



# FPB ONLINE REGULATION POLICY

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**Head Office:**

ECO Glade 2, 420 Witch Hazel Street,  
ECO Park, Centurion, 0169  
Tel: +27 12 661 0051 Fax: +27 12 661 0052  
E-mail: [information@fpb.gov.za](mailto:information@fpb.gov.za)



film and publication board



@FPB\_ZA

**We inform. You choose.**

[www.fpb.org.za](http://www.fpb.org.za)

**Cape Town:**

Second Floor, 56 Barrack Street, Cape Town, 8000 | Tel: +27 21 461 8171 Fax: +27 21 461 8126

**Durban:**

Number 12, Concorde Place Westridge, Mayville, 4091 | Tel: +27 31 261 7139 Fax: +27 31 261 7130

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## 1 Definitions

- 1.1 **“Act”** means the Films and Publications Act 65 of 1996, as amended from time to time;
- 1.2 **“Bill”** means the Film and Publications Amendment Bill, 2014;
- 1.3 **“Board”** means the Film and Publication Board as established by section 3 of the Act;
- 1.4 **“Council”** means the Council established by section 3 of the Act
- 1.5 **“film”** means any sequence of visual images in such a manner that by using such recording such images will be capable of being seen as a moving picture and includes any picture intended for exhibition through any medium or device;
- 1.6 **“game”** means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decision, inputs and direct involvement of the game player or players; and
- 1.7 **“Minister”** means the Minister to whom the administration of the Act has been assigned.

## 2 Introduction

- 2.1 The Board is a public entity of the Department of Communications, established in terms of the Act.
- 2.2 The mandate of the Board can be summarised as follows:
  - 2.2.1 to regulate the creation, production, possession and distribution of films, games and certain publications by way of classification;
  - 2.2.2 to protect children from exposure to disturbing and harmful material and from premature exposure to adult material; and
  - 2.2.3 to criminalise the use of children in and exposure of children to pornography.
- 2.3 Section 18(1) of the Act requires any person who intends to distribute any film or game and certain publications in the Republic of South Africa to first register with the Board and submit the film, game or publication to the Board for examination and classification. Although the current legislation is not platform-specific, the Board’s compliance and classification activities have, over the years, 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.
- 2.4 Media convergence – a new technology trend enabled by the digitization 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.

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- 2.5 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.
- 2.6 The 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. The Executive branch of the state has also called for a framework that can adapt to “the rapid pace” of technological change in media available to, and consumed by, the South African community.
- 2.7 Strategic object 4 of the Board’s five year strategic plan requires it to ensure the effective and innovative regulation of content distributed online and on mobile and related platforms, to protect children and inform the general public. In response, in August 2014, the Council approved the Board’s Online Content Regulation Strategy (Strategy). This Strategy lists, as its core objectives as the following:
- 2.7.1 to ensure classification and compliance monitoring of digitally-distributed content;
  - 2.7.2 to provide appropriate technology for online content regulation;
  - 2.7.3 to inform and educate the community on the challenges of digital content; and
  - 2.7.4 to partner with national and international regulators on cross-border regulation.
- 2.8 In addition to this Strategy, the Board has recently finalised the review of its legislation, the Bill and submitted it to the Minister. Once enacted and applied in conjunction with the approved 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. 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.
- 2.9 Currently, section 4A of the Act empowers the Council, on 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 the 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.

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2.10 Against this background, and 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.

### **3. Application of the Policy**

3.1 This Policy applies to any person who distributes or exhibits online any film or game or certain publications in the Republic of South Africa. This Policy also sets out the way in which the Board will deal with user generated content (UGC).

3.2 The following exemption as set out in clause 34(1)(a) of the FPB Classification Guidelines for the classification of films, interactive computer games and certain publications applies to this Policy:

*“All publications that are bona fide newspapers or magazines published by a member of a body either recognised by the Press Ombudsman or another recognised self-regulatory authority, and that subscribe and adhere to a code of conduct, do not fall within the jurisdiction of the FPB”.*

### **4 Objectives of the Policy**

The objectives of this Policy are:

4.1 to create a regulatory classification and compliance monitoring framework, giving effect to sections 16 and 18 of the Act by enabling effective regulation and speedy classification of digital content by the Board; and

4.2 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.

### **5 Online distribution of television films and games**

5.1 Section does not apply to UGC for the reasons set out in section 6.

5.2 All online films or games distributed, or to be distributed, in the Republic of South Africa must be classified before distribution.

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- 5.3 No online content distributor will be authorised by the Board to distribute online films and games in the Republic of South Africa unless it has registered with the Board as an online distributor and has paid the prescribed registration fee for content providers as determined by the Minister, and any other fees that the Minister may determine from time to time.

