



GUIDELINES FOR PREVENTION

OF DISEMINATION OF UNDESIRABLE BULK POLITICAL SMS

AND SOCIAL MEDIA CONTENT VIA ELECTRONIC

COMMUNICATIONS NETWORKS

JUNE 2017

Table of Contents

1 Introduction 3

2 Definitions and Abbreviations 3

3 General.....5

4 Process.....5

5 Content.....6

6 Timing 7

7 Unsolicited Messages.....7

8 Adherence to the Law and Guidelines..... 7

9 Complaints Handling 8

1.1 BACKGROUND

The Communications Authority of Kenya (CA) is the regulatory Authority for the ICT industry in Kenya with responsibilities in telecommunications, e-commerce, broadcasting and postal/courier services. CA is also responsible for managing the country's numbering and frequency spectrum resources as well safeguarding interests of consumers of ICT services

Under Sections 23 and 25 of the KICA, CA is mandated to protect the interest of all users of telecommunications services in Kenya with respect to prices and quality and variety and the granting of licenses with conditions including specification of services (Section 25 (3) (a).

Based upon its mandate to protect consumer interests, CA in consultation with the NCIC, the IEBC, the RPP, MNOs, CSPs, MVNOS and other relevant stakeholders now issues these Guidelines to prevent the transmission of undesirable content via SMS and Social Media platform.

1.2 Application of the Guidelines

These Guidelines are issued pursuant to Section 23 and 25 of the KICA and Regulations 21 of the Kenya Information and Communications (Consumer protection) Regulations, 2010 and will apply to licensees, broadcasters, MVNOs, CSPs and MNOs. Further these guidelines also apply to collaborative arrangements with other stakeholders such as bloggers, Social Media Services Providers among others.

1.3 Effective Date of the Guidelines

The Guidelines will be effective from the issue date.

1.4 Amendments to the Guidelines

These Guidelines may be amended from time to time by the CA in consultation with NCIC, IEBC, RPP, MNOs, MVNOs, CSPs, and other relevant stakeholders PROVIDED THAT the Authority shall convene a stakeholders' consultation to discuss any proposed amendments to these Guidelines prior to their coming into force.

2 DEFINITIONS AND ABBREVIATIONS

2.1 Definitions

In these Guidelines, unless otherwise stated the following definitions apply:

- 2.1.1 “ASP” means a person authorized by the Communications Authority of Kenya to provide telephony, Internet and any other services as defined by CA;
- 2.1.2 “Broadcasters” means an entity as defined in the KICA Cap 411A.
- 2.1.3 “Bulk content” means content that is transmitted on a one-to-many configuration via SMS, MMS, audio calls, ring back tones, and any other similar medium that is capable of providing bulk Messaging service;
- 2.1.4 “Constitution” means the Constitution of Kenya 2010;
- 2.1.5 “Content Service Provider” means a person authorized by the Communications Authority of Kenya to provide content services.
- 2.1.6 “Customer” means a user of communication services
- 2.1.7 “Election” means the act of selecting a vote of a person or persons from among a number of candidates to fill an office or to a membership of any political party and includes a presidential, parliamentary or county election;
- 2.1.8 “Hate Message” means a message designed to degrade, intimidate or incite to violence or prejudicial action against a person or group of people based on their race, gender, ethnicity, nationality, religion, political affiliation, language, ability or appearance;
- 2.1.9 “Mobile Network Operator” means a person authorized by the Communications Authority of Kenya to build and commercially operate Telecommunications/Electronic Communications Systems;
- 2.1.10 “Political Aspirant” Aspirant” means a candidate for an elective post as defined in the Elections Act 2016;

- 2.1.11 “Political Messages” means content of a political nature originated by Political Parties and other individuals to the general public by SMS, MMS, premium messages, caller ring back tones, social media platform or any other similar medium that is capable of transmitting bulk content;
- 2.1.12 “Political Party” means an association contemplated in Part 3 of Chapter Seven of the Constitution;
- 2.1.13 “Premium Rate Content” means content that is transmitted on customers on a subscription basis via SMS, MMS, voice calls and any other premium channel;
- 2.1.14 “Social Media” or social networking includes all forms of but is not limited to: online publishing and discussion, Media Sharing, Blogging/Micro blogging, Social Networking, Document and Data Sharing Repositories, Social Bookmarking and Widgets;
- 2.1.15 “Undesirable Content/Message means content/message as contemplated under Condition 1.1 of the Content Service Provider (CSP) license issued under the KICA.

2.2 Abbreviations

CA	Communications Authority of Kenya
CSP	Content Service Provider
IEBC	Independent Electoral and boundaries Commission
IEBCA	Independent Electoral and boundaries Commission Act
KICA	Kenya information and Communications Act Chapter 411A
MMS	Multimedia Messaging
MNO	Mobile Network Operator
MVNO	Mobile Virtual Network Operator
NCIA	National Cohesion and Integration Act No.12 of 2008
NCIC	National Cohesion and Integration Commission
PC	Penal Code, Chapter 63, Laws of Kenya

PPA	Political Parties Act, 2011
RBT	Ring Back Tone
RPP	Registrar of Political Parties
SMS	Short Message Service

3 GENERAL

Bulk and Premium Rate Content

For accountability, Political Messages will only be delivered through licensed CSPs who have direct inter-operability agreements with an MNO or MVNO.

4 PROCESS

4.1 Bulk and Premium Rate Content

Prior to sending a Political Message, CSPs shall make a request to an MNO/MVNO at least forty-eight (48) hours before sending the message.

The application shall include as a minimum, the following information:

- 4.1.1 The verbatim content of the Political Message;
- 4.1.2 A signed Authorization Letter from the Political Party or individual sponsoring the Political Message in such form as shall be approved by the Authority;
- 4.1.3 Certified copies of registration documentation of Political Party or identification documentation of the individual, whichever is applicable;

4.1.4 Intended time for dissemination of the Political Message.

- 4.2 Prior to sending of any proposed Political Message, an MNO/MVNO shall vet its content to ensure compliance with these Guidelines. The MNO/MVNO will notify the requesting entity of its decision within eighteen (18) hours of submission of the request.
- 4.3 The MNO/MVNO has the right to refuse the transmission of a proposed Political Message over its network that it views not to be in compliance with these Guidelines. The MNO /MVNO's shall give the CSP reasons for refusal.
- 4.4 Where an MNO/MVNO is unable to ascertain through its internal vetting process whether the content of a message is not inflammatory, inciting, hateful or otherwise in violation of the law, they shall refer the content to NCIC for further vetting in line with the provisions of Sections 13 and 62 of NCI Act.
- 4.5 The NCIC shall respond to a request by an MNO/MVNO to vet the contents of a message within twenty four (24) hours.
- 4.6 In the event and upon determination by NCIC a political message that had already been transmitted elicits an unforeseen negative reaction from the public or any other entity, the MNO/MVNO shall immediately have the right to stop transmission of the message. In the event, the Political Party or Individual that sent the message will be required to issue an apology to the recipients of the Political Message forthwith via SMS and/or any other remedial action as may be determined by NCIC. Cost of which shall be borne by the Political Party or individual sponsoring the Political Message.
- 4.7 This process shall also be applicable to Political RBTs.

5 CONTENT

- 5.1 No Political Message shall be sent out bearing a MNOs, CSPs, ASP's and Broadcasters name, logos, slogans or otherwise appearing to be associated with either of the above mentioned entities.
- 5.2 A Political Message must bear the name of the Political Party or individual disseminating the Political Message.

- 5.3 Political Messages shall not contain offensive, abusive, insulting, misleading, confusing, obscene or profane language.
- 5.4 Political Messages shall not contain inciting, threatening or discriminatory language that may or is intended to expose an individual or group of individuals to violence, hatred, hostility, discrimination or ridicule on the basis of ethnicity, tribe, race, color, religion, gender, disability or otherwise.
- 5.5 Political Messages shall not contain attacks on individual persons, their families, their ethnic background, race, religion or their associations.
- 5.6 Political ring back tones shall adhere to these guidelines

6 TIMING

- 6.1 In transmitting Political messages, MNOs, CSPs and MVNOs shall comply with all the laws including political campaign periods announced by IEBC.
- 6.2 Bulk or Premium Rate Content shall only be sent out during the day between the hours of 08:00hrs and 18:00hrs.
- 6.3 The provisions of Clause 6.2 shall not Political RBTs.

7 LANGUAGE

Bulk and Premium Rate Content shall be communicated in English and Kiswahili languages only.

7 UNSOLICITED MESSAGES

- 7.1 CSPs SHALL NOT send unsolicited Bulk or Premium Rate Content to customers who have not subscribed for the service. CSPs shall ensure that all recipients of Political Messages have opted into the service. Such opt in will require the express consent of the recipients and opt-out procedures must be clearly notified to customers and kept functional at all times.
- 7.2 CSPs shall ensure that prior to subscribing customers to Premium Rate Content, they have notified the customer of the charges, terms and conditions of such subscription and shall provide the customers with a free-of-charge process of opting out of the subscription at any time.

- 7.3 For purposes of CRBT, the consent of the subscribing customer shall be required.
- 7.4 CSPs must produce evidence of such consent immediately upon request by MNOs or MVNOs or any other concerned governmental body or regulator.
- 7.5 MNOs, MVNOs, CSPs and ASPs shall strictly adhere to the law regarding the use of customer databases howsoever acquired.
- 7.6 Any unauthorized use, sharing or sale of existing customer databases for purposes of sending out Political Messages, Poll Tracking and lobby activities may lead to the immediate suspension of the inter- operability agreement between the CSP and the MNO or MVNO pending legal and/or regulatory determination

8 ADHERENCE TO THE LAW AND GUIDELINES

- 8.1 CSPs shall take legal responsibility for the content of Political Messages and shall fully indemnify and keep indemnified MNOs and MVNOs against any claims that may arise out of those Political Messages.
- 8.2 Broadcasters shall be held accountable for all broadcast content aired on their platforms.
- 8.3 CSPs shall endeavor to indemnify themselves against any claims that may arise out of Political Messages from the Political Party or individuals sponsoring the Political Message.
- 8.4 CSPs, MNOs, and MVNOs shall strictly adhere to the laws, regulations and guidelines relating to elections and political activities which include the Constitution, the KICA, the NCI Act, the IEBC, the Media Act, the Elections Act, Penal Code and the PPA.
- 8.5 Failure to comply with any of these Guidelines may lead to suspension of the interoperability Agreement between the MNO/MVNO and CSP pending determination by the CA and/or the Law Court. In addition, such non-compliance shall also be reported to CA
- 8.6 Further failure to comply with these guidelines by CSPs, MVNOs and

MNOs will lead to regulatory actions by CA.

9 COMPLAINTS HANDLING

- 9.1 All disputes between MNOs/MVNOs and CSPs will be settled in accordance with the provisions of the interoperability agreement, the KICA and Kenya Information and Communications (Dispute Resolution) Regulations, 2010.
- 9.2 Complaints from the general public against CSPs, MNOs and MVNOs with regards to Political Messages shall be settled by CA in accordance with the provisions of KICA, the Kenya Information and Communications (Dispute Resolution) Regulations, 2010 and the Kenya Information and Communications (Consumer Protection) Regulations, 2010 and the Kenya Information and Communications (Broadcasting) Regulations 2009.
- 9.3 Complaints from the general public against Political Parties or individuals with regards to Political Messages shall be lodged with NCIC for investigation and settled in accordance with the NCI Act.
- 9.4 The general public are encouraged to anonymously report cases of potential inflammatory content to NCI and CA

PART II: GUIDELINES WITH REGARDS TO THE USE OF SOCIAL MEDIA FOR POLITICAL MESSAGING

1. Social Media Content

1.1. Language and Tone

All social media content shall be written using a civilized language that avoids a tone and words that constitute hate speech, ethnic contempt, and incitement to violence, harassment, abusive, violence, defamatory or intimidating.

1.2. Accuracy and Accountability

It shall be the responsibility of the content author to authenticate, validate the source and truthfulness of their content prior to publishing to limit information that might spread rumors, mislead or cannot be supported by facts.

1.3. Truthful posting and Publishing

Content authors shall be committed to be honest and correct in their content publishing and shall be responsible for all their content as published.

1.4. Hate Speech

Political content shall only be published on social media in adherence to the Constitution, NCI Act and other relevant laws with regards to hate speech.

1.5. Disclosure and Independence

Political content authors shall disclose any content published as a result of special requests, personal interests and affiliations so that the public is aware of, and is not unfairly influenced by, the content thereof.

1.6. Electoral laws and context norms

Use of social media platform for political advertisements shall be done in adherence to the electoral laws of Kenya

2. Social Media Content

The following guidelines shall be observed while using social media platforms:

1. Correct identification is required when publishing political messages.
2. All comments shall be polite, truthful and respectful.

3. It shall be the responsibility of the Administrator of the social media platform to moderate and control the content and discussions generated on their platform
4. Publishing of other person's private information will not be published without their consent.
5. Publishers of political content who are unsure whether their content is inflammatory or not, will liaise with the NCIC before publishing the content. NCIC shall respond to the publisher within 24 hours.
6. Persons who knowingly spread inflammatory content shall be penalized according to the NCI Act, penal code and other relevant laws.

ISSUED BY:

Chairman
National Cohesion and Integration
Commission

Director General
Communications Authority of
Kenya