



Report of the Adjudicator

Complaint number	#61668
Cited WASPA members	Mobixone (1964)
Notifiable WASPA members	Not applicable.
Source of the complaint	WASPA Compliance Department
Complaint short description	X18 Adult Content
Date complaint lodged	2025-10-15
Date of alleged breach	2025-09-30
Applicable version of the Code	17.14
Clauses of the Code cited	21.10
Related complaints considered	Not applicable.
Fines imposed	The Member is fined R10 000.00 for breach of clause 21.10 of the Code, payable to WASPA within 7 days of receipt of this published report.
Other sanctions	Not applicable.
Is this report notable?	Not notable.

Summary of notability	Not applicable.
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Initial complaint

1. Whilst monitoring, testing services, and conducting compliance checks of test results, the Complainant identified the Member's service which did not comply with the requirements as set out in the WASPA Code of Conduct (the Code).
2. On or about 2025-09-30, the Complainant's tester (the Tester) used a test device to conduct a manual test on the MTN network.
3. The Tester entered a URL into Google Chrome and was directed to the adult content website: www.darknessporn.com. The Tester browsed on the site and clicked on an advertisement for 'Hottest XXX Videos in Africa'. The Tester was directed to a page containing an advertisement and clicked on the 'More 18+ videos' option. The advertisement was of a naked woman bent over, genitals facing the camera, whilst one of the two men appears to insert a finger into her (the advertisement).
4. The Tester was then directed to the landing page for an adult content subscription service called 'Penthouse' charged at R39.99 per week (the service). The Tester clicked on the terms and conditions link at the bottom of the landing page and briefly reviewed the content thereof. The Tester subsequently returned to the landing page and clicked on the 'Join' call to action button. The Tester was directed to the MTN age verification page and clicked on the 'Yes' button to confirm that they were older than 18 years of age. The Tester was directed to the confirmation page and clicked on the 'Confirm' button. Thereafter, the Tester was directed to a page confirming that the subscription was successful.
5. A USSD message popped up, requesting the Tester to confirm if they wanted to access their Penthouse TV subscription, and the Tester duly responded. The Tester clicked on the 'Continue' button and was then directed to the Penthouse TV homepage. Screenshots of the site were provided of a naked woman spread-eagled, facing the camera with her genitals exposed (Penthouse TV homepage).
6. Therefore, the Complainant submitted that the content provided as part of the Member's service included content that would fall under the definition of "explicit sexual conduct", which would place it within the category of "Restricted Distribution Content – X18" in terms of the Film and Publication Board Classification Guidelines for the Classification of Films, Games and Certain Publications (the Classification Guidelines). Thus, the Complainant alleged that the Member had consequently breached clause 21.10 of the Code.

Member's response

7. The Member stated that upon receiving notification of the complaint, it immediately reviewed the reported content and determined that the video contained explicit material in

contravention of its internal content policy. The Member confirmed that the content was removed without delay and permanently taken down from the portal.

8. It further stated that it takes compliance with the Code seriously and had implemented remedial measures, including reminding its content partner of strict content guidelines and strengthening its internal media review and approval process by introducing an additional compliance check.
 9. The Member also stressed that it regretted the breach, confirmed that the incident was isolated and promptly addressed, and indicated that it was willing to provide further information or confirmation of removal if required.
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Complainant's response

10. The Complainant stated that it believed that the Member had acknowledged the breach and outlined the corrective steps taken. Accordingly, it stated that it did not wish to further respond to the Member's submission.
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Sections of the Code considered

11. Clause 21.10 is the clause in question herein and reads as follows: "Members may not offer adult content which is classified as XX or X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as XX or X18".
12. Clause 21.1 of the Code states: "An "adult service" is any service where the content or product is of a clearly sexual nature".
13. Clause 21.2 of the Code also states that: "An "adult content service" is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified".
14. In addition, the following excerpts from the Classification Guidelines are considered herein:
 - 14.1. 'Explicit sexual conduct' means graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of "sexual conduct" in the Act.

'Sexual conduct' includes:

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

- (h) Oral genital contact; or
- (i) Oral anal contact.

- 14.2. 'Simulated' in the context of 'sexual intercourse' means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the said conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.
 - 14.3. 'Restricted Distribution Content – X18' is content as described in section 4.2 (12) and contains:
 - a) explicit sexual conduct, unless, judged within context, the film is a bona fide documentary or is of scientific, dramatic or artistic merit, in which event the film shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials".
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Decision

- 15. The Member clearly offered adult content of an X18 nature, which would be classified as X18 under the Classification Guidelines. The advertisement and the Penthouse TV homepage depicted simulated sexual conduct, including explicit depictions of sexual acts that created the appearance of actual sexual conduct. These depictions involved individuals engaging in such conduct while exposing uncovered portions of the breasts, genitals, and/or buttocks.
 - 16. Clause 21.10 of the Code specifically states that Members may not offer adult content which is classified as X18 by the Film and Publication Board, or which has not yet been classified but which would likely be classified as X18.
 - 17. Furthermore, the Member did not deny or defend the use of X18 advertisements within its service but admitted that it had breached the Code.
 - 18. Therefore, the Member is found in breach of clause 21.10 of the Code.
 - 19. It is noteworthy, and constitutes a mitigating factor, that the Member immediately addressed the non-compliant content and implemented remedial and preventative measures. In addition, this is the first complaint received against the Member concerning illicit content.
 - 20. That being said, the Member breached a serious clause of the Code. Clause 21.10 exists to prevent the distribution of explicit sexual content, particularly content that is likely to be classified as X18, which is restricted to adults and poses harm if potentially accessed by minors. By offering such content through a subscription service accessible on a mobile network, the Member undermined the safeguards intended to protect consumers and prevent exposure to highly explicit material. Consequently, the Member must be fined accordingly to avoid setting a dangerous precedent that would undermine the effectiveness of the Code.
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Sanctions

21. The Member is fined R10 000.00 for breach of clause 21.10 of the Code, payable to WASPA within 7 days of receipt of this published report.
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