GENERAL NOTICES

NOTICE 182 OF 2015

GOVERNMENT GAZETTE NOTICE FOR PUBLIC COMMENT

REPUBLIC OF SOUTH AFRICA

I, NFT Mpumlwana, hereby publish for public comment, the Draft Online Regulation Policy developed under section 4A of the Films and Publications Act, 61 of 1996, as amended.

Any person who wishes to submit representations or comments in connection with the Draft Online Regulation Policy is invited to do so within 90 (ninety) days from the date of publication in the Government Gazette and by no later than 16h00 on the last day. Comments received after this time may not be considered.

Hand deliver to: The Film & Publication Board
ECO Glade 2, 420 WITCH HAZEL AVENUE
Centurion, 1609
Attention; Tholoana Ncheke

OR E-MAIL TO: policy.submissions@fpb.org.za

A copy of the Draft Online Regulation Policy is also available free online at www.fpb.org.za

SCHEDULE

1. The Film and Publication Board (Board) is a public entity of the Department of Communications, established in term of the Films and Publications Act 65, 1996 (as amended in 2004 and in 2009).

2. **The mandate of the Board can be summarised as follows:**

   2.1 To regulate the creation, production, possession and distribution of films, games and certain publications by way of classification;

   2.2 To protect children from exposure to disturbing and harmful material and from premature exposure to adult material; and

   2.3 To criminalise child pornography and the use and exposure of children to pornography.

3. Section 18(1) of the Films and Publications Act requires any person who intends to distribute any film or game and certain publications in the Republic of South Africa first to register with the Board and to submit to the Board for examination and classification such film, game or publication.

4. Although the current legislation is not platform-specific, the Board's compliance and classification activities have over the year focused more on physical platforms and less on the online space, resulting in children being exposed to unclassified content accessed through the internet and other mobile platforms.

5. Media convergence – a new technology trend enabled by the digitisation of media content, the widespread availability of high-speed broadband

connections, and the proliferation of Internet-enabled devices has fundamentally transformed the way media content is distributed and consumed. Consumers can now access media content across geographic boundaries, anytime, anywhere, and however they want it.

6. Section 4A of the Act empowers Council, in consultation with the Minister, to issue directives of general application, including classification guidelines, in accordance with matters of national policy that are consistent with the purpose of this Act. Thus on 16 October 2013 Council resolved to enact an Online Regulation policy that would issue directives on how the Board must classify and regulate the distribution of online content in the Republic of South Africa to ensure cyber safety of children and that children are protected from disturbing and harmful content access through social media and mobile platforms.

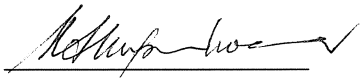
7. Against this background, in order to give effect to the Act, Council in consultation with the Minister of Communications, Ms Faith Mutambi intends to adopt the attached Draft Online Regulation Policy.

8. The purpose of the Policy is to ensure that classification and compliance monitoring focuses on media content, rather than on platforms or delivery technologies.

9. This Policy is also available for free online at **www.fpb.org.za**

Annexure

Annexure 1	**EXPLANATORY MEMORANDUM ON THE DRAFT ONLINE REGULATION POLICY**
Annexure 2	**The Draft Online Regulation Policy**



Mrs. NFT Mpumlwana
Council Chairperson
Film and Publication Board

GOVERNMENT GAZETTE NOTICE FOR PUBLIC COMMENT

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM ON THE DRAFT ONLINE REGULATION POLICY TO BE ADOPTED BY COUNCIL IN TERMS OF SECTION 4A OF THE FILMS AND PUBLICATIONS ACT, 65 OF 1996, AS AMENDED.

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1. BACKGROUND

This is the first policy developed to create a framework and give effect to the Films and Publications Act, 65 of 1996 (the "Act"), as amended in relation to online content distribution in the Republic of South Africa. The Draft Online Regulation Policy once adopted will bring about a comprehensive and fundamental transformation for online content regulation in the country and for the first time, industry, civil society and the Film and Publication Board ("FPB") will join hands and share the costs and responsibility for digital content classification and compliance monitoring to ensure that children are protected from exposure to disturbing and harmful content. For all intends and purposes, content includes films, games, publications and self generated content uploaded or posted on social media platforms.

Prior to the development of the Draft Online Policy, the FPB consulted extensively with industry, civil society and key stakeholders. What came out of these engagements and consultations was that, in the context of ever greater convergence of media technologies, platforms and services, and more media being accessed from the home through high-speed broadband networks, the need for a comprehensive review of classification laws and regulations became apparent. In keeping with these findings the FPB in 2013 amended its Regulations to the Act which became operational in February 2013 and recently finalised the review of the Films and Publications Amendment Bill 2014. The review of the Regulations to the Act was predicated on the realisation that although the Act provides for platform neutrality in its application, the Regulations to the Act were ambivalent in relation to the process for classification of digital content.

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2. POLICY DEVELOPMENT CONTEXT

Since March 2012 the FPB has been in discussions with some of the major distributors who requested the FPB to come up with a solution which would enable them to distribute digital content in the country without risking contravening the Act. For example, one of the six major distributors currently distributing digital content in the country indicated to the FPB that as at the end of April 2012, it had sold 100 million ipads, in its apps stores in 155 countries worldwide, of these only three including South Africa did not have gaming apps. The distributor further indicated that as at the end of March 2012 it had developed in excess of 700 000 apps, of which more than 100 000 of them are gaming apps. Furthermore, 435 million store accounts have been opened, indicating the level of take – up by consumers of its services. On average, the distributor indicated that one consumer downloaded 100 apps and that 35 billion apps have been downloaded since launch of the service.

Although at the time the FPB was not specifically provided with statistics relating to the South African situation, industry trends in South Africa show an increase in the use of portable devices for gaming and social networking, and the expected boom in online gaming over the next few years. While these are positive developments and will be economically beneficial for the country, the downside to this is that there is also a proliferation of illegal content in and the abuse of social media platforms which are at times used by sexual predators to lure their child victims and people who advocate racist ideologies and therefore use these platforms to undermine the government's agenda on social cohesion. This was further confirmed during the FPB public awareness and education campaigns wherein parents, learners and society at large raised concerns about the rise of self generated content, most of which involved school learners engaging in sexual activities and uploading images or video footages thereof on Facebook, Twitter, You-Tube or distributing same amongst their peers using mobile phones and similar devices.

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The key concern for these parents and learners was that whilst there is a need for adults to be free to make their own informed media choices and for children to be protected from material which may cause harm, there continues to be a community expectation that certain media content, including digital content, be accompanied by classification information based on decisions which reflect the community's moral standards.

Recently there has been a several reports in the print media about the spate of hate speech and racist comments posted on public platforms such as Twitter and Facebook. Examples of such cases as reported in the media are the following:

- In February 2015 Sunday Times[1] published an article about a case which came before the Human Rights Commission in which an individual posted racist comments on his Facebook page wherein he wrote *"when I see a white man, I see someone who has robbed me of the privilege I was supposed to have."* Thereafter he invited his friends on Facebook to join him at a "Big Black Braai" to celebrate the death of 42 people with white sounding names who died when the bus they were travelling in plunged into the Westdene Dam.

  In the same article it was also reported that "in *2014 cases related to freedom of speech increased from 3% to 22% of the more than the 10 000 cases dealt with by the Human Rights Commission. Furthermore, social media platforms such as Facebook and Twitter contributed to this increase and appear to have shifted the discourse of free speech. These cases are often complex, containing elements of racism, poverty, ignorance and misguided hatred.*"

- In October 2014, the Finacial Mail published an article about one of the Pretoria's top school being in a state of panic after naked pictures of at least 20 teenage boys were posted on Twitter in the country's biggest sexting scandal.

[1] Article by Ahmed, CEO of the South African Human Rights Commission, page 21 of the Sunday Times published on February 1 2015.

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The posting which was from a fake Twitter account depicted the boys in compromising sexual positions. It was further reported that despite the account and a Gmail address which was used to receive the photos being shut down within hours of the pictures being uploaded, school principals, parents and pupils involved are now worried about where the pictures will end up. The postings also sparked outrage on social media

- In January 2015 a video was uploaded on social media showing a popular pastor from KZN walking around naked in his home. The video also went viral and was accessible to persons of all ages.
- In September 2014 a Pastor from one of the popular churches in Pretoria made headlines when a video clip was uploaded on You-Tube showing him ordering members of his congregation, some of whom were minors, to graze like cattle and drink petrol to prove that humans can eat anything provided by God.

  Upon classification, it was found by the Classification Committee of the FPB that although the themes of the video aforementioned are centered on religion, faith, scripture, miracles and beliefs, the video contained some instances of harmful imitative acts and techniques of a moderate nature. The footage of human consumption of petrol which is shown in the video clip may be harmful to young children under the age of 13 as their moral development is not complete. The video clip also appears to use religion to encourage or promote harmful behavior which is in contravention of Section 18(3) (b)(ii) of the Act.

Although the other cases mentioned were not referred for classification by the FPB, it goes without saying that some of these videos, Twitter and Facebook posts, especially the ones which have elements of racism, contain hate speech and exposing the genitals of young boys can cause irreparable harm to developing minds. Furthermore, hate speech, racism and propaganda for war are prohibited and not protected by freedom of expression as provided for in section 16 of the Constitution.

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3. PROBLEMS WITH THE CURRENT FRAMEWORK

A strong underlying theme of many of the submissions, particularly from industry players, was that the current classification scheme does not deal adequately with the challenges of media convergence and the volume of media content which is now available to South Africans. The Act lacks clarity in relation to the classification process for digital content and online media.

Most online distributors and members of civil society drew attention to aspects of the classification and content regulation framework in that it is failing to meet intended goals, and that it creates confusion for media content industries and the wider community. More specifically, the main problem identified was the piecemeal regulatory responses to changes in technologies, markets and consumer behaviour which have the potential to create uncertainty for both consumers and industry. These may raise questions about where responsibilities lie for driving change.

Against this background and in order to give effect to section 16 and 18 of the Act, it became imperative for the FPB to develop the attached Online Regulation Policy and to open the process for public consultations and inputs. Public participation and transparency in the process is a vital aspect of public policy formulation.