**Permit.**

- 5.4 Section 23(2) of the Act sets out a process for the exemption of a class of films or games from classification, subject to conditions as outlined in the provision of the Act below

*“The Board may, in its discretion and subject to such conditions as it may deem fit to impose...by means of a permit, issued in the prescribed form,...exempt from classification ...any particular class of films or games, ...and may at any time, after due enquiry withdraw any such permit or exemption...”*

- 5.5 Class’ speaks to type, that is characteristics, attributes and qualities. Typically, games distributed through an app store have certain common characteristics, namely they are of a relatively low level of sophistication and file sizes are relatively small. This gives them the attributes of a class. An additional attribute of the class is that such films and games will be distributed through an online medium.
- 5.6 Until the Act is amended to allow for the practical regulation of online content, the Board sets out guidelines in this Policy to regulate the distribution of online content by issuing a permit for exemption to online distributors granted in terms of section 23(2).

**Agreements with online distributors**

- 5.7 The permit in section 23(2) must be in the prescribed form. The Regulations to the Act at present do not prescribe the form for such a permit; therefore the Board will draft these permits in the form of an agreement to be negotiated with the online distributor (Agreement).
- 5.8 The Agreement must contain the following terms to fulfill the requirements of a permit:
- 5.8.1 the online distributor is exempted from submitting the following class of films or games for classification by the Board: games or films distributed over an online medium;
  - 5.8.2 the online distributor must classify the content in accordance with a classification system that has been accredited by the Board (in terms of paragraph 5.10) or through self-classification after undergoing training with the Board (in terms of paragraph 5.11);
  - 5.8.3 to maintain the permit, the online distributor must adhere to the terms of this Agreement;
  - 5.8.4 the Board retains the right to audit samples of classified content; and

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5.8.5 the online distributor must pay the Board the fees as prescribed by Regulations to the Act.

5.9 The Board has the right to withdraw the permit at any time if the online distributor does not comply with the permit conditions. Online distributors may approach the Board for a permit in terms of section 23(2). Any existing permits with online distributors will be amended in accordance with this Policy from time to time.

**Classification and labeling of content**

5.10 To enable online distributors to classify films or games using a classification system other than the Board's, the Board must accredit that classification system. While no two classification systems will be entirely aligned, the Board considers it important that elements of the Classification Guidelines are reflected in the accredited classification system, including:

5.10.1 independent decision-making;

5.10.2 the need to protect children from harm;

5.10.3 meaningful classification information;

5.10.4 transparency of decisions and classification processes;

5.10.5 availability and integrity of review mechanisms;

5.10.6 efficient and accessible public complaints processes;

5.10.7 alignment with the Board's classification decisions and labelling requirements; and

5.10.8 comparable classification categories and criteria and endorsement by governments in other jurisdictions.

5.11 Where an online distributor elects to self-classify, the distributor's classifiers must be trained and certified by the Board and ensure that their processes are substantially similar to the Board's classification processes. The Board will only certify such classifiers if they have completed the training approved by the Board and have demonstrated competencies in the application of the Board's Classification Guidelines and the Act. Training must be ongoing; its frequency determined by needs such as the introduction of new classification staff members by the distributor or changes to the Board's Classification Guidelines.

5.12 All content classified pursuant to the provisions of paragraphs 5.10 and 5.11 above must conspicuously display the Board's logo and classification rating on the landing page of the website or in the website catalogue. The logo must be displayed as prescribed in Regulation 21 of the Act and as illustrated in the example below:



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## 6 User generated content

- 6.1 User created (or generated) content (UGC) is content created by users of online services, which enable such content to be uploaded by the user. It applies to both professional and amateur productions and does not distinguish between whether consumers must pay to view the content or not.
- 6.2 The rise of UGC, 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 and Twitter. The bulk of this media content is unclassified content on online platforms.
- 6.3 The volume of UGC is enormous. It is estimated that 300 hours of video, much of it UGC, is uploaded to YouTube alone every minute.
- 6.4 UGC presents the following challenges:
- 6.4.1 the majority of it is produced, hosted in, and distributed from, foreign countries in which the Board has no jurisdiction;
  - 6.4.2 the sheer volume being produced makes traditional methods of review and classification impossible; and
  - 6.4.3 the diffuse nature of the internet means that the Board cannot keep track of every website distributing UGC.
- 6.5 The effect of these challenges is that the Board cannot use its finite resources to attempt to classify and regulate UGC in general. To attempt to do so would consume resources of the Board that could be better spent classifying and regulating matters which it can.
- 6.6 The Board may, however, exercise a discretion to regulate specific instances of UGC which constitute the content described in sections 16(2),16(4) and 18(3) of the Act. In exercising its discretion the Board will take into account the following factors:
- 6.6.1 the target market of the UGC (for example children);
  - 6.6.2 its accessibility and the extent of its distribution;
  - 6.6.3 the egregious nature of the content; and
  - 6.6.4 the potential to cause severe harm, especially to children.
- 6.7 Where the Board regulates such content it may do so on its own accord or on the basis of complaints received by members of the public in relation to the content set out in sections 16(2), 16(4) and 18(3) of the Act. The complaints process is dealt with in more detail at paragraph 7.
- 6.8 The Board may approach the media platform including internet services providers, to



take down the offending content or institute criminal charges, where appropriate.

