

# Media Monitoring Africa & SOS Coalition

Submission on the  
*Film and Publications Board Amendment Bill*  
Oral Presentation, September 2016



# Introduction

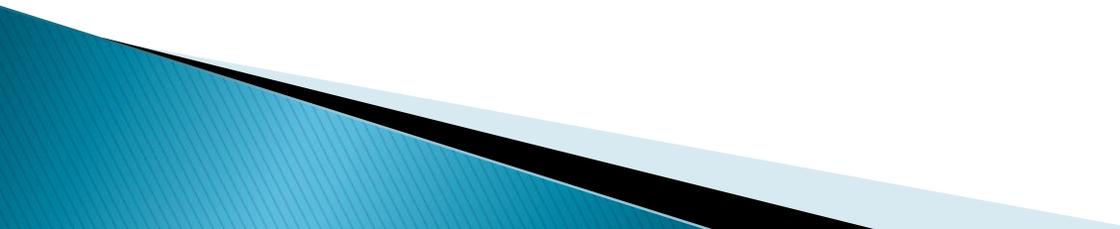
- ▶ The submission was made by Media Monitoring Africa (MMA) and SOS: Support Public Broadcasting Coalition (SOS);
  - ▶ MMA and SOS welcome the move to start discussing issues of online regulation;
  - ▶ As a classifications body, the Film and Publications Board has a critical role to play throughout this process.
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# About MMA

MMA is a registered non benefit trust operating since 1993. MMA's vision is a just and fair society empowered by a free, responsible and quality media. Through a human rights-based approach, MMA aims to promote the development of:

- Media that is transparent, diverse, ethical and accountable to its audiences;
- Critical and constructive communications by the powerful, and;
- Informed, engaged and connected citizenry.

# About MMA

- ▶ Established in 1993 to monitor South Africa's first democratic elections, MMA has over 20 years' experience in media monitoring and direct engagement with media, government, civil society organisations and citizens.
  - ▶ MMA is the only independent organisation that analyses and engages with media according to this framework. In all of our work, we seek to demonstrate leadership, creativity and progressive approaches to meet the changing needs of the media environment.
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# About SOS

- ▶ SOS is a civil society Coalition committed to, and campaigns for broadcasting services that advance the public interest
  - ▶ The Coalition also engages in the advancement of community broadcast media in South Africa
  - ▶ The Coalition is made up of a broad range of NGOs, Trade Unions and their Federations, and individuals
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# About SOS

- ▶ Core principles include, amongst others;
  - The advancement of meaningful access to broadcasting services that serve and represent the people of South Africa within an African and global context
  - The increase of direct and sustainable public investment into the SABC and community broadcasters to enable them to deliver on their mandates to the people effectively
  - Active engagement with parliament, and specifically the Portfolio Committee on Communications specifically

# Broad Issues

- ▶ 1. Potential for infringements on fundamental rights
  - The current form of the bill may, if left in its current state, infringe on sections 16 and 32 of the Constitution
  - Violations are deepened as the Bill appears to seek pre-publication classification, including user-generated content
  - According to the Constitution, all publications that fall outside of the newspaper or magazine exemption are subject to a possible pre-publication classification

# Broad Issues

- ▶ 2. Regulatory impact assessment considerations
  - DPME is already stating that a consistent socio-economic impact assessment of all policy, legislation and regulation is needed
  - If this research has been conducted we request that stakeholders have an opportunity to engage with the content

# Broad Issues

- ▶ 3. The need for children's participation
  - Despite the clear objective to protect children, the Bill does not involve child participation
  - Section 28 of the Constitution makes provision for the participation of children in all matters that affect them
  - It is imperative that a public participation process includes the views of children

# Specific Concerns

- ▶ Definitions and terminology
  - Bill's definition of 'child porn' is different to the definition provided in the Sexual Offences Act of 2007, amendment in 2015. We support the refined definition
  - We, call on Parliament, and/or the Minister of Communications, and/or the FPB to consider withdrawing and revising this terminology in the body of the Bill and, in cooperation with the relevant government departments and public institutions, all supporting Acts, policies and regulations from "child pornography" to "child sexual abuse material" or "child abuse material" in line with international standards

# Specific Concerns

- ▶ Issues of hate speech
  - We are not against the regulation of hate speech however;
  - This is already dealt with in the Cybersecurity / Cybercrimes Bill which seeks to criminalise hate speech
  - Public participation process is underway towards the development of a National Action Plan to Combat Racism, Racial Intolerance, Xenophobia and Related Intolerance
  - We request the Committee to consider withdrawing the definition of hate speech in line with section 16(2) (c) of the Constitution

# Specific Concerns

## ▶ Revenge Porn

- Distribution of sexually graphic images of individuals without their consent
- We also note that the Bill appears to have drawn on similar proposed legislation in the UK where, in addition to the issue of non-consensual sharing, the element of causing distress is added
- We note that there may have been consent when the photograph or film was originally made, however as is often the case this content is then shared with the intent of causing embarrassment or harm to the person through its subsequent dissemination, when a relationship has turned sour or for financial gain.