4. KEY FEATURES OF THE DRAFT ONLINE POLICY

The key features of the Draft Policy's model are:

4.1. Platform-neutral regulation

One legislative regime establishing obligations to classify content across all media platforms.

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4.2. Clear scope of the type of content to be classified

This includes self-generated content uploaded on platforms such as You-Tube, facebook and Twitter, feature films, television programs and certain computer games which are distributed online by streaming through the internet.

4.3. Co-regulation and industry classification

This refers to classification of content by the industry subject to the FPB's regulatory oversight.

4.4 Regulatory Oversight and guidance by the FPB

The role of the FPB in the application of the Policy and co-regulation scheme is defined.

- **Platform-neutral regulation**

  Although the Act confers upon the FPB, jurisdiction over all distribution platforms, the FPB's classification and compliance monitoring activities have been until recently focused predominantly on physical distributions and less on online platforms. The convergence of media platforms brought by technology has made traditional distinctions based on how content is accessed or delivered less relevant. Accordingly, this Policy seeks to elevate the Act's 'platform-neutralilty' to ensure uniform compliance by all content distributors regardless of whether the content is screened in cinemas, streamed via the internet to television, sold in retail outlets, provided online, or otherwise distributed to the South African public.

- The intention is to avoid inconsistencies manifest under the current classification regime and enable a new classification framework to be more

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adaptive to changes in technologies, products and services arising out of media convergence.

- **Clear scope of what must be classified and self-generated content**

The volume of media content available to South Africans has grown exponentially. There are currently over million web sites and hundreds of thousand 'apps' available for download on mobile phones and other devices, and every minute over 60 hours of video content is uploaded to YouTube (one hour of content per second). As it is impractical to expect all media content, particularly self-generated content to be classified, it is the responsibility of the platform provider in consultation with the FPB to determine the scope of what must be classified.

Accordingly the obligation to classify content will not generally apply to persons uploading online content on a non-commercial basis. Child exploitative and pornographic posting, hate speech and racism may be prosecuted and the content creators be convicted and sentenced, Internet intermediaries, including application service providers, host providers and internet access providers will bear the responsibility of putting in place content filtering systems to ensure that illegal content or content which may be harmful to children is not uploaded in their services.

In addition to the above the FPB through its online compliance monitoring work, may refer any self-generated video that is found to contain classifiable elements for classification to its classification committee, instruct the distributor to take down the unclassified content and only reinstate it after having complied with the FPB classification decision. In such an event the costs for classification will be borne by the online distributor. This is aimed at ensuring that the online distributors remain vigilant and that their filtering mechanisms are adequate to protect children against exposure to harmful

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content and that people with racist ideologies do not use these platforms to undermine Government's social cohesion and transformation agenda.

- **Co-regulation and industry classification**

FPB has come to the realisation that by assigning a greater role to the industry in terms of classification can thus focus on the content that generates the most concern in terms of community standards and the protection of children. In this regard, once adopted, the Policy will introduce elements of co-regulation into the classification system.

The co-regulation scheme provides for innovative and efficient classification decision-making mechanisms. Content may be classified by online distributors using the FPB classification guidelines and the Act, but subject to FPB's regulatory oversight and review. This will facilitate the provision of South African classification information in a media environment characterised by vast volumes of content.

- **Regulatory Oversight and guidance by the FPB**

Once the Policy is adopted, the FPB will retain the primary responsibility for regulating the application thereof. The FPB will be responsible for a range of functions, including but not limited to:

- encouraging, monitoring and enforcing compliance with the Act;
- auditing distributors complaints handling mechanism in relation to digital media content;
- auditing all media content self-classified by online distributors using the Act and the Classification Guidelines.

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- providing and rolling out classification training to all registered online distributors;
- coordinating joint public awareness and education campaigns on cyber safety and digital content classifications with online distributors;
- liaising with relevant South African and international media content regulators, online distributors and law enforcement agencies to combat child pornography and sexual exploitation on the internet; and
- educating the public together with online distributors about the new Online Regulation Policy and promoting cyber safety.

5. POLICY CONSULTATION PROCESS

Public consultation is central to public policy making processes to firstly educate members of the public on the possible interventions to the challenge at hand, secondly to also obtain the necessary buy-in that is essential for the success of the policy. Public consultations will be as inclusive as possible. Consequently, FPB will visit all 9 provinces and mount an extensive public consultation campaign across the country.

