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SUBMISSION BY THE CENTRE FOR JUSTICE AND CRIME PREVENTION (CJCP) ON THE DRAFT ONLINE REGULATION POLICY

Submission made to the Film and Publication Board in response to the call for public comments on the Draft Online Regulation Policy developed under Section 4A of the Film and Publications Act 61, of 1996, as amended, published in the Government Gazette, Notice 182 of 2015, 4 March 2015.

Members of the Board: Justice Azhar Cachalia (Chairperson), Zyda Rylands, Ann Skelton, Lullu Tshiwula, Nomfundo Walaza, Elrena van der Spuy, Justice Jody Kollapen; Justice Vincent Saldanha; Adele Kirsten

Executive Director: Patrick Burton

An association incorporated under Section 21 - Reg No: 2005/012780/08

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About the CJCP

1. The Centre for Justice and Crime Prevention (CJCP) is a Section 21 Not-for-Profit organization working in the field of crime and violence prevention, and on the development of safe communities and environments, both on and offline, with a particular focus on children and youth.
2. The CJCP conducts high quality research on various aspects relating to safety, to violence prevention, and specifically, to the protection and well-being of children and young people. To this end, the CJCP has conducted several national representative population studies on youth victimization, school violence, child abuse violence and neglect, and of particular reference to this submission, on young people's experienced of cyberbullying, of online safety, and of young people's own agency in responding to risk and potential harms online. The CJCP has, and is currently working with a range of international institutions and research bodies on issues of online safety, including UNICEF (South Africa, Headquarters, and Office of Research at Innocenti), the Department of Media and Communications at the London School of Economics, and the Berkman Centre for Internet and Society at Harvard University. In addition, the CJCP has sat on and facilitated panel discussions at the Internet Governance Forum, on youth online safety, and on risks and opportunities, and presented at the UN Convention on the Rights of the Child's Day of General Consultation on Child's Rights Online: balancing Risks and Opportunities.

Introduction

3. The CJCP welcomes the opportunity to comment on the Draft Online Regulation Policy, and thanks the Film and Publications Board (FPB) for the consideration, thought and intention that has clearly gone into the development of the draft paper.
4. The CJCP also recognizes that the FPB has been mandated to
 - a. protect children from disturbing and harmful material, and from premature exposure to adult material, and
 - b. to criminalise child pornography and the use and exposure of children to pornography
5. The CJCP recognizes that the Draft Online Regulation Policy is one of the instruments available to the FPB to facilitate the furtherance of these objectives, in a way that is comprehensive, responsive and anticipatory of convergent media trends.

Comments on the Draft Policy

6. While recognizing the above, the CJCP has some concerns regarding the wording of the policy.
7. As it stands, the policy does not adequately reflect the framework of rights and opportunities that should underpin a national policy that both cements the opportunities that online technology and

content presents, and ensures that the best interests of all users, particularly vulnerable populations such as children, are protected. At a global level, children and young people's digital use should be framed within the United Nation's Convention on the Rights of the Child (UNCRC, 1989), which sets out children's rights to protection, provision and participation.¹

8. The policy, as it stands, through its licensing and regulation provisions, may result in undermining effective positive use of, communication through, online mediums by children and young people. If implemented and enforced in its current form, it is likely to curtail the generation of positive content by children and others. This flies in the face of global calls for increased active participation by children in the internet, including increased generation of age-appropriate material.² It is unreasonable and restrictive to expect or extract a license fee from a child uploading age-appropriate content onto YouTube, twitter, Facebook or any other platform. As the Policy stands now, this would however be allowed for.

9. The policy also undermines Section 16(1) of the South African Constitution, which states that:

1. *"Everyone has the right to freedom of expression, which includes:*

- a) freedom of the press and other media*
- b) freedom to receive or impart information and ideas*
- c) freedom of artistic creativity; and*
- d) academic freedom and freedom of scientific research."*

The limitations of these rights to freedom of expression are captured in Section 16(2):

2. *"the right in sub-section (1) does not extend to:*

- a) propaganda for war*
- b) incitement of imminent violence; or*
- c) advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm,"*

10. The CJCP has specific concerns regarding Section 7 of the Draft Policy. Section 7, which seeks to prohibit child exploitative media content and classification by the Board of self-generated contents, is currently very broadly worded, and appears premised on the assumption that ALL unclassified online content presents a risk to children. The uploading of any content, including videos or photos would become subject to classification and licensing. In practice this includes for example, photos, non-sexual in nature, shared between friends or adults, that in reality pose no threat or risk of harm to another individual or a child. International research points to the importance of differentiating between **risks** resulting from online experiences, and **harms** that may result from experiences online.

- a. The Section, as it stands, does not adequately differentiate the need to minimize risk and to prevent harm, and how the policy intends to respond to these two separate outcomes. International evidence show that not all risks should (and can be) prevented, but should be minimized, and rather children and others should be taught how to manage these risks to enhance their online experience, and to take advantage of the opportunities that the online

¹ United Nations Convention on the Rights of the Child, ratified November 1989, adopted September 1990
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

² See for example Global Agenda for Children's Rights in the Digital Age: Recommendations for developing UNICEF's research strategy, available at www.unicef-irc.org/publications/702 and Children's Rights in a Digital Age, available at www.unicef-irc.org/research/264/

world presents.³ Conversely, harms to children relating to online experiences should be prevented. As it stands the policy does not adequately address these nuances.

- b. There is substantial evidence to show that content that is deemed harmful for a child of a certain age (e.g. ten years old) may not be harmful to a child of another (usually older) age (e.g. seventeen years old). The distinction of age-appropriate material and how this should be treated, is not made explicit in the policy. A sweeping and restrictive regulatory framework will result in the curtailing of many of the age-appropriate opportunities that exist for adolescents and teens.

In conclusion, the CJCP recognizes and applauds the Film and Publication Board's initiative in ensuring that the wellbeing and safety of children within South Africa are protected. However, we suggest that the draft policy, as it stands, will have more negative, restrictive and detrimental outcomes for children, and will undermine the vast array of opportunities that are available, and will become increasingly available, to children through the use of ICTs and social media, and so requires a fundamental re-working to ensure that the rights and opportunities available to children through access to, and the use of ICTs and social media are better protected and enshrined, while minimizing the possibility of harms.

³ See for example Livingstone, Haddon, Gorzig, Olafsson et al (2013) EU Kids Online, available at <http://lsedesignunit.com/EUKidsOnline/index.html?r=64>, and Vera Slavtcheva-Petkova, Victoria Jane Nash & Monica Bulger (2014): Evidence on the extent of harms experienced by children as a result of online risks: implications for policy and research, Information, Communication & Society, DOI: [10.1080/1369118X.2014.934387](https://doi.org/10.1080/1369118X.2014.934387)