

FILMS AND PUBLICATIONS AMENDMENT BILL

Presentation by MultiChoice

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Team



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Introduction



- MultiChoice supports appropriate initiatives to:
 - promote informed consumer choice
 - protect children from harmful content
 - extend protections to online environment
- But, this must be –
 - Constitutional
 - workable
 - effective
 - capable of implementation, monitoring and enforcement

Overview of submission



- Adhere to Constitution
- Make Bill more effective and enforceable
- FPB must complement other regulators and legislation
- Retain full broadcasting exemption in Act
- Extend Act to online environment in focused, effective, workable way
- Give consumers uniform protection from domestic and foreign distributors

Bill is unconstitutional

- Various provisions in Bill are unconstitutional
- Previous Constitutional challenges
 - FPB Amendment Bill, 2006 – President sent back because broadcasting sections unconstitutional
 - PMSA (2012), De Reuck (2004) – Con Court declared provisions unconstitutional
- Prior classification –
 - limits freedom of expression
 - should be last resort
- Major shift required so Act does not fall foul of Constitution again
- This requires clear, effective, appropriate regulation which is no more restrictive than necessary to achieve legitimate purpose

FPB should complement other institutions



- FPB Act should complement other legislation
 - e.g. Hate Crimes and Hate Speech Bill addresses hate speech “by any means whatsoever”, including social media and online
 - hate speech should be dealt with in that Bill
- FPB should complement other institutions, e.g. ICASA, Human Rights Commission

FPB may not regulate broadcasting

- FPB should complement, not fetter, ICASA's function
- s192 of Constitution requires one independent authority to regulate broadcasting in the public interest i.e. ICASA
- Attempt to regulate broadcasting through any other body is unconstitutional
- Avoid repeating situation where Bill sent back by President
- Broadcasting policy and legislative process in light of convergence is underway, will determine scope of "broadcasting". Bill should not pre-empt that process

Bill's approach to broadcasting is not permissible



Provision in Bill	Comment
s18(9): Streaming content through Internet does not amount to broadcasting	<ul style="list-style-type: none">• Broadcasting is defined in EC Act• Bill may not dictate what is/isn't broadcasting
s18(8): ICASA may not issue or renew any broadcasting licence to a broadcaster who also streams content through the Internet unless such broadcaster is also registered with the FPB as a distributor in terms of s18(1)	<ul style="list-style-type: none">• It is not permissible to limit ICASA's discretion to issue or renew a broadcasting licence• This encroaches on ICASA's jurisdiction, fetters ICASA's discretion and infringes s192 of Constitution
s18(7): Broadcasting exemption shall not apply to a broadcaster who streams content through the Internet	<ul style="list-style-type: none">• Broadcasting exemption should remain and should apply to ancillary services such as catch-up services• Same approach as for print media online

