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**CONTEXTUALIZING THE FPB'S NEW BRAND REPOSITIONING AS A CONTENT REGULATORY  
AUTHORITY**

Dr Mashilo Boloka<sup>1</sup>

In February 2023, the Film and Publication Board (FPB) unveiled its new logo and Brand Repositioning Strategy which redefined it as a Content Regulatory Authority of South Africa. The purpose of this article is to contextualize this Brand Reposition Strategy. The FPB's Brand Reposition Strategy as the Content Regulatory Authority of South Africa is anchored on the following: Powers and responsibilities entrusted to it by the Films and Publications Amendment Act, no 11 of 2019 (the Act), its mandate to protect the public, particularly children against harmful and prohibited content, contained in films, games and publications as content.

**FPB's powers and responsibilities in accordance with the Act,**

The conduct and legitimacy of any regulator is determined by the Act that entrusts in it the *authority* to act and perform certain powers, and the ability to make regulation and enforce compliance with those regulations. The responsibilities and functions that the FPB performs are derived from the Act as amended in 2019 (Act no 11 of 2019). Section 3(1) (a) of the Act establishes the Film and Publication Board as a juristic person which shall perform the functions, exercise the powers and carry out the duties assigned to, conferred on or imposed upon them in terms of *this Act or any other law*. In the execution of these functions and responsibilities, section 3(2) of the Act requires the FPB to be independent, impartial and must perform their functions without fear, favour, or prejudice and act in accordance with applicable law.

To achieve this mandate, the entity as per section 2 of the Act, regulates the creation, production, possession and distribution of films, games and certain publications. These functions are carried out through:

- Classification of content, including films, games and certain publications which in terms of the Act includes, any of the following, published using the internet, any newspaper, magazine, book, periodical, pamphlet, poster or other printed matter; any writing or typescript which has in any manner been duplicated; any drawing, picture, illustration or painting; any print, photograph, engraving or lithograph; any record, magnetic tape, soundtrack, or any other object in or on which sound has been recorded for reproduction;
- Registration of online commercial content distributors or exhibitor of films or games and Internet Service Providers and Internet Access Service Providers;
- Issuing self-classification certificates and accreditation of international rating systems;

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<sup>1</sup> Dr Mashilo Boloka is the Executive Officer of the Film & Publication Board (FPB).

- Exemption of persons and/or entities from certain sections, and exclusions from application of the Act;
- Receiving and managing public complaints relating to prohibited content with the Act or any unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors;
- With the assistance of the South African Police Services, enter any premises or facilities that are used to store films or games being distributed or intended for distribution, and *view and take copies* of all the information, reports, documents and other material needed for the inspection of labelling; and in the prescribed form, issue a compliance notice and notice to remove from display, including from display in an online medium, unclassified films or games;
- Referring matters, child pornography, to a police official of the South African Police Service and National Director of Public Prosecution for investigation and prosecution;
- Developing regulations on any matter that may be prescribed under this Act and or generally required for the better achievement of the objects and purposes of this Act, in consultation with the Minister.

### **Mandate to protect the public particularly children against harmful and prohibited content**

As per the provisions of the Act, the FPB exists to protect the public, particularly children against what is defined in the Act as *harmful and prohibited content* distributed via various platforms, online and certain publications. While “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. “Harmful content” on the other hand means content that can cause emotional, psychological or moral distress to a person, whether it be through a film, game or publication through any on or offline medium, including through the internet.

Section 31 (3) (a) requires the FPB to develop and publish the guidelines which it can apply in order to determine what is harmful or disturbing in terms of the Act and *Gazette* within two years after the commencement of this Act. In addition to section 31 (2) (e) and (f) requires the FPB to, in consultation with the Minister, make regulations on any matter that may be prescribed under this Act and generally on any matter required for the better achievement of the objects and purposes of this Act. All these sections empower the FPB as the legitimate authority over the protection of harmful and prohibited content.

### **Films, games and publications as content**

Within a digital context, films, games and publications are examples of what is defined as content distributed via various platforms, including traditional/linear broadcasting which as per section 92 of the Constitution and 18(6) of the Act is within Independent Communications Authority of South Africa’s (ICASA) domain. The biggest challenge in South Africa is that although the country adopted a tech-neutral policy as far back as 2005, with the enactment of the Electronic Communications Act (ECA), content and the consumption thereof is still being defined in technology and platform specific

terms. Other than the archaic and tech specific definition of ‘television’ content in section 27 of the Broadcasting Act of 1999, there is nowhere content is being defined in the South African Communications related legislations including the ECA. This is a reflection of a content environment that has not been modernised nor adapted to the rapidly changing digital world, hence the mandate creep in certain regulatory areas, duplication and fragmentation and unaccounted for regulatory scopes.

However, the 2022 Budget vote by the Minister of Communications and Digital Technologies has raised hopes that this matter will finally be dealt with sooner. In brief, the Budget vote proposes a single content regulatory system, that is platform and tech-neutral, including ratings. We are excited that our policy-maker has not adopted a simple mandate overburdening approach wherein all the regulators are conveniently merged to establish a single regulator. As the contrasting lessons from the UK and Australia have shown, that will be counter-efficiency.

However, until such time that the policy is reviewed, all the fragmentation, duplication shall remain the days of our lives. It therefore, requires all the regulators to collaborate to minimise these challenges. The 4 regulators within the communications environment have established what is referred as the Digital Regulators Forum. Chaired by the FPB, the forum brings together the 4 regulators: FPB, ICASA, Information Regulator and Domain Name Authority (.ZDNA). On their own individual regulators are negotiating agreements on further collaborations.

## Conclusion

The branding and reposition strategy within the content industry is not a mandate grab, but a strategy informed by legitimate powers and responsibilities accorded to it by the Films and Publications Act.

**ENDS**

## For media queries or interviews please contact:

Ms Manala Botolo

Assistant Manager: Communications and Marketing

Email: [manala.botolo@fpb.org.za](mailto:manala.botolo@fpb.org.za)

Mobile: 082 860 6748

## Notes to the editor

The objective of the Act of 1996 is to regulate the creation, production, possession and distribution of films, games and certain publications, and more recently certain online content. This is done to provide consumer advice to enable adults to make informed viewing, reading, and gaming choices for themselves and children in their care; to protect children from exposure to disturbing and harmful material and from premature exposure to adult experiences, and to make the use of children in, and the exposure of children to pornography, punishable.

Paramount to the mandate of the FPB is the protection of children. Protecting children under the Act is a proportional balancing of the rights afforded in the South African Constitution against the right of the child. Children have the right to be protected from physical, mental, emotional, spiritual, or moral harm and to be protected from maltreatment, neglect, abuse, or degradation.

It further ensures that children's best interest is of paramount importance in every matter concerning a child.