

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 2682

28 October 2022

FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED**NOTICE IN TERMS OF SECTION 24C AND SECTION 27A OF THE FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED**

I, Dr Mashilo Boloka, the Chief Executive Officer of the Film and Publication Board, hereby prescribe, in the Schedules hereto, the notice issued in terms of section 24C and 27A of the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended.

DR MASHILO BOLOKA
CHIEF EXECUTIVE OFFICER
FILM AND PUBLICATION BOARD

Date:

NOTICE**SCHEDULE 1**

- 1. Definitions.** – In this Notice, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

“**Act**” means the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended from time to time;

“**child oriented service**” means a contact service and includes a content service which is specifically targeted at children;

“**child pornography**” means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);

“**contact service**” means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other;

“**content**” means any sound, text, still picture, moving picture, other audio-visual representation or sensory representation and includes any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers;

“**content service**” means—

- (i) the provision of content; or

- (ii) the exercise of editorial control over the content conveyed via a communications network, as defined in the Electronic Communications Act, 2005 (Act No. 35 of 2005), to the public or sections of the public; and

“day” means any number of days prescribed in these Regulations and shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official South African Public Holiday, in which case the last day shall be the next succeeding business day;

“distribute” in relation to a film, game or a publication, without derogating from the ordinary meaning of that word, includes –

- (i) to stream content through the internet, social media or other electronic mediums;
- (ii) to sell, hire out or offer or keep for sale or hire, including using the internet; and
- (iii) for purposes of sections 24A and 24B, to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereof by such a person;

“distributor” means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;

“FPB” means the Film and Publication Board, established in terms of section 3 of the Act;

“internet” means the internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

“internet service provider” means any person who carries on the business of providing access to the Internet by any means;

“non-commercial online distributor” means any person who distributes content using

the internet, or enables content to be distributed by a user of online services, for personal or private purposes;

“operator” means any person who provides a child oriented contact service or content service, including internet chatrooms;

“prohibited content” means content which amounts to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16 (2), 16 (4) and 18 (3) of the Act.

SCHEDULE 2

OBLIGATIONS OF INTERNET ACCESS AND SERVICE PROVIDERS

2. **Obligations by Internet Access and Service Providers.** – (1) Any person contemplated in section 24C of the Act is required to update the FPB in writing, within 90 (ninety) days from publication of this Notice, how they have:
- (a) moderated their child-orientated services and taken such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;
 - (b) prominently displayed reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child oriented service, as well as in the medium used to access such child oriented service including, where appropriate, chatroom safety messages for chatrooms or similar contact services;
 - (c) provided a mechanism to enable children to report suspicious behaviour by any person in a chatroom to the service or access provider;

- (d) reported 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; and
 - (e) where technically feasible, provided children and their parents or primary caregivers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.
3. **Offence and liability for non-compliance.** – (1) Any person who fails to comply with the obligations provided for in section 24C (2) of the Act shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50,000.00 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

SCHEDULE 3

4. **Registration and other obligations of internet service providers.** – (1) Any internet service provider contemplated in section 27A of the Act is required to update the FPB in writing, within 90 (ninety) days from publication of this Notice, how they have –
- (a) registered with the FPB in the manner prescribed by regulations made under the Act;
 - (b) taken all reasonable steps to prevent the use of their services for the hosting or distribution of child pornography;
5. **Knowledge of the use of services of an internet service provider.** – (1) Where an internet access provider has knowledge that its services have been used for the

hosting or distribution of child pornography, propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm, such internet service provider indicate in writing, within 90 (ninety) days from publication of this Notice –

- (a) all the reasonable steps they have taken to prevent access to the child pornography and use of their services for the used for the hosting or distribution of propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm by any person;
- (b) whether they have reported the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such internet address, to a police official of the South African Police Service; and
- (c) the reasonable steps taken to preserve such evidence for purposes of investigation and prosecution by the relevant authorities.

6. Particulars of users. – (1) Indicate to the FPB within 90 (ninety) days from publication of this Notice whether as an internet service provider it has, upon request by the South African Police Service, furnished the particulars of users who gained or attempted to gain access to an internet address that contains child pornography.

7. Offence and liability for non-compliance. – (1) Any person who —

- (a) fails to comply with section 27A (1) and (2) of the Act shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150,000.00 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
- (b) fails to comply with section 27A (2) or (3) shall be guilty of an offence

and liable, upon conviction, to a fine not exceeding R750,000.00 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

SCHEDULE 4

- 8. Complaints against prohibited content.** – (1) Where any person which offers a service online is aware that their service is being used to host or distribute unclassified content, prohibited content, or potential prohibited content, such service indicate within 90 (ninety) days from publication of this Notice –
- (a) the referrals made to the FPB where the person has identified content which has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D of the Act;
 - (b) reasonable steps taken to prevent the use of their services to host or distribute unclassified content, prohibited content, or potential prohibited content
 - (c) with regards to non-commercial online distributors –
 - (i) the takedown notices which have been issued in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002);
 - (ii) the content which has been taken down by the service;
 - (d) with regards to internet service providers, as contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) –
 - (i) the takedown notices which have been issued in terms of section 77 of Electronic Communications and Transactions, 2002 (Act No.

25 of 2002);

- (ii) the content which has been taken down by the service;
- (e) where sections 24E, 24F and 24G of the Act apply, the instances where internet service providers, as contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), have furnished the FPB or a member of the South African Police Services with information of the identity of the person who published the prohibited content.

SCHEDULE 5

9. Details of where responses should be communicated. – (1) All responses should be marked for the attention of the FPB, at the following contact details –

- (a) By hand –

Film and Publication Board
Eco Glade 2
420 Witch Hazel Avenue
Centurion
1609

- (b) By mail –

Film and Publication Board
Private Bag X31
Highveld Park
0169

- (c) By email –
clientsupport@fpb.org.za