

The Films and Publications Board Online Content Regulation Policy 2016

The Films and Publications Board (“the Board”) has published a revised Online Content Regulation Policy which will come into force on a date to be published in the Government Gazette.

The Board intends that the Policy will create an effective regulatory framework for the classification of digital content. The Policy also seeks to create a basis for a form of co-regulation between the Board and industry for the classification of digital content distributed on mobile and digital platforms.

The Policy is structured as follows:

- Online distribution of “television films” and games
- User-generated content (UGC)
- Complaints
- Self-classification

Who does the Policy apply to?

Any person who distributes or exhibits online any film or game or publication (excluding newspapers and magazines falling under the Press Council).

Online distribution of “television films” and games

The Policy states upfront that all online films or games distributed or to be distribution in South Africa must be classified before distribution. Online content distributors must register with the Board to distribute online films and games and pay the “prescribed registration fee for content providers” as determined by the Minister, together with any other fees that the Minister may determine from time to time.

The Board will regulate the distribution of online content through the issuing of an exemption permit to online distributors under section 23(2) of the Films and Publications Act.

Exemptions are to apply to different classes of films and games, and will be subject to conditions imposed by the Board, including rights of withdrawal of the exemption.

According to the Policy a “class” of films or games “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 class. An additional attribute of the class is that such films and games will be distributed through an online medium.”

Permits issued under section 23(2) – to be applied for by way of letter - will be in the form of agreements to be negotiated with online distributors.

This agreement will specify that the online distributor is exempted from submitting games or films distributed over an online medium for classification, but can instead

- classify the content themselves in accordance with a classification system that had been accredited by the Board; or
- self-classify the content using the Board’s Classification Guidelines once the necessary training has been provided by the Board (with further training to be provided as required).

The Policy sets out various considerations the Board will take into account before accrediting another classification system and lists requirements and checks and balances for self-classified content.

Display of classification decision

Any content self-classified or classified in terms of an accredited classification system must “conspicuously display the Board’s logo and classification rating on the landing page of the website or in the website catalogue”. Like so:



User-generated content (UGC)

The Policy refers to UGC as content created by users of online services which enable such content to be uploaded by the user. UGC can be professional or amateur and it is not relevant whether consumers must pay to view the content or not. The Policy notes that the bulk of this content is unclassified and recognises that there is an enormous quantity of such content, most of which is produced, hosted in and distributed from foreign jurisdictions.

As a consequence, the Board does not have the necessary resources to classify UGC. It will still however, have a discretion to regulate “specific instances of UGC” where:

- A publication contains sexual conduct which violates or shows disrespect for the right to human dignity of any person, degrades a person, constitutes incitement to cause harm; advocates propaganda for war; incites violence; or advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm.
- A publication which would be classified XX or Refused Classification (RC).
- A film which would be classified RC, XX or X18 or which contains a scene which may be disturbing or harmful to, or age-inappropriate for, children.
- A complaint is received.

In deciding whether or not to regulate specific instances of UGC, the Board will consider:

- The target market
- The accessibility and extent of distribution of the UGC
- The “egregious nature” of the content, and
- The potential to cause sever harm, especially to children.

Under the Policy the Board may approach a “media platform, including internet services providers, to take down the offending content or institute criminal charges, where appropriate.”

Complaints

A member of the public wishing to complaint about classification of content must first approach the “content provider responsible for the classification decision”. This can be escalated to the Board if not satisfactorily resolved. The Board retains the authority to investigate any complaints.

If a “content provider or online distributor” self-classifies content, it must have an internal complaints procedure complying with the requirements of the Policy.

In response to a complaint or at its own discretion, the Board:

- Issue the content provider or online distributor with a “classify” notice or a “restrict access” notice;
- Direct the content provider or online distributor to take down offending content;
- Classify content or review the original classification decision;
- Lay criminal charges, where appropriate.

Public awareness and educational campaigns

The Board will work with industry and stakeholders to conduct public awareness and educational campaigns to promote digital literacy and a secure cyber environment.

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