Delete s18(7), (8) and (9) of Bill

Avoid double jeopardy

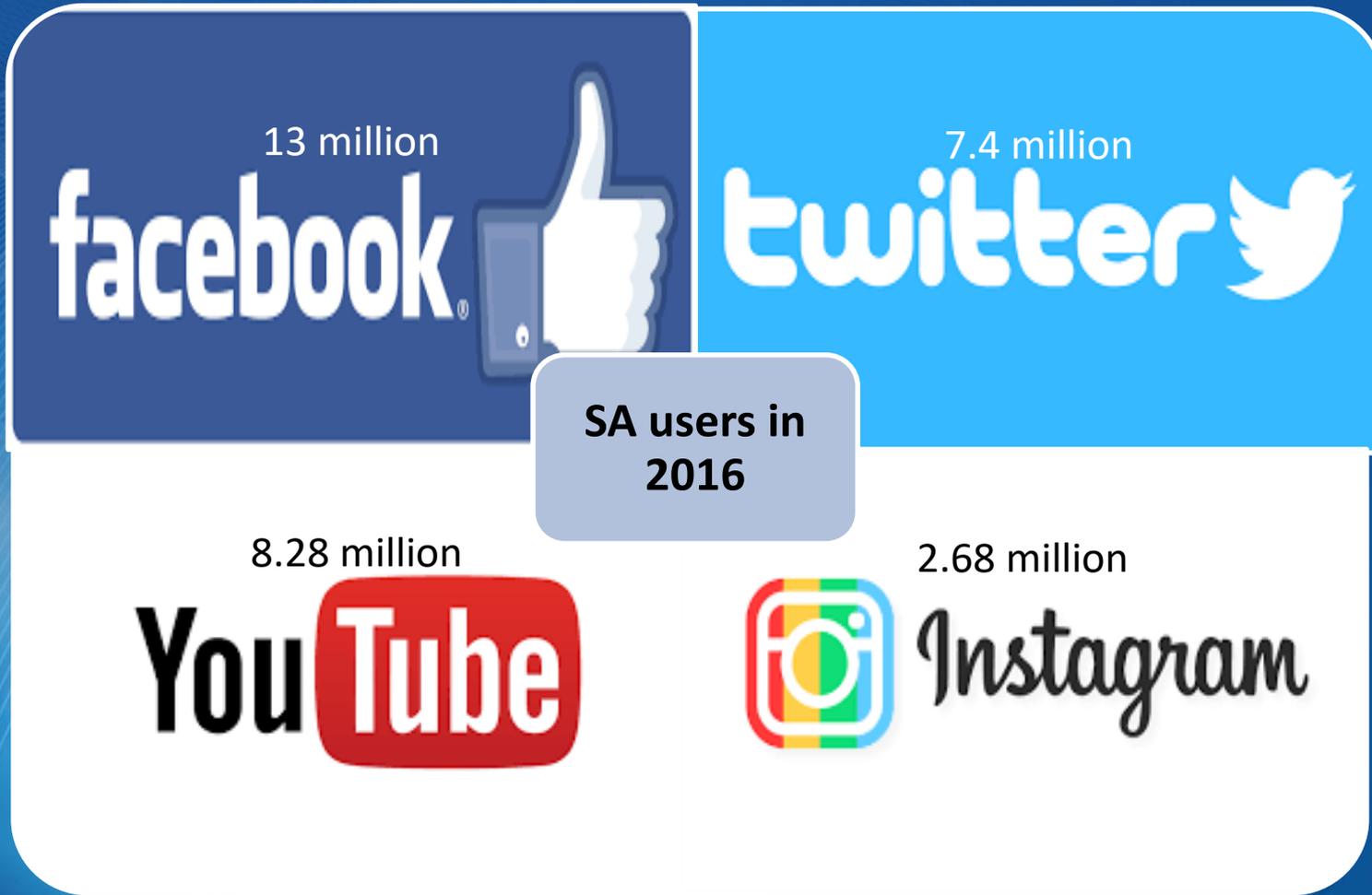
- ICASA and BCCSA codes of conduct protect broadcasting viewers, including children, from harmful content
- It is unnecessary to require broadcasters to classify films which already benefit from broadcast protection
- If broadcasters are merely distributing online films which they broadcast, then they should not have to –
 - register as online distributors
 - classify films for online distribution
- As with print media, broadcasting exemption should apply to ancillary services online (e.g. catch-up)

Extending Act online is welcome, but needs to be effective and workable



- We support uniform protection against harmful content based on need to ensure protection, rather than distribution medium
- Bill tries to cater for reality for which Act was not designed
- Act is based on physical distribution through video stores, bricks and mortar thinking
- Act can't just be tweaked to apply online
- Huge amounts of content are distributed online through blogs, vlogs, social media, apps, websites, via fixed and mobile devices, by millions of users in multiple territories

Current online environment



Current classification by FPB

TOTAL NUMBER OF CLASSIFIED MATERIAL

Classification Genre	Annual (01 April 2014 – 31 March 2015)
General	709
Exemptions	321
Erotica/Adult	168
Games	232
Theatre (Trailer)	357
Theatre (Feature)	325
Film Festivals	16
Publications	19
Police Cases (Child Porn)	4
TOTAL	2 151

