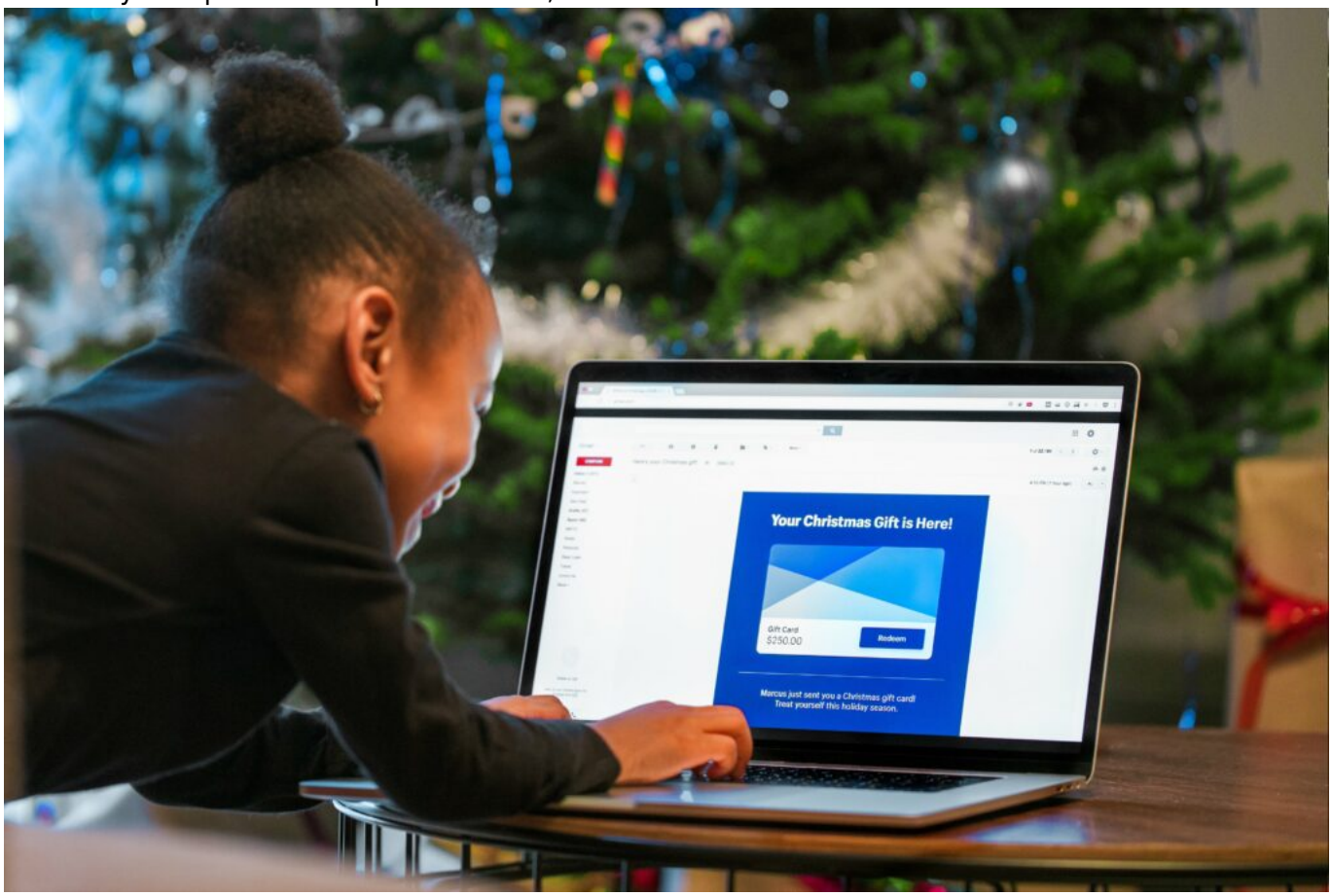
THE FILM AND PUBLICATIONS ACT – CHILD SAFETY ONLINE

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written by Tshepiso Hadebe | December 1, 2022



On 1st of March 2022, by presidential proclamation, the Film and Publications Amendment Act ("**the Act**") came into operation. The Act was promulgated to address among other things, what the Department of Communication and Digital Technologies ("**the DCDT**") described as an escalation in potentially harmful content on digital platforms, and to address the issue of child safety online.

The changes to the Act are aimed at modernising laws that protect the South African public from exposure to prohibited content distributed online. They are also aimed at protecting children from exposure to harmful digital content that could have adverse psychological and behavioural impacts. The Film and Publications Board ("**FPB**") is the custodian of the Act which has expanded the mandate of the FPB from a classification authority to a online content regulator.

Since the commencement of the Act, the DCDT, under which the FPB is established, has published the Films and Publications Amendment Regulations ("**the Regulations**"). The Regulations give effect to and serve as an instrument for the operation of the Act. The Regulations address, among other things, registration as a distributor, submission of publications, films and games for classification and display requirements as well as submission of online content for classification.

In relation to child online safety, the FPB launched the South African Online Youth Safety Council ("**the Council**"). The mission of the Council is to provide advice to the FPB about issues that young people experience online and to explore ways of supporting the youth to have a positive online experience. Going forward, the Council will also inform child safety policies and programs.

On 28 October, the FPB published a notice issued in terms of section 24C and 27A of the Act. The notice deals with the obligations of internet access and service providers ("**Service Providers**") to provide a safer platform for children when accessing their services. The notice seeks to curb the distribution of child pornography. The notice further provides for a complaints mechanism where internet access and service providers can report to the FPB if their services are being used to host prohibited content.

In terms of the notice, any person contemplated in section 24C[1] of the Act is required to send an update to the FPB in writing, within 90 days from publication of the notice. The update must set out how child-orientated services are moderated and if any reasonable steps have been taken to ensure that the services are not being used by any person for the purpose of the commission of any offence against children.

Service Providers must also set out how they have prominently displayed reasonable safety messages in a language that will be clearly understood by children. They must also show that safety messages are on all advertisements for child-oriented services as well as in the mediums used to access child-oriented services. This includes where appropriate, chatroom safety messages or similar contact service.[2] In addition, Service Provider's must state if they have provided a mechanism to enable children to report suspicious behaviour by any person in a chatroom.

The Service Providers must also report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service.

Where it is technically feasible, the Service Providers are also required to provide children and their parents or primary caregivers with information concerning software or other tools which can be used to filter or block access to certain content services and contact services. This is instances where allowing a child to access such services would constitute an offence under the Act or it may be considered unsuitable for children. They must also set out information concerning the use of such software or other tools.

Based on the recent activities by the FPB, it would seem that it has truly embraced its responsibilities under the Act. In future, we are likely to see collaboration between the FPB and other regulators such as the Information Regulator in order to ensure a safer internet for children.

Contact us for good, clear, precise advice.

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[1] In terms of section 24C of the Film and Publications Amendment Act, an operator is defined to mean means any person who provides a child-oriented contact service or content service, including internet chat-rooms.

[2] Section 24C (b) of the Film and Publications Amendment Act defines contact service to mean any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other.