6. CONSULTATION PARTICIPANTS

- Once adopted, the policy will have an impact on all South Africans and foreign companies distributing media content in the Republic of South Africa in relation to the manner in which they engage and use media platforms. In this regard, regulatory partners identified below and the industry are urged to consider the attached Draft Online Regulation Policy and submit their inputs or comments to the Film and Publication Board as directed.
  - ICASA, SABC
  - WASPA, ISPA

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- Universities, NYDA, Film and Media Schools and youth formation
- MDDA, DOC, Brand South Africa
- All content broadcasters and Distributors
- Telecommunications and Network mobile operators
- Online and gaming distributors
- Film distributors and content creators, including creators of self generated content uploaded or posted on social media platforms
- FPB Employees at large
- Classifiers;

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- Parents;
- Educators;
- Civil Society Organisation; and
- Internet users and bloggers

- Law Enforcement Agencies
  - South African Police Services
  - National Prosecuting Authority

SIGNED AND DATED AT CENTURION ON THIS 13th DAY OF FEBRUARY 2015

Mrs. NFT Mpumlwana
Council Chairperson
Film and Publication Board

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DRAFT ONLINE REGULATION POLICY /2014

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Abbreviations and acronyms:

DOC – Department of Communications

EA – Executive Authority

Board – Film and Publication Board

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DEFINITIONS

"Act" – means the Films and Publications Act of 1996, Act No. 65 of 1996, as amended.

"Board" – means the Film and Publication Board

"Online content" – in relation to the distribution of films, games and certain publications, means distribution that is connected by computer or electronic devices to one or more other computers, devices or networks, as through a commercial electronic information service or the Internet.

"Self-generated content or user-generated content" (UGC) – refers to a variety of media available in a range of modern communications technologies. UGC is often produced through open collaboration by one or more people or coordinated participants, who interact to create a product or service online, which they make available to contributors and non-contributors alike.

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POLICY APPROVAL

The signatories below are in favour of the approval of the Online Content Regulation Policy.

Prepared by Signature _____

Sipho Risiba Date _____

Chief Operations Officer

Recommended by Signature _____

Themba P Wakashe Date _____

Chief Executive Officer

Recommended by Signature _____

Mrs Lusanda Rataemane Date _____

Chairperson: OPITCOM

Approved by Signature _____

Mrs Thoko Mpumlwana Date _____

Chairperson: Council FPB

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1. INTRODUCTION

The Film and Publication Board (Board) is a public entity of the Department of Communications, established in term of the Films and Publications Act 65, 1996 (as amended in 2004 and in 2009).

1.1 The mandate of the Board can be summarised as follows:

1.1.1 To regulate the creation, production, possession and distribution of films, games and certain publications by way of classification;

1.1.2 To protect children from exposure to disturbing and harmful material and from premature exposure to adult material;

1.1.3 To criminalise child pornography and the use and exposure of children to pornography.

Section 18(1) of the Films and Publications Act requires any person who intends to distribute any film or game and certain publications in the Republic of South Africa first to register with the Board and to submit to the Board for examination and classification such film, game or publication. Although the current legislation is not platform-specific, the Board's compliance and classification activities have over the year focused more on physical platforms and less on the online space, resulting in children being exposed to unclassified content accessed through the internet and other mobile platforms.

Media convergence – a new technology trend enabled by the digitisation of media content, the widespread availability of high-speed broadband connections, and the proliferation of Internet-enabled devices – has fundamentally transformed the way media content is distributed and consumed. Consumers can now access media content across geographic boundaries, anytime, anywhere, and however they want it.

Until recently the Board adopted a fragmented approach in responding to the demands of industry players and online distributors for a solution to enable them to classify and distribute online content in the Republic of South Africa.

Council and several stakeholders have argued strongly for the need to move from piecemeal responses that apply the existing classification framework to each new technological development, towards one that is framed in such a way as to be adaptive to broader convergent media trends. Further, the Executive authority has also called for a framework

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that can adapt to 'the rapid pace' of technological change in media available to and consumed by the South African community.

Strategic object 4 of the Board's five-year strategic plan requires it to ensure the effective and innovative regulation of content distributed online, mobile and related platforms to protect children and inform the general public. In response, in August 2014 Council approved the Board's Online Content Regulation Strategy. This strategy lists as its core objectives the following:

- to ensure classification and compliance monitoring of digitally-distributed content;
- to provide appropriate technology for online content regulation;
- to inform and educate the community on the challenges of digital content; and
- to partner with national and international regulators on cross-border regulation.

Further, the Board has recently finalised the review of its legislation, the Films and Publications Amendment Bill, 2014 ("the Bill"), and submitted it to the Minister of Communications. Once enacted and applied in conjunction with the approved Online Content Regulation Strategy, the Bill will create a legislative framework that will ensure a greater role for online distributors in classifying their own content on behalf of the Board, using the Board's Classification Guidelines and the Act. Further, in the context of the ever-greater convergence of media technologies, platforms and services, and more media being accessed from the home through high-speed broadband networks, the framework will also make it possible for the industry to enter into co-regulation agreements with the Board for the purposes of content classification and compliance monitoring.

Section 4A of the Act empowers Council, in consultation with the Minister, to issue directives of general application, including classification guidelines, in accordance with matters of national policy that are consistent with the purpose of this Act. Thus on 16 October 2013 Council resolved to enact an online policy that issues directives on how the Board must regulate the distribution of online content in the Republic of South Africa.

Against this background, in order to give effect to the above Council resolution, the goals set out in the Online Content Regulation Strategy, and the Bill, the Online Regulation Policy is hereby enacted. This policy, read with the Online Regulation Strategy and the Bill, will also ensure that classification focuses on media content, rather than on platforms or delivery technologies. This is necessary because regulatory frameworks for media based upon their delivery platform have proven to be unsustainable over time.

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1.2. The context of media convergence

Developments associated with media convergence in South Africa include:

- increased household and business access to high-speed broadband internet;
- the digitisation of media products and services, as seen with the rise of YouTube, Apple iTunes, and other global digital media platforms; the convergence of media platforms and services for both established and new media; the globalisation of media platforms, content and services, making nationally-based regulations more difficult to apply;
- the acceleration of innovation, characteristic of a more knowledge-based economy;
- the rise of user-created content, and a shift in the nature of media users from audiences to participants; greater media user empowerment, due to greater diversity of choices of media content and platforms, and the increased ability to personalise media; and
- the blurring of lines between public and private media consumption, as well as the difficulty of applying age-based access restrictions, as more media are accessed from the home through converged media platforms.
- piecemeal regulatory responses to changes in technologies, markets and consumer behaviour, resulting in uncertainty for both consumers and industry, and raising questions about where responsibilities lie for driving change.

2. APPLICATION OF THE POLICY

This Online Regulation Policy applies to any person who distributes or exhibits online any film, game, or certain publication in the Republic of South Africa. This shall include online distributors of digital films, games, and certain publications, whether locally or internationally. Upon approval this policy shall have the full effect and force of law, as stipulated in section 4A of the Act.

3. OBJECTIVES OF THE POLICY

The objective of this policy is to create a regulatory classification and compliance monitoring framework, giving effect to sections 18(1) and (2) of the Films and Publications Act 65 of 1996 as amended ("the Act"), by enabling effective regulation and speedy classification of

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digital content by the Board, and to create an opportunity for co-regulation between the Board and the industry for the classification of digital content distributed on mobile and digital platforms.

4. GUIDING PRINCIPLES FOR AN ONLINE CONTENT REGULATION POLICY

The Board has identified eight guiding principles for a policy that aims to provide an effective framework for the classification and regulation of online media content in South Africa.

The eight guiding principles are that:

(1) South Africans should be able to read, hear, see and participate in media of their choice;

(2) communications and media services available to South Africans should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community;

(3) children should be protected from material likely to harm or disturb them;

(4) consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints;

(5) the classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services;

(6) the classification regulatory framework should not impede competition and innovation, nor disadvantage South African media content and service providers in international markets;

(7) classification regulation should be kept to the minimum needed to achieve a clear public purpose; and

(8) classification regulation should be focused on content rather than on platform or means of delivery.

Against this background, this policy seeks to create and enhance cooperation between the Board and the industry to ensure uniform classification, labelling and compliance monitoring of digitally distributed content.

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Co-regulation between the Board and the industry will also ensure that the industry assists to efficiently provide classification information to South African consumers under the scope of the Act.

5. POLICY ON ONLINE DISTRIBUTION OF DIGITAL FILMS, GAMES, AND CERTAIN PUBLICATIONS

5.1. In order to ensure the uniform classification of content and the effective regulation of digital content distribution by the Board in the Republic of South Africa, the following policy is hereby enacted:

5.1.1 Any person who intends to distribute any film, game, or certain publication in the Republic of South Africa shall first comply with section 18(1) of the Act by applying, in the prescribed manner, for registration as film or game and publications distributor.

5.1.2. In the event that such film, game or publication is in a digital form or format intended for distribution online using the internet or other mobile platforms, the distributor may bring an application to the Board for the conclusion of an online distribution agreement, in terms of which the distributor, upon payment of the fee prescribed from time to time by the Minister of DOC as the Executive Authority, may classify its online content on behalf of the Board, using the Board's classification Guidelines and the Act; or

5.1.3 Upon payment of the prescribed fee for each title submitted, submit electronically each digital game or film by providing the Board with a link from which the Board will access the online game or film for classification.

5.1.4 Where it is convenient and practical to do so, the Board may dispatch classifiers to the distributors' premises for the purposes of classifying digital content. In such an event the classification shall be deemed to be the classification process of the Board, and the distributors shall ensure that the work of classifiers takes place unhindered and without interference.

5.1.5 In the event that an online distributor arranges to have online content classified by the Board's classifiers in terms of clause 5.1.4, the distributor shall first satisfy the Board that it has storage facilities to store all classified content for audit and related purposes.

5.1.6 The dispatching of classifiers in terms of clause 5.1.4 shall be subject to the Board and the online distributor concluding an agreement in terms of which the online distributor, amongst others, indemnifies the Board for any claim, loss or damage arising from the classification services being rendered at the online distributor's premises.

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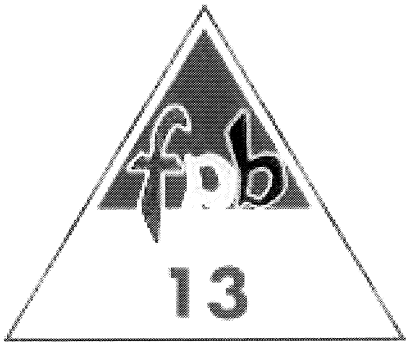
5.1.7 For the purposes of this policy, the words 'online' and 'digital' are used interchangeably.