Huge amount of online content makes Bill unworkable



- FPB classified about 250 titles in Feb 2014
- More video content was uploaded to the internet in 30 days in Jan 2014 than all 3 major US TV networks combined had created in 30 years
- People watch hundreds of millions of hours on YouTube every day
- ShowMax catalogue currently has over 15,000 hours of content available for viewing
- Bill proposes regulating any distribution by any person of any content (including UGC, sport, news, current affairs, etc) for any purpose online
- Sheer mass of online content makes it untenable to simply extend Act as proposed in Bill
- Act will be –
 - impossible to implement, monitor or enforce
 - ineffective and unworkable

Bill should apply only to commercial distribution

- Registration and classification obligations should apply only to distribution –
 - primarily for remuneration
 - by distributors with editorial responsibility or control over selection and organisation of content
- FPB should have less hands-on regulation, more high level supervision, e.g. through self-classification

Bill should allow self-classification

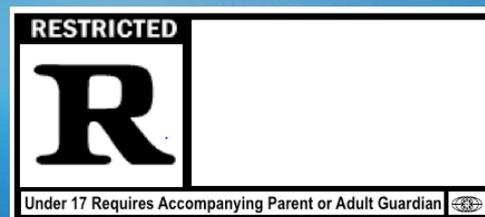
- Online distributors are currently self-classifying under FPB's Classification Guidelines with FPB oversight
- Self classification is working well:
 - quick, effective, achieves purpose,
 - creates jobs and transfers skills
 - without compromising FPB standards
- Bill proposes classification by industry body – impractical, more red tape, longer, more expensive
- Bill should enable self-classification under FPB classification guidelines

Protection from foreign online content

- Domestic and foreign online distributors should be equally accountable under Bill
 - same protection for viewers regardless of location of distributor / where content is hosted
 - regulatory parity between SA and international operators
- Distribution, classification and warning requirements should apply to content distributed online -
 - to any person in SA
 - by online distributors inside / outside SA

Approval of foreign classification systems

- Prescribe conditions for approval of foreign classification systems in regulations
- This will ensure uniformity, consistency, procedural fairness, accountability, transparency
- Permit approval of foreign classification systems only on a reciprocal basis
 - Uniformity of protection
 - Reduce confusion
 - Address cultural legal differences



Display requirements unworkable online

- Bill's display requirements are rigid, technology-specific, reflect 1990s thinking
 - Presumes use of labels, websites
 - Label can't be displayed while streaming
 - It's not always possible to display FPB on a "landing page"
 - Size of certificate differs depending on device used
- Requirements are not workable online
- Display requirements should be –
 - Outcomes-based
 - Future proof
 - Made in regulations

Appropriate enforcement measures needed

- Act will be ineffective without appropriate enforcement
- s18E –
 - is too wide
 - lacks key definitions, meaning, clarity and procedural safeguards
 - incapable of application and enforcement
 - needs to be clarified and strengthened

Additional measures

- Awareness and educational campaigns
- Industry codes of conduct on –
 - responsible use of content
 - steps consumers should take re non-compliance
- FPB lists of registered distributors and offenders –
 - empower parents, enable consumer choice and incentivise compliance
 - provide to ISPs for take down notice purposes under ECT Act and filtering and blocking software providers

Concluding comments

- We reiterate our support for the Bill, but it must be -
 - Constitutional
 - Effective
- Key proposals:
 - Do not regulate broadcasting in this Bill
 - Retain full broadcasting exemption and extend it to ancillary services online
 - Extend Act to online environment only iro commercial distribution
 - Permit self-classification under FPB Guidelines
 - Give uniform protection from domestic and foreign distributors
 - Recognise foreign classification systems on reciprocal basis
 - Strengthen enforcement and awareness

THANK YOU