



FPB Online Regulation Policy May 2016



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Section 1 - Definitions



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- The terminology used in the Online Content Regulation (“Policy”) are defined as defined in the Films and Publications Act 65 of 1996, as amended (“Act”) unless as otherwise stated.

Section 2 - Introduction

- This section outlines the mandate of the FPB.
- In terms of the Act, it is mandatory that all films and games be subjected to pre-distribution classification.
- Media convergence has transformed the distribution of media content and this poses a unique challenge for the FPB.
- Strategic objective 4 of the FPB's 5 year strategic plan requires the FPB to ensure effective and innovative regulation of content distributed online.
- Pursuant to the above, in August 2014 the Council approved the FPB's online content regulation strategy ("Strategy")

Section 2 continued...

- Section 4A of the Act empowers the Council in consultation with the Minister of Communications (“Minister”) to issue directives of general application.
- Thus on 16 October 2013 Council resolved to enact an online consultation.

Section 3 – Application of the Policy

- The Policy applies to every person who distributes and exhibits online any film or game or certain publication in the Republic of South Africa.
- The Policy also outlines how the FPB will deal with user generated content.
- The exemptions applicable to bona fide newspapers and magazines published by a member of the Press Ombudsman or another recognised self-regulatory authority as outlined in the Act shall also apply to the Policy.

Section 4 – Objectives of the Policy

The objectives of the Policy are:

- to create a regulatory classification and compliance monitoring framework, thereby giving effect to sections 16 and 18 of the Act; and
- to create an opportunity for co-regulation between the FPB and industry for the classification of digital content distributed on mobile and digital platforms.

Section 5 - Online distribution of television films and games

- This section does not apply to user generated content.
- No online content distributor will be authorised to distribute films and games unless they have registered with the FPB and paid the prescribed fees as determined by the Minister from time to time.

Permit

- Section 23(2) of the Act sets out the process for the exemption of a class of films or games from classification, subject to conditions outlined in the Act.
- The FPB will invoke the provisions of section 23(2) to regulate online content and issue a permit for exemption.

Section 5 continued....

Agreements with online distributors

- The permit referred to in section 23(2) of the Act will be in the form of an agreement to be concluded with online distributors.
- The FPB has the right to withdraw the permit at anytime if the online distributor fails to comply with any of the permit conditions.

Section 5 continued...

Classification and labelling of content

- The FPB must accredit a foreign classification system in order for the online distributor to classify content using the said system.
- Where an online distributor elects to self classify content, the distributor's classifiers must first be trained and certified by the FPB and ensure that their processes are substantially similar to the FPB's classification process.
- The training must be ongoing as determined by the FPB from time to time.
- All content must display the logo of the FPB together with the classification rating and consumer advice.

Section 6 – User generated content

- User generated content (“UGC”) is defined as content which is created by users of online services, which enable such content to be uploaded by the user, it applies to both professional and amateur productions.
- The volume of UGC poses a challenge for the FPB and cannot therefore classify or regulate UGC.
- However, the FPB may exercise its discretion to regulate specific instances of UGC which constitute prohibited content in terms of sections 16(2), 16(4) and 18(3) of the Act.
- The FPB may also regulate UGC on the basis of complaints received from members of the public.

Section 6 continued...

- The FPB may approach a media platform including internet service providers to take down offending content or institute criminal charges where appropriate.
- The FPB will conduct education and awareness campaigns together with registered online distributors.

Section 7 - Complaints

- Complaints relating to the classification of online content shall first be directed to the content provider responsible for the classification decision.
- Online distributors who have been authorised to self-classify must develop an internal complaint handling mechanism.
- The FPB retains the authority to investigate complaints about classification decisions and unclassified or unrestricted media content.

Section 8 – Public awareness and educational campaigns

- The FPB shall together with industry and stakeholders conduct public awareness and educational campaigns.
- These campaigns will be aimed at fostering 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.

Section 9 – Review of classification decisions by online distributors on behalf of the Board

- The FPB retains the power to review a selection of content that has been self-classified by online distributors to ensure consistency with the FPB classification guidelines.
- Online distributors must submit a schedule of classifications to the FPB.
- If the FPB objects to the classification rating applied to a film or game, the FPB must notify the online distributor who must then rectify the matter.
- Should it be detected that content which should've been rated 18 is given a lower age rating, the online distributor must immediately classify such content as 18.

Section 9 continued....

- Should an online distributor be found to have manipulated or provided false information to the FPB in order to advance it's own commercial interests, the FPB may withdraw the section 23(2) permit and direct that all media content belonging to the distributor be submitted to the FPB for classification by the FPB.

Section 10 - Audits of classification decisions by online distributors



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- As part of the quality assurance process and monitoring of distributors classification decisions the FPB has the power to undertake post-classification audits of media content.
- The FPB also uses these audits as a means for advising online distributors to ensure and maintain consistent application of the FPB classification guidelines.
- Where necessary, the FPB may use the outcome of these audits as evidence of serious and persist breaches of the section 23(3) permit.

Section 11 – Sanctions regime for classification by online distributors



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- All authorised online distributors are subject to the penalty regime of the FPB in terms of the Act or any other directive issued by the FPB from time to time.
- The Act empowers the FPB to impose fines and/or withdraw the section 23(2) permit.

Section 12 – Classification decision database

- Every authorised online distributor must establish and administer a centralised database to record classification decisions made by their classifiers.
- The database must be accessible to the FPB's compliance monitors.
- The FPB will publish on its website a central and reliable database to enable online distributors to check whether content has already been classified.

Section 13 – Policy review

- This policy will be reviewed from time to time, based on legal, technological and operational requirements.
- The policy shall become effective from the date approved or as indicated by the Council after approval by the Minister.

Thank
you

