

Take-Down Procedure

Section 77 of the ECT Act sets out the legislative framework for take-down notices as follows:

“77. (1) For the purposes of this Chapter, a notification of unlawful activity must be in writing, must be addressed by the complainant to the service provider or its designated agent and must include-

- a. the full names and address of the complainant;
- b. the written or electronic signature of the complainant;
- c. identification of the right that has allegedly been infringed;
- d. identification of the material or activity that is claimed to be the subject of unlawful activity;
- e. the remedial action required to be taken by the service provider in respect of the Complaint;
- f. telephonic and electronic contact details, if any, of the complainant;
- g. a statement that the complainant is acting in good faith;
- h. a statement by the complainant that the information in the take-down notification is to his or her knowledge true and correct; and

(2) Any person who lodges a notification of unlawful activity with a service provider knowing that it materially misrepresents the facts is liable for damages for wrongful take-down.

(3) A service provider is not liable for wrongful take-down in response to a notification.”

The Take-Down Procedure detailed below is to be followed by all Association Members on receipt of a take-down notice or notice purporting to be a take-down notice.

Receipt

1. A copy of a take-down notice received directly by a Member must be forwarded to info@wapa.org.za within 24 hours of receipt thereof.

Applicable time-periods

2. The following guiding time periods shall apply to the procedure set out below:
 - 2.1. Initial evaluation: 2–4 working days from date of receipt of take-down notice by the Association;
 - 2.2. Factual verification: 1–3 working days from the completion of the initial evaluation;
 - 2.3. Acceptance of take down notice: 1–2 working days from completion of factual verification;
 - 2.4. Verification of Member Response: as set out in the relevant sections.

Initial Evaluation

3. Where the Association receives a take-down notice, either directly or forwarded from a Member, it shall take initial steps to verify:
 - 3.1. whether it is the designated agent of the Member in respect of which the take-down notice has been issued;
 - 3.2. if so, whether the take-down notice complies with the requirements of section 77(1)(a)-(g) as set out above.
4. Where the Association is not the designated agent as set out in section 3.1 above, then



- 4.1. where the recipient of the take-down notice is a Member of the Association, then the Association shall
 - 4.1.1. identify the designated agent in respect of the Member and forward the take-down notice to such designated agent or to the Member itself; and
 - 4.1.2. inform the issuer of the take-down notice (“the Complainant”) and the Member of the action taken.
- 4.2. where the recipient of the take-down notice is a not member of the Association, then the Association shall inform the Complainant of the fact that:
 - 4.2.1. the Association is not the designated agent in respect of the recipient;
 - 4.2.2. the recipient is not a member of the Association; and
 - 4.2.3. the Association cannot take the matter further.
5. Where the take-down notice does not specify the service provider in respect of which it is issued then the Association shall take reasonable steps to ascertain whether the unidentified service provider is a Member of the Association and shall communicate the outcome of this process to the Complainant. If the recipient is identified as a Member of the Association it shall proceed further in terms of section 3 above.
6. Where an initial check in terms of section 3.2 above reveals that the Complainant has not complied with section 77(1) then the Association shall notify the Complainant:
 - 6.1. that the take-down notice is deficient;
 - 6.2. of the specific reasons for such deficiency; and
 - 6.3. that the Complainant may resubmit the take-down notice after remedying the deficiency.

Factual Verification

7. Where the Association is satisfied that a full and proper take-down notice is before it in respect of an Association Member for which it is the designated agent, then the Association shall –
 - 7.1. verify that the content which forms the subject of the take-down notice is currently hosted by or otherwise under the control of the Member to which the take-down notice has been addressed;
 - 7.2. verify that the content which forms the subject of the take-down notice is capable of being taken down as required.
8. Where the Association is unable to positively verify either sections 7.1 or 7.2 above, it shall inform the Complainant accordingly.

Acceptance of Take-Down Notice

9. Where the Association has satisfied itself that the take-down notice is properly before it, it shall
 - 9.1. forward the take-down notice to the relevant Member and request that it provide a written acknowledgement of receipt of the Complaint; and



- 9.2. notify the Complainant that the take-down request has been accepted by the Association and forwarded on to the relevant Member for further action.

Verification of Member Response

10. Where the Association receives written confirmation from the relevant Member or verifies for itself that the content complained about has been taken down then it shall inform the Complainant accordingly.
11. The Association must, in the event that it has not received confirmation from the relevant Member that the content complained about has been taken down and not earlier than within 48 hours of acting in terms of section 9 above, take steps to ascertain whether the content has been taken down or not.
 - 11.1. If the content has been taken-down then the Association shall inform the Complainant accordingly.
 - 11.2. If the content has not been taken down send written communication to the relevant Member requesting that it immediately advise the Association of steps taken in response to the take-down notice.
12. In the event that no or an unsatisfactory response is received in reply to a communication sent under section 11.2 above, then the Association shall, not earlier than 48 hours after the sending of the communication referred to in section 11.2 above, telephonically contact the relevant Member and enquire as to the steps taken in response to the take-down notice.
13. In the event that the content forming the subject matter of the take-down notice has not been taken down within 24 hours of the completion of the action contemplated in section 12 above, then the Association shall inform the Complainant that
 - 13.1. the Member has failed to respond to the take-down notice or has refused to remove the material, as the case may be;
 - 13.2. the Complainant may lay a further Complaint against the Member in terms of the Association's Code of Conduct.