently in terms of the Constitution or Articles of Association of the IRB.
 - (b) Sufficient staff under the control of the board/ management committee to carry out the functions of the IRB.
 - (c) A properly constituted complaints and/or disciplinary committee that can act on complaints or transgressions of the Code of Conduct.
 - (d) An adequate membership application procedure to screen applications and to ensure that ISPs meet with the minimum requirements required in terms of the constitution or articles of association, membership application requirements and the Code of Conduct.

B. Complaints and Take-down Procedures

- 2 The following aspects should be considered when evaluating the Complaints and Take-down Procedures:
 - 2.1. Is there knowledge and awareness of the existence of the Code of Conduct, Complaints and Take-down Procedures amongst members, the recipients of their services and the public? This will depend on whether there is sufficient notice of this information on the respective websites of the ISPs. Does the IRB require its members to make a prominent reference to membership, the Code, the Complaints and Take-down Procedures on their websites? Is compliance of this checked regularly?
 - 2.2. Is there proper record keeping by the IRB of all complaints received by the IRB and their resolution, all disciplinary hearings and their results and all appeal proceedings (if any) and their results?
 - 2.3. Can the IRB invoke investigations and complaints on its own initiative? Are ISPs compelled to assist in investigations and proceedings?
 - 2.4. Are the decisions of the IRB as a result of complaints binding on members?

2.5. Are there adequate binding actions or punishments that can be taken against recalcitrant members? Ultimately, are the IRB and its structures entitled to expel the member from the organisation? This remedy effectively removes the protection that the ECT Act provides and is therefore the most severe punishment that can be meted out in this context.

2.6. Is there a binding provision for ISPs to notify the IRB of take-down notices?

C. Disciplinary Procedures

3 Does the IRB have an adequate binding Disciplinary Procedure in terms of its constitution or articles of association? Essentially the same concerns raised in respect of the Complaints and Take-down Procedures should apply to the Disciplinary Procedure.

D. Monitoring Procedures

4 Does the IRB have a policy in place on monitoring and enforcement, including:

(a) Procedures for carrying out regular spot checks to check compliance by Members with the IRB's Code of Conduct?

(b) Procedures for initiating investigations on its own initiative or following on a complaint?

(c) Annual detailed compliance statements required from ISPs?

(d) Compulsory reporting by ISPs of all take-down notices received?

5 Does the IRB have procedures in place to follow up on complaints and recurring complaints and to check up on compliance with conditions that have been laid down during complaints or disciplinary proceedings or in undertakings made by members?

E. Reporting duties

6 It shall be a condition for continued recognition by the Minister that the IRB shall report any changes to its constitution, articles of association and Code of Conduct to the Minister.

- 7 In the event of any such change the Minister shall evaluate the continued eligibility of the IRB for recognition in the light of such changes.
 - 8 It shall be a condition for continued recognition by the Minister that the IRB shall provide an annual report by 28 February to the Minister on:
 - (a) membership of the IRB;
 - (b) statistics on take-down notices received;
 - (c) statistics on complaints received by the IRB;
 - (d) any disciplinary action taken against members; and
 - (e) any other information the Minister may require from time to time.
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