

REPUBLIC OF SOUTH AFRICA

FILMS AND PUBLICATIONS AMENDMENT BILL, 2015

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B – 2015]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing Enactments
- _____ Words underlined with a solid line indicate insertions in existing Enactments
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BILL

To amend the Films and Publications Act, 1996, so as to insert and amend certain definitions; to provide for the establishment, ~~of, the~~ composition ~~of,~~ and appointment of, members of the **Penalty Enforcement** Committee; to provide for the powers and duties of the **Penalty Enforcement** Committee; to regulate online distribution of ~~digital~~ films and ~~digital~~ games; to extend the **compliance obligations of the Films and Publications Act and the compliance monitoring** functions of the Film and Publication Board ~~of monitoring compliance with the Films and Publications Act to include~~ online distributors ~~in respect of the requirements to comply with the Films and Publications Act~~; to revise and further regulate the functions of compliance officers regarding entering and inspection of premises and facilities in which the business of the sale, hire or exhibition of films or games is being conducted; to further regulate the classification of publications, films and games; to provide for **accreditation of** independent **commercial online distributors industry classification** ~~bodies accreditation thereof~~ by the Film and Publication Board; to provide for classification of publications, films and games by the independent industry

classification bodies; to provide for foreign and international classification systems and approval thereof by the Film and Publication Board; to provide for the use of classification ratings issued by a foreign and international classification authority or body; to provide for the right of appeal against classifications issued by independent industry classification bodies; to provide for exemptions in respect of online distribution of films and games; to further provide for the obligations of internet service access providers regarding curbing the use of their services in ~~advocating racism and hate speech~~ propagating prohibited content; to revise and strengthen penal provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 65 of 1996, as amended by section 1 of Act 34 of 1999, section 1 of Act 18 of 2004 and section 1 of Act 3 of 2009

1. Section 1 of the Films and Publications Act, 1996 (Act No. 65 of 1996) (hereinafter referred to as the principal Act), is hereby amended—

(a) ~~by the insertion after the definition of "Appeal Tribunal" of the following definition:~~

~~" 'artistic' means predominantly aesthetic according to the reasonable person;"~~

(a) by the substitution for the definition of "certificate" of the following definition:

" 'certificate' means, in relation to a film or game, [means] the certificate [referred to in section 18]E, issued in respect of the classification of a film or game;"

(b) by the substitution of the definition of "**child pornography**" for the following:

" 'child pornography' means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007);";

~~words preceding paragraph (a) of the following words:~~

~~" 'child pornography' [includes any] means an explicit image, however created, or any explicit description of a person, real or simulated, [who is or] who is depicted, made to appear, look like, represented or described as being[,] under the age of 18 years—";~~

(c) ~~by the substitution in the definition of "child pornography" for paragraph (c) of the following paragraph:~~

~~"(c) — showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation [, or in such a manner that it is capable of being used for the purposes of sexual exploitation];";~~

(c) ~~by the insertion after the definition of "classification committee" of the following definition:~~

" 'commercial online distributor' means a distributor in relation to films, games and publications which are distributed using the internet and excludes non-commercial online distributors;";

(e) by the insertion after the definition of "**Council**" of the following definitions:

"digital film" means any sequence of visual images recorded in such a manner that by using such recording such images will be capable of being seen as a moving picture, and includes any picture intended for

~~exhibition through the internet or any other electronic medium or device;~~

~~'digital game' means a computer game, video game, online apps or other interactive computer software for interactive game played, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game, accessed and played through the internet or any other electronic medium or device;"~~

(d) by the substitution for the definition of "**distribute**" of the following definition:

"**distribute**'[,] in relation to a film, game or a publication, without derogating from the ordinary meaning of that word, includes—

(a) ~~to stream content through the internet, social media or other electronic mediums;~~

(a) to sell, hire out or offer or keep for sale or hire, including using the internet; and[,]

(b) for purposes of sections 24A and 24B, **[includes]** to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereof by such a person;"

(e) by the substitution for the definition of "**distributor**" of the following definition:

" '**distributor**'[,]means **[, in relation to a film]**~~or game,~~**[means]** a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;" **[in the selling, hiring out or exhibition of films]**~~including the streaming of~~

~~content through the internet, social media and other electronic
mediums;"~~;

(f) by the substitution in the definition of "**domestic violence**" for the words preceding paragraph (a) of the following words:

" '**domestic violence**' means explicit depictions or descriptions of—";

(g) by the insertion after the definition of '**domestic violence**' of the following definition:

" '**Enforcement Committee**' means the committee established in terms of section 3;";

(h) by the substitution for the definition of '**film**' of the following definition:

" '**film**' means any sequence of visual images recorded in such a manner that by using such recording, such images will be capable of being seen as a moving picture, and includes any picture intended for exhibition through any medium, including using the internet, or device;";

(i) by the substitution for the definition of 'game' of the following definition:

" '**game**' means a computer game, video game or other interactive computer software for interactive game playing, including games accessed or played using the internet, where the results achieved at various stages of the game are determined in response to the decision, inputs and direct involvement of the game player or players;";

by the insertion after definition of "**game**" of the following definitions:

~~" 'harm' means any element that causes emotional, psychological or moral distress to a person, whether it be through a film, game, publication or other media, on or offline, and "harmful" has a corresponding meaning~~

“ ‘harmful’ means causing emotional, psychological or moral distress to a person, whether it be through a film, game or publication through any on- or offline medium, including through the internet and ‘harm’ shall have the corresponding meaning;”;

“‘hate speech’ includes any speech, gesture, conduct, writing, display or publication which is prohibited in terms of section 16(2) of the Constitution of the Republic of South Africa, 1996, which propagates, advocates or communