

3 June 2022

SAPS

Attention: Major General L Magson

Per email: jooosteme@saps.gov.za

Dear Major General Magson

Cybercrimes Act Standard Operating Procedures Consultation

1. ISPA refers to the online presentation on the implementation of the Cybercrimes Act 19 of 2020 (“**the Cybercrimes Act**”) on 20 May 2022 and the invitation extended to ISPA and others to make written submissions on the Draft Standard Operating Procedures for the Investigation, Search, Access or Seizure of Electronic Evidence in terms of Section 26 of the Cybercrimes Act (“**the Draft SOPs**”).
2. At the outset ISPA wishes to communicate its appreciation to SAPS for the preliminary engagement on the Draft SOPs and the expressed intention to establish sustained relationships with key stakeholders, industry and professional bodies moving forward. ISPA has a long history of constructive engagement with SAPS and looks forward to continuing this.
3. ISPA supports the proposed process to finalise the Draft SOPs. In particular ISPA supports the drafting of high-level SOPs at this stage, taking into account the fact that implementation of the Cybercrimes Act requires time to mature.
4. In ISPA’s understanding there will be a higher frequency of interactions between electronic communications service providers (ECSPs) and SAPS under the Cybercrimes Act. Noting that the Draft SOPs are primarily intended to provide practical procedural guidance to SAPS, ISPA’s members will:
 - 4.1. Interact with SAPS personnel through the formal procedures for preserving and disclosing information established by the Act; and
 - 4.2. Provide assistance to SAPS in discharging its search and seizure powers and obligations under the Act where specifically authorised to do so.
5. Within the scope of this interaction, the departure point for ISPA’s members is for the Drafts SOPs to mature into a clear set of practical instructions and considerations which create certainty for ECSPs in processing procedural requests and providing assistance under the Act.
6. ISPA has reviewed the Draft SOPs and has at this stage no amendments to request, but wishes to highlight the following:

- 6.1. With regard to paragraph 6 [“Pornographic Images of Children and other Sensitive Evidence”], ISPA suggests that SAPS consider the work done by the South African Law Reform Commission (SALRC) under its Project 107 [“Sexual Offences: Children and Pornography”]. The relevant SALRC committee – which includes an ISPA representative – published a comprehensive report on suggested law reform on 22 March 2022, including a chapter on investigation, procedural matters and sentencing in respect of child sexual abuse material offences¹.
- 6.2. In finalising the Draft SOPs cognisance must be taken of other applicable legislation. ISPA refers in particular to the Protection of Personal Information Act 4 of 2013 (POPIA) and the obligations it imposes on ECSPs and others in respect of the collection, processing, storage and deletion of personal information. Should this not have already been done, ISPA suggests that SAPS consider consulting with the Information Regulator created under POPIA in this regard.
- 6.3. ISPA appreciates the need to develop more detailed, lower-level SOPs over time as well as sensitivities attaching to general public access to the details of SAPs procedures. It is however critical that there is clear communication between SAPS and ECSPs during this phase where we are transitioning from procedures under the Criminal Procedure Act 51 of 1977 to those created by the Cybercrimes Act.
- 6.4. There is an emphasis in the Draft SOPs on the handling of digital evidence: this is an area which requires detailed interaction so that there is a clear understanding of the records held by ISPs and the manner in which these are processed and stored.
7. ISPA looks forward to further participation in this process to finalise and further develop the Draft SOPs as also the finalisation of required regulations under section 54 of the Cybercrimes Act.

Regards

Dominic Cull

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ISPA Regulatory Advisors

(intended as an electronic signature)

¹ Available from <https://www.justice.gov.za/salrc/reports/r-pr107-Pornography-Children-29March2022.pdf>