6.9 In addition, the Board's role in relation to UGC will be expressed through its education and awareness mandate. The Board will, subject to budgetary considerations, conduct campaigns together with registered online distributors to:

6.9.1 inform the public as to what UGC is;

6.9.2 explain that the majority of UGC is unclassified throughout the world;

6.9.3 warn consumers that they do not have the security of knowing that the Board has reviewed and classified the content before they view it and that there is therefore no advice of any sort from the Board attached to UGC; and

6.9.4 advise consumers to exercise caution, and in particular to take care when exposing or permitting children to be exposed to UGC.

## 7 Complaints

7.1 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. The Board has the power to investigate all substantiated complaints.

7.2 A content provider or online distributor authorised by the Board to self-classify its content must develop an internal complaint-handling mechanism.

7.3 The complaint handling mechanism must cover:

7.3.1 awareness and accessibility of the complaints mechanism;

7.3.2 response time frames and recording and reporting processes;

7.3.3 processes for escalating serious complaints; and

7.3.4 the review and reclassification of classification decisions, where appropriate.

7.4 In all instances, the Board retains 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.

7.5 The Board may, in response to a complaint about media content or of its own accord:

7.5.1 issue the content provider or online distributor with a 'classify' notice or a 'restrict access' notice;

7.5.2 direct the content provider or online distributor to take down offending content;

7.5.3 classify content or review the original classification decision; or

7.5.4 lay criminal charges, where appropriate.



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## **8 Public awareness and educational campaigns**

The Board shall together with industry and stakeholders conduct public awareness and educational campaigns to foster digital literacy and ensure a secure cyber environment particularly for children taking into account the fundamental rights to security, dignity, access to information, the right to communication and freedom of expression.

## **9 Review of classification decisions by self-classifiers**

9.1 Allowing online distributors to classify their 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 Self-classification will only be permitted where classifiers use the Board's classification system as set out in paragraphs 5.10 and 5.11.

9.3 The Board retains the power to review a selection of content that has been self-classified by online distributors to ensure consistency with the Board's Classification Guidelines. Where inconsistencies are detected during a review, the Board may elect to expand the sample of content reviewed. The Board may offer further assistance to self-classifiers in complying with the Board's Classification Guidelines. As a last resort, the Board retains the power to revoke an online distributor's right to self-classify and the certification of the online distributor's classifiers may be revoked in the case of serious or persistent breaches.

9.4 Self-classifiers must submit schedules of classifications to the Board. The Board will then select a sampling of content to review. The self-classifiers must provide the compliance monitors with copies of selected content; alternatively the online distributor may elect to give the Board's compliance monitors access to the online films and games to conduct the review.

9.5 If the Board objects to the classification applied to a particular film or game, it must notify the online distributor which must promptly work towards updating the classification to comply with the guidance of the Board.

9.6 If detected during a review that a film or game that falls within the description of an 18 age rating in the Act and the Board's Classification Guidelines is rated lower than 18, the online distributor must immediately classify such content as 18 when distributing in the Republic of South Africa.

9.7 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 section 23(2) permit and direct that all media content belonging to the distributor be submitted to the Board for classification by the Board.

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## **10 Audits of self-classification decisions**

- 10.1 As part of the quality-assurance process and monitoring of self-classification the Board has the power to undertake post-classification audits of media content that must be classified and of media content that must be restricted to adults. This is to ensure that classifications are legally sound and valid.
- 10.2 Board uses the audits as the primary mechanism by which the Board proactively manages and oversees the activities of self-classifiers, to maintain a high standard of consistency during self-classification.
- 10.3 The Board also uses the audits as the means for advising self-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.
- 10.4 Where necessary, the Board may use the outcome of audits as evidence of serious and persistent breaches as set out in paragraph 8.3.

## **11 Sanctions regime for self-classification decisions**

- 11.1 All 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 and any other directive that the Board may issue from time to time.
- 11.2 In terms of the Act, the Board has the power to impose fines and/or withdraw the permit of any online distributor who does not comply with this Policy or the permit conditions as set out in paragraphs 5.8, 8.3, 8.7 and 9.4

## **12 Classification decision database**

- 12.1 Every online distributor authorised for self-classification must establish and administer a centralised database to record classification decisions made by their classifiers. The database must be accessible to the Board's compliance monitors and must include details such as the classification decision and any consumer advice.
- 12.2 The Board will publish on its website a central and reliable database to enable online distributors to check whether content has already been classified.

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**13 Policy review**

13.1 This Policy may be reviewed from time to time, based on legal, technological and operational requirements.

13.2 This Policy shall become effective on the date to be fixed by the Minister through notice in the Government Gazette.

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*[Signature]*