



**DOC RESPONSE TO THE  
SUBMISSIONS BY  
STAKEHOLDERS TO THE FILMS  
AND PUBLICATIONS  
AMENDMENT BILL –  
20 SEPTEMBER 2016**

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**the doc**

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# Presentation Outline

- **INTRODUCTION**
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# INTRODUCTION

- The Department of Communications (DoC) appreciates and welcomes the thirty-two (32) comments received from various stakeholders that expressed that took their time to enhance this FPB Bill legislative process.
- In several cases organisations made joint submissions. The submissions covered a spectrum of interests including broadcasting, telecoms and ISP industry, concerned organisations and groups, regulator and enforcement agencies; non-governmental organisations and civil society sector organisations.
- There are some comments that we accede to and some that we do not agree with.
- More pertinently there is general consensus that due to the current digital convergence environment, this was a timely and much needed technical Legislative amendment.



# INTRODUCTION

- Andrus **Ansip**, Vice-President for the Digital Single Market, said:
  - *"I want online platforms...sectors to be powerhouses in the digital economy, not weigh them down with unnecessary rules. They need the certainty of a modern and fair legal environment: that is what we are providing today. This means not changing existing rules that work, such as those related to the liability of online service providers. It also means ....extending certain obligations to platforms and other digital players to improve user protection and to reach a level-playing field".*
- Günther H. Oettinger, Commissioner for the Digital Economy and Society, said:
  - *"The way we watch TV or videos may have changed, but our values don't. With these new rules, we will ....make sure incitement to hatred will have no room on video-sharing platforms. We also want to ensure a level-playing field, responsible behaviour, trust and fairness in the online platforms environment..."*
- The following questions arises:
  - *What is the problem under consideration?*
  - *Why is government intervention necessary?*
  - *What are the legislative amendments objectives and the intended effects?*



# INTRODUCTION

- The Bill continues to protect certain fundamental rights under our Constitution and various other legislation, in particular the freedom to conduct a business, and the amendments are justified as they do not go beyond what is necessary to fulfil a legitimate objective to ensure the online protection of children and the vulnerable from exposure to inappropriate content and promoting consumer confidence, ensuring they are able to make informed decisions about suitability of online content that may be watched by children
- The DoC intend to:
  - Ensure that the responsibility for this law is technically moved from the previous Minister (Home Affairs) to the current Minister (Communications).
  - Give effect to the relevant Constitutional Court judgements, which struck down some of the Act's provisions.
  - Create policy and regulatory consistency, certainty and clarity.



# INTRODUCTION

- Evaluate whether the Act and other pieces of legislation are still aligned with the constitutional values of the Republic of South Africa, aimed at protecting children and the vulnerable against most harmful content in the online environment and to strengthen the Act's enforcement provisions.
- Provide all online users with a safe experience through digital media literacy and empowerment.
- Support regulator, industry and stakeholder efforts for self- and co-regulation to ensure this approach remains flexible and up-to-date.
- Around the world, laws are being adopted to try to deal with these issues, general laws and also specific rules to deal with special concerns (e.g. online child pornography, etc.).
- Across the globe, many operators (ISPs, mobile operators, social networks, search engines) have committed through codes of conduct or on their own initiative to address the problem of harmful content.



# INTRODUCTION

- Self-regulatory frameworks on notice and take down or notice and take-action have also developed to frame the role of internet intermediaries and to ensure that content can easily be removed from websites when it is obviously illegal.
- In some areas (e.g. online child pornography) regulators can be involved in the process.
- Hotlines exist in many countries for victims to report illegal content on the internet and to fight sexual abuse material.
- Some regulatory authorities around the world are providing information on what to do when facing problem. Despite these initiatives, parents are sometimes not sufficiently digitally literate to know what to do.
- There is therefore a need for governments, regulatory authorities and market operators to provide information on the available tools and on

# INTRODUCTION

- SA and international markets have seen a gradual shift in the distribution of content from traditional content distribution platforms (DVD's, VHS, Cinema) to online content distribution platforms.
- There have been some significant changes in the way South Africans access media content. In particular, the increasing availability of video on demand services (e.g. Showmax and Netflix) has broadened the contexts within which South Africans classifications and consumer advice could be displayed and used.
- Recently FPB has been classifying an increasing amount of online content movies, television shows, and video games in a rapidly changing media environment.
- This highlights the rising popularity of online viewing platforms – most notably online on demand catchup services (such as DSTV On Demand) and paid streaming services (such as Netflix or Showmax).





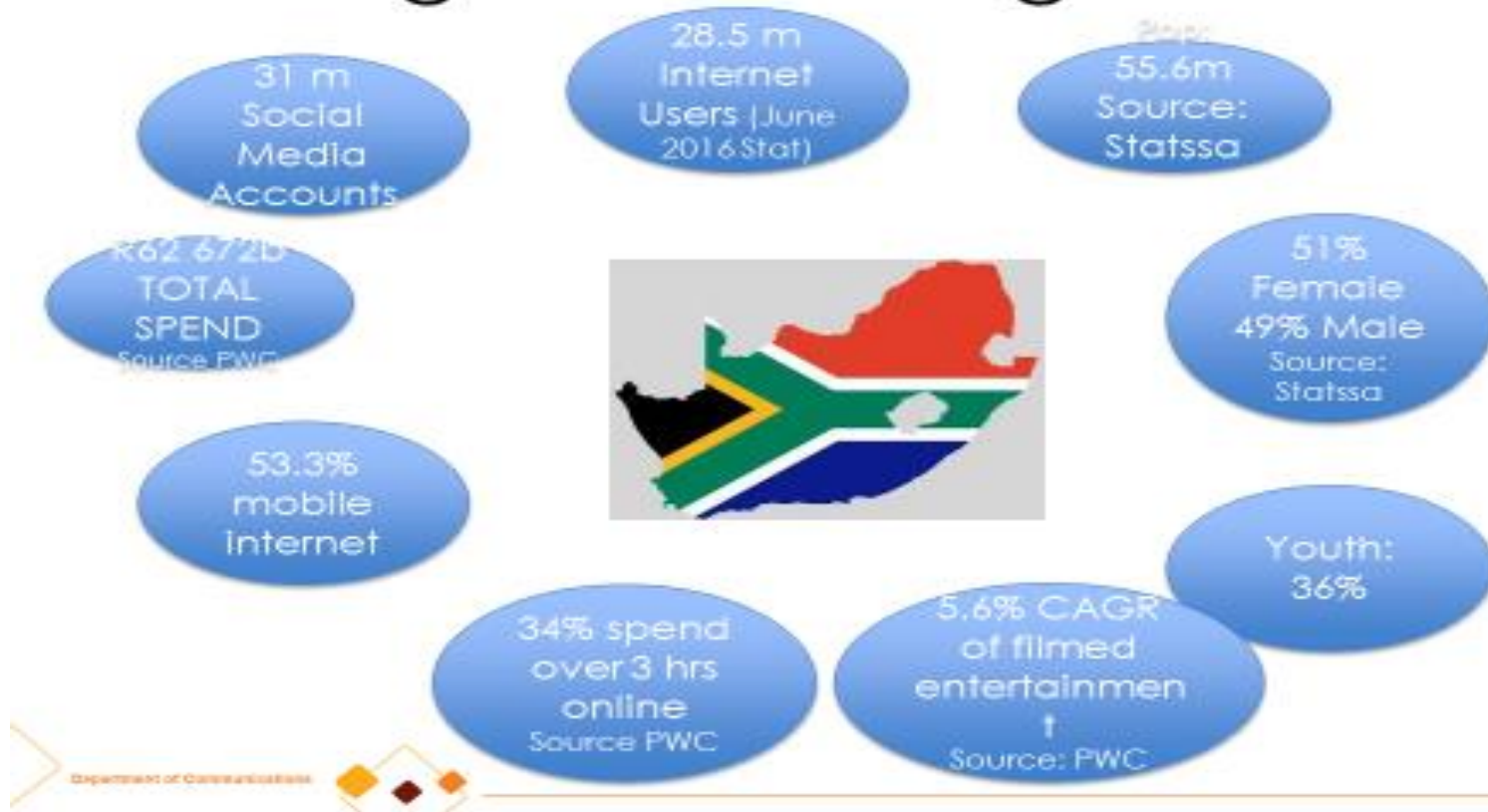
# INTRODUCTION

- The industry as well as the FPB required legal and regulatory clarity on whether the regulatory regime used for physical content distribution applies to the online content distribution environment.
- The purpose of the classification system should be to protect the public from content that is considered to be injurious to the public good, and to provide guidance to families about what they choose to view or play.



# DIGITAL SA

## Digital SA at a glance



# SYNOPSIS OF SUBMISSIONS

- Firstly, we agree with stakeholders submissions that certain legal definitions set out in the Bill required further work to help provide legal certainty for all parties and to prevent potential abuses or circumvention of the intended regulations.
- Secondly, we broadly agree and support the proposal that FPB will only deal with online or internet content networks and services matters, and ICASA will be the only one regulating broadcasting content.
- Thirdly, acknowledging that we always need to assess the practical and/or technical and related potential financial costs and social benefits arising from implementing and enforcing the regulatory provisions emanating from this legislations, we are of the view that the cost implications in enforcing this law by FPB, in line with international trends, is expected to be modest given the small number of online content networks and service providers (who will not be worse off as a result of this law and whose costs are also going to be modest as they are already complying with the laws).



# SYNOPSIS OF SUBMISSIONS

- The DoC examined at a high level research, in relation to impact assessment, various options related to either various scenarios related to no policy intervention and various other policy intervention options.
- The obligations that we intend to impose on online distributors is to register with FPB and assist in addressing harmful and illegal content online have some financial and technical implications which are not expected to be significant and could be absorbed in the routine costs of online distributors and are insignificant compared to the societal benefit to ensure protection for a vulnerable group in society that would emerge.
- The DoC does not expect the financial implications of the proposed Bill to be significant for Government, but notes there may be “cost implications in enforcing the measures” (e.g. by FPB), but these are likely to be modest given the small number of online distributors.



# SYNOPSIS OF SUBMISSIONS

- The DoC believes that this amendment has to go through so as to improve on the current regulatory regime to ensure or create regulatory and policy certainty for consumers, industry and public.
- The benefits for South African citizens are expected to be significant and the cost to industry and service providers is negligible because most of the provisions are already being enforced.
- The DoC's view is that the impact assessment will continue to be an ongoing exercise as this law gets implemented, as it is also a Cabinet decision that had to be implemented from September 2016 as well with all legislation and policies to be introduced to Cabinet and Parliament



# SYNOPSIS OF SUBMISSIONS

- The DoC also agrees that over the last number of years movies, television shows and games are increasingly being accessed across a variety of platforms — including broadcast television, illegal file-sharing websites, paid streaming services and various other platforms.
- From a classification perspective, these changes have complicated the relatively simple to understand and enforce offline classifications; and now these have to be moved to online distributors, and the FPB is faced with the task to educate the public about how to use these classifications in an online space.
- For online video-sharing distributors, we believe that we all have to work together with them to produce future-proof and effective enforcement measures that will protect children and the vulnerable from harmful content (such as pornography and violence) and protect all citizens from incitement to hatred. Like elsewhere, this might include detailed measures include tools for users to report and flag harmful content.

# SYNOPSIS OF SUBMISSIONS

- In our upcoming policy review, we will be consulting further on how to achieve a better balance of the rules which today apply to traditional broadcasters, video-on-demand providers and video-sharing platforms, especially when it comes to protecting children.
- The DoC has consulted the Department of Justice and Constitutional Development (DoJ) on the Films and Publications Amendment Bill, 2015.
- Two meetings were held between the DoJ and DoC, the first meeting was held at the premises of the DoJ and the second meeting was held at the premises of the DoC.
- The DoJ and DoC were always reporting back to the South Africa Law Reform Commission which was appointed by the President to investigate pornography and children and this project is Project 107 C Sexual Offences.
- FPB, DTPS, DoC, National prosecuting Authority including ISPA were also adhoc committee members of the SALRC.
- The South African Law Reform Commission is currently revising child pornography.

# SYNOPSIS OF SUBMISSIONS

➤ **The following recommendations emerged from our meetings:**

1. The regulation and criminalisation of “child pornography” should not be dealt with in terms of the FPA. The objects of the FPA is set out in the long title of the Act which provides that the aims of the FPA are to “provide for the classification of certain films and publications; to that end to provide for the establishment of a Film and Publication Board and a Film and Publication Appeal Tribunal; to repeal certain laws; and to provide for matters connected therewith”. It is submitted that the criminalisation of child pornography should be dealt with in the SOA. The current tendency to deal with child pornography in a law which does not specifically relates to the criminalisation of sexual offences hampers the further development of this important aspect and give rise to fragmentary approach.





# SYNOPSIS OF SUBMISSIONS

2. The regional court magistrates, the National Prosecuting Authority and the South African Police Service have requested the Department of Justice and Constitutional Development to deal with child pornography coherently in a single law, namely the SOA.

3. Although the South African Law Reform Commission is busy with an investigation on this aspect it may take several years before legislation is promoted to specifically deal with this aspect. The investigation by the South African Law Reform Commission is, however, important to determine whether the offence currently on the Statute Book is adequate to deal with all aspects relating to child pornography and how the position of children should be regulated. The cyberspace is an extension of the real world and the distribution of material of a pornographic nature between children should be dealt with differently.



# SYNOPSIS OF SUBMISSIONS

4. South Africa is probably the only country in the world that deals with child pornography in a law that primarily deals with the classification of media. In almost all other countries this category of offences forms part of their substantive criminal law.

5. In order to rectify the fragmentation of criminal law and to ensure that this aspect can in context of other sexual offences be further developed it is proposed that section 24B of the FPA be incorporated in the SOA. The Cybercrimes and Cybersecurity Bill can be used as the medium to effect such an amendment. The proposed amendment may also be utilised to address child pornography that is cyber related which is probably not fully addressed in the current section 24B of the FPA.



# SYNOPSIS OF SUBMISSIONS

- In 2015, the FPB commissioned a study through UNISA's BMR to collect empirical evidence on the experience of South African Children and how they relate to media material; inform the formulation of the FPB Classification Guidelines – ensure alignment of FPB Classification categories to developmental stages of children; and understand the role parents play in the viewing and gaming choices of children.
- The study found that:
  - Sexual content, horror and violence have the most observable impact on children between the ages of 7 and 17.
  - More subtle themes such as Blasphemy and prejudice are less noticeable in movies
  - Children surveyed were found to be desensitised to violence and bad language in movies. This is supported by the high prevalence of violent and consumer advisories identified by FPB Classifiers.



# SYNOPSIS OF SUBMISSIONS

- Parents, who are meant to provide the necessary parental guidance when making gaming and viewing choices play a limited role in monitoring the children's media consumption patterns.
- Children surveyed revealed their reluctance to discuss any uncomfortable feeling they may have with their parents as a result of exposure to unsuitable content.
- Most children 7 – 17 years of age play age inappropriate games containing elements of extreme violence.
- The impact of gaming on thoughts and behaviour is perceived to be less due to the fact that games are animated and seen as not real.



# DEPARTMENT OF COMMUNICATIONS RESPONSES TO THE CONSULTATION

- PLEASE REFER TO “ANNEXURE A” WHICH IS A DETAILED RESPONSES ON ALL THE CLAUSES IN WHICH SUBMISSIONS WERE MADE: THIS ANNEXURE WILL BE FINALISED WITH OFFICE OF CHIEF STATE LAW ADVISOR ON 15 SEPTEMBER 2016.



# CONCLUSION

- The Department appreciate all the inputs submitted by stakeholders. Your inputs were valuable and have assisted us in making improvements to the Bill.
- The support and collaborative efforts from members of Films and Publications Board are noted and the Department intend to support them on the implementation of this Bill.
- The Department would like to thank the Office of Chief State Law Advisors for their sound legal advises and expertise that they provided in order to improve this Bill.
- The Department encourages the committee to ensure that the protection of the children, the vulnerable and the citizens against harmful content is enhanced.



# CONCLUSION

- Lastly, our legislative and regulatory efforts are all intended to improve on and update classification enforcement mechanism.
- South Africa has moved from censorship and it is not the intention of this Bill to censor, but to classify accordingly in line with international trends but specific and relevant to the South African challenges and environment.



# THANK YOU