5.1.8 The terms 'distributor 'and 'content provider' are also used interchangeably.

5.1.9 Online distributors of digital content classified in terms of either clause 5.1.2 or 5.1.3 shall ensure that, in all content distributed via the various media distribution platforms, they display the Film and Publication Board classification rating and logo, as prescribed in Regulation 21 of the Regulations to the Act and as shown in the example below:



5.2. Classification pursuant to an online distribution agreement

In the event that a content provider or distributor chooses to classify its own content in terms of 5.1.2 above, the distributor shall first satisfy the Board that the rating system to be used for classification is aligned with the Board's classification system and Classification Guidelines, and that the distributor is capable of generating classification ratings and symbols as indicated in 5.1.9 above.

5.3. Labelling of digital content distributed online

5.3.1. Upon classification of digital content in terms of either clause 5.1.2 or 5.1.3, all registered online distributors of digital content shall ensure that, prior to distributing any film, game or publication online, they submit to the Board an application, in the prescribed form, for permission to use the FPB logo.

5.3.2. Upon granting such permission, the Board shall also issue the online distributor with a series of barcodes that will have to be displayed by the content distributor along with the classification decision.

5.3.3. In all classification decisions for digital content, the online distributor must ensure that the Board's classification decision and logo is conspicuously displayed on the landing page

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of the website, in the website catalogue of the online distributor's website landing page, at the point of sale, and during the streaming of the digital content.

5.4. Transitional arrangements

5.4.1. It is hereby recorded that the Board has entered into transitional agreements with a number of online distributors who are already distributing digital content in the Republic of South Africa using a classification rating system not aligned with the Board's Classification Guidelines and the Act.

5.4.2. Notwithstanding the duration of each individual contract concluded with online distributors, all online distributors shall ensure that on or before the 31st of March 2016, The ratings systems used for the classification of content intended for distribution in the Republic of South Africa are aligned with the Board's Classification Guidelines and the Act.

5.4.2. As at the 31st of March 2016, no online distributor shall be allowed to distribute digital content in the Republic of South Africa unless such content is classified in terms of the Board's Classification Guidelines, or a system accredited by the Board and aligned with the Board's classification Guidelines and the Act.

5.4.3. All content distributed in the Republic of South Africa at the end of the transitional period shall have been classified in terms of the Board Classification Guidelines and shall display the Film and Publication Board classification decision and logo as illustrated in clause 5.1.9.

5.5. Authorisation of distributors' classifiers

5.5.1. No classification of online media content shall be undertaken by any distributor unless the distributor has been authorised by the Board.

5.5.2 The Board shall not grant authorisation to any distributor unless the distributor satisfies the Board that it has in place a classification and rating system in terms of which the classification process and classification decisions are founded upon the decision-makers consistently applying the Act and the Board's Classification Guidelines, adhering to agreed standards, and employing sound decision-making practices.

5.5.3 The object is that all classification decisions, whether made by the Board or by distributors, will be made in the same way, using the same classification tools for the same classification outcome.

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5.5.4 To ensure that all distributor classifiers are classifying content consistently and are properly applying the statutory classification criteria, the distributor's classifiers must have been trained and certified by the Board. The Board will only certify such classifiers if they have completed training approved by the Board and have demonstrated competencies in the application of the Board's Classification Guidelines and the Act.

5.5.5 In granting authorisation, the Board shall retain the power periodically to renew authorisations and to undertake refresher training to ensure that classifiers stay up to date with changes in legislation, including the statutory classification guidelines, and to maintain their classification skills and knowledge at the required level of competence.

5.5.6 Authorised classifiers may be employed full-time by major online content distributors, or they may be engaged by content providers on a classification task basis. Classifiers who are authorised and trained to meet the same minimum requirements and standards may have greater mobility and opportunities to work across media content industries.

5.6. Training

5.6.1 In order to meet the training requirements in terms of clause 5.5 above, the Board shall develop material for a classification course, and shall deliver classification training for online distributor's classifiers.

5.6.2. The training provided by the Board shall be robust and comprehensive in order to ensure that there is consistency and accuracy in classification decisions.

5.6.3. Such training shall be conducted by professionals with appropriate qualifications to maintain a high level of public confidence in the quality of classification decision-making and in the integrity of the self classification arrangement.

5.6.4. The training shall include a requirement that provides for consistent, minimum classification standards, skills and knowledge for all authorised classifiers by mandating that they complete the training program provided by the Board.

5.6.5. Only the Board shall the power to determine the methodology and duration of the training, which may not last more than five days.

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6. ONLINE DISTRIBUTION OF TELEVISION FILMS AND PROGRAMMES

6.1. All digital content in the form of television films and programmes streamed online via the internet shall first be submitted to the Board for pre-distribution classification.

6.2. In relation to online television films and programmes streamed via the internet, the Board shall in certain circumstances, and for commercial and practical reasons, have the power to determine that such films, television programs and related content that have been classified under an authorised classification system are 'deemed' to have an equivalent Board classification.

6.2. However, to maintain the integrity of the Board's classification scheme, the Board shall only authorise robust and comprehensive classification processes that incorporate the Board's Classification Guidelines and are comparable to those provided for under the Act and the Board Classification Guidelines as reviewed from time to time. Essentially, the Board must be satisfied that authorised classification systems deliver classification decisions comparable to those that might be made if content were classified by the Board's classifiers operating under the Act.

6.3. Where the Board considers that a particular item of media content has generated controversy in another jurisdiction, or is likely to have a high profile on release, it shall have the capacity to call it in for classification by the Board or to request the content provider to classify the product, rather than allow it to be 'deemed'. Content providers will be required to make similar judgements of their own volition to minimise the risk of complaints or of an application for review of the classification.

6.4. The Board's determination concerning what content is to be classified by the Board is intended to operate in parallel with the content provider's determination about content that is deemed to be classified.

6.5. For the purposes of this clause 6, the online distributors shall ensure that their websites contain all classification decisions made by the online distributor, along with an explanation to consumers about how their classification systems work, and what content is 'deemed'.

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7. PROHIBITION AGAINST CHILD EXPLOITATIVE MEDIA CONTENT AND CLASSIFICATION BY THE BOARD OF SELF-GENERATED CONTENT

The rise of user-created content, supported by technological advancements in 'smart phones' and the availability of user distributor tools such as YouTube and other global digital media platforms, has shifted the nature of media users from being audiences to being participants. More and more South Africans, the majority of which are children are using "Contact services 'such as facebook, twitter The bulk of this media content is unclassified, and children are therefore left exposed to unclassified content on online platforms.

In order to minimise the risk of children's exposure to unclassified content on online platforms, it is hereby recorded that:

7.1 user created content includes any publication as defined in section 1 of the Act to include, inter alia, a drawing, picture, illustration or painting; recording or any other message or communication, including a visual presentation, placed on any distribution network including, but not confined to, the internet.

7.2 it is a criminal offence in terms of section 24C the Act, for any person to distribute or upload child pornographic images, posts, publications or videos on online distribution networks or social media platforms for the purposes of child exploitation.

7.3 online distributors must ensure that they comply fully with their obligations as set out in section 24C of the Act by ensuring that they take reasonable steps as are necessary to ensure that their online distribution platforms are not being used for the purposes of committing an offence against children, and report suspicious behaviour by any person using contact services to the Board and South African Police Services.

7.4. With regard to any other content distributed online, the Board shall have the power to order an administrator of any online platform to take down any content that the Board may deem to be potentially harmful and disturbing to children of certain ages.

7.5. In the event that such content is a video clip on YouTube or any other global digital media platform, the Board may of its own accord refer such video clip to the Classification Committee of the Board for classification.

7.6. The decision of the Board's Classification Committee shall be final and binding on the distributors, subject to the online distributor's right to appeal such a decision to the Board's Appeal's Tribunal.

7.7. Upon classification, the Board shall dispatch a copy of the classification decision and an invoice payable by the online distributor within 30 days, in respect of the classification of the content in question.

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7.8. The fee payable in respect of the classification of content by the Board in terms of sub-clause 7.4 above shall be the sum equivalent to what the Board charges per title in respect of boxed films or games submitted to it for classification.

7.9. Failure to pay the said classification fee within the stipulated period may result either in the Board withdrawing the online distributor's registration certificate until the fee is paid, or in the online distributor being penalised and legal action being taken against the distributor in terms of section 24A of the Act

7.10. The online distributor shall, from the date of being notified by the Board in writing of the classification decision, take down the unclassified video clip, substitute the same with the one that has been classified by the Board, and display the Film and Publication Board Logo and classification decision as illustrated in clause 5.1.6.

7.11. Where the user-created content is prohibited or illegal content, the Board shall have the power, in addition to ordering the online distributor concerned to take down the content , to refer the offending and illegal content to the South African Police Services for criminal investigation and prosecution.

8. MATTERS THE BOARD MUST CONSIDER

8.1. It is important that consumers are confident that the online distributor or content provider's system has been thoroughly assessed before being authorised. Consumers must be assured that the online distributor or content provider's systems have been carefully assessed so that the integrity and value of Board classification decisions is not compromised.

8.2. While no two classification systems will be entirely aligned, the Board considers it important that elements of the Board's Classification Guidelines be reflected in the authorised classification system, including:

(i) independent decision-making;

(ii) regard for community standards, particularly the need to protect children from harm;

(iii) meaningful classification information;

(iv) transparency of decisions and classification processes;

(v) availability and integrity of review mechanisms;

(vi) efficient and accessible public complaints processes;

(vii) comparable classification categories and criteria, and endorsement by governments in other jurisdictions.

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9. CHECKS AND SAFEGUARDS

9.1. Allowing industry to classify its own content may raise concerns in certain sectors of South African society about achieving an acceptable balance between content providers' commercial interests and community needs and concerns.

9.2. Accordingly the Board shall retain the power to monitor industry classification decision-making and to penalise serious breaches.

9.3. In the event that an online distributor is found to have manipulated or provided false information to the Board or any other person with the sole object of achieving a classification decision that advances its own commercial interest, the Board may withdraw the online distributor's registration certificate, bar the distributor from the co-regulation regime, and direct that all media content belonging to the distributor be submitted to the Board for classification by the Board.

9.4. Under this policy, all industry classifiers, whether they classify for television networks, film distributors, or other content providers, are subject to the Board's regulatory oversight.

10. ONLINE DISTRIBUTION LICENSING FEE AND CLASSIFICATION FEE PER TITLE

10.1. No online content distributor shall be authorised by the Board to distribute online content in the Republic of South Africa unless it has registered with the Board as an online distributor and has paid the prescribed online distribution licensing fee as determined by the Minister, and any other fees that the Minister may determine from time to time.

10.2. The above online licensing fee shall be paid annually, and shall escalate at the rate to be determined by the Minister.

10.3. Notwithstanding the provision of clause 10.1, the Board shall have the power to charge a classification fee per title submitted for the classification of digital content distributed in the Republic of South Africa. In this regard, the classification fee payable shall vary from case to case, but shall be based on the fee tariff prescribed by the Minister from time to time.

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11. COMPLAINTS

11.1. Complaints about the classification of content will be directed, in the first instance, to the content provider responsible for the classification decision. A complainant may lodge a complaint with the Board where that complainant considers that the complaint has not been satisfactorily resolved. Under the Board's model, the Board shall have power to investigate all valid complaints.

11.2. A content provider or online distributor authorised by the Board to classify its own content must develop a complaint-handling mechanism.

11.3. The complaint-handling mechanism must cover:

(i) awareness and accessibility of the complaints mechanism;

(ii) response time frames, and recording and reporting processes;

(iii) processes for escalating serious complaints; and

(iv) the review and reclassification of classification decisions, where appropriate.

11.4. The Board shall retain the authority to investigate complaints about classification decisions and about unclassified or unrestricted media content. In the course of investigating complaints (especially those that are more complex or serious), the Board may liaise with the content provider or online distributor to ascertain how the original complaint was initially addressed, to obtain reasons for the classification decision (if the content has been classified), or to discuss options for resolving the complaint.

11.5. The Board may, in response to a valid complaint about media content, issue the content provider or online distributor with a 'classify' notice or a 'restrict access' notice.

11.6. The Board may of its own accord direct the content provider or online distributor to classify content or review the original classification decision, arising from investigation into a complaint.

12. REVIEWS OF CLASSIFICATION DECISIONS

12.1. A review of a classification decision involves the making of a new decision on the merits, which replaces the original decision.

12.2. Under this policy, all classification decisions for all media content, including television programs streamed through the internet, are reviewable.

12.3. The Board shall have the power and authority to review all content, including content that has been voluntarily classified by the online content provider or distributor.

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13. AUDITS OF INDUSTRY CLASSIFICATION DECISIONS

13.1. As part of the quality-assurance process and monitoring of industry classification decision-making, the Board shall have the power to undertake post-classification audits of media content that must be classified and of media content that must be restricted to adults.

13.2. In conducting audits, the Board may draw on the classification experience of its classifiers as the independent benchmark decision-maker.

13.3. The Board shall use the audits as the primary mechanism by which the Board proactively manages industry classifiers and classification activities, to maintain a high standard of decision-making.

13.4. Further, the Board shall use the audits as the means for advising content providers and/or individual classifiers about any issues identified with the classification decision-making process, and may initiate remedial action to assist classifiers to improve their job performance. This might involve liaising with the online distributor or content provider and suggesting additional training or supervision. In some cases, audit outcomes might require content providers to revisit decisions as appropriate.

13.5. The Board will also use audits as an evidence base of serious and repeated misconduct, in which case the Board will have the power to impose sanctions.

14. SANCTIONS REGIME FOR INDUSTRY CLASSIFIERS

14.1. Sanctions are another means of protecting consumers and of ensuring that the integrity of the entire classification scheme is maintained. Sanctions are intended to be a 'last resort' to prevent industry classifiers from continuing to make classification decisions that are repeatedly misleading, incorrect, or grossly inadequate.

14.2. In keeping with the above principle, all content provider or online distributors authorised to distribute online content in the Republic of South Africa are subject to the penalty regime of the Board in terms of the Act, this policy, and any other directive that the Board may issue from time to time.

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14.3. The Board shall have the power to impose fines and/or withdraw the authorisation of any content provider or online distributor who repeatedly makes decisions that are misleading, incorrect, or grossly inadequate..

15. CLASSIFICATION DECISIONS DATABASE

15.1. Every content provider or online distributor authorised in terms of this policy shall establish and administer a centralised database to record classification decisions made by the classifiers of the content provider or online distributor.

15.2. The database shall include details such as the classification decision and any consumer advice, whether it is a Board or industry classification, the responsible organisation or classifier, and whether the content is original or modified.

15.3. The Board shall publish on its website a central and reliable database to enable online distributors and content provider to check whether content has already been classified.

16. POLICY REVIEW

This policy shall be reviewed annually, based on legal and operational requirements.

16.1. The Chief Operations Officer ("COO") shall coordinate the review of the policy.

16.2. This policy shall be reviewed when required by the Office of the Chief Operations Officer ("COO"), and approved by the Council. It shall become effective from the date approved or indicated by the Council.

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