# Specific Concerns

## ▶ Revenge Porn

- Accordingly we request that the committee considers tightening the wording to ensure that the absence of consent is about the non-consensual sharing and or dissemination of the content, and not about the original creation of the content.
- Provided of course it was consensually exchanged within a confidential relationship to begin with

# Specific Concerns

## ▶ Revenge Porn

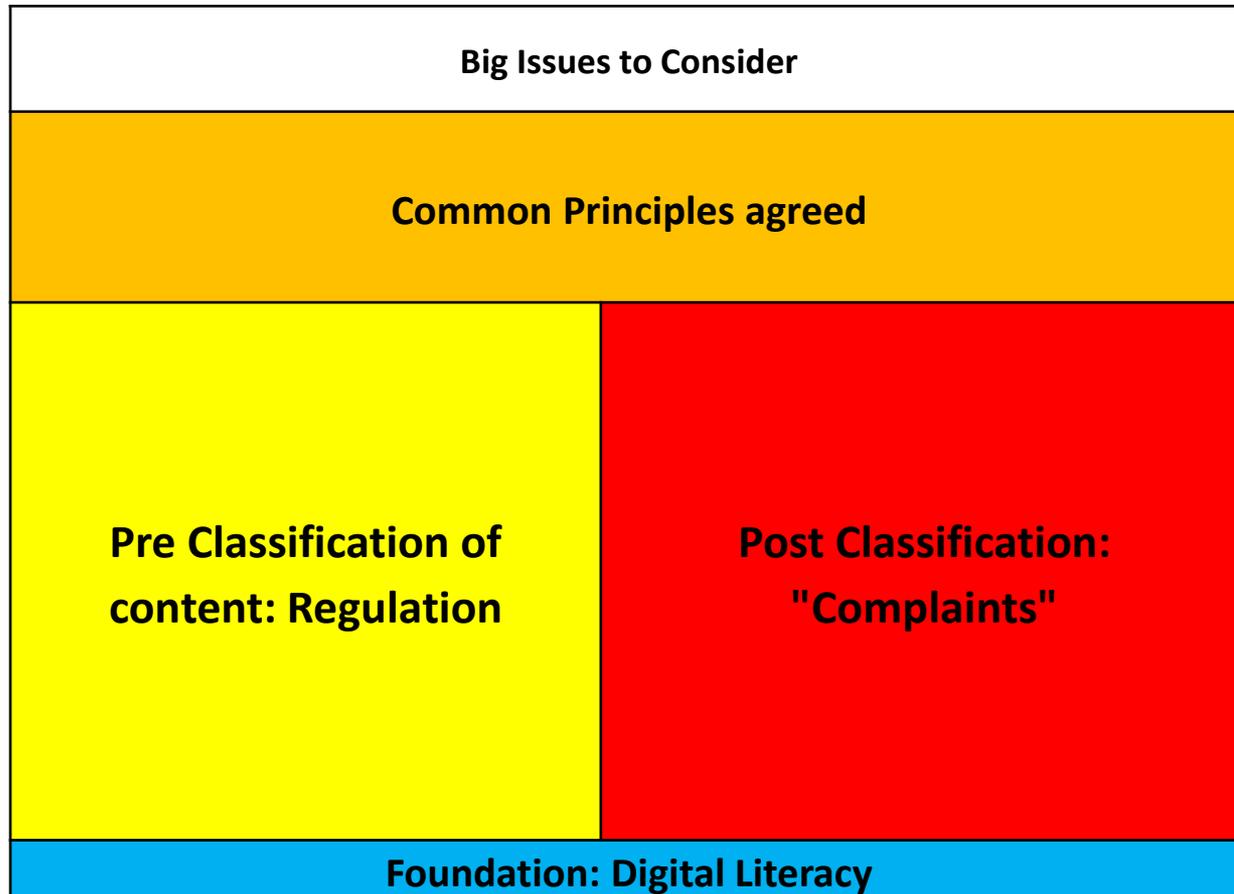
- We further request that irrespective of whether the additional criteria is included, that the committee considers including the other elements in the draft UK legislation around defences
- We welcome the highlighting of the issue but respectfully submit that it should be addressed in the Cybercrimes and Cybersecurity Bill

# Conclusion

- ▶ Prevention is better than cure
- ▶ It is often already too late once legislation is in effect
- ▶ How do we prevent?
  - We already have good partnerships with the FPB and Google
  - Digital literacy



# Conclusion



# Thank You

For more information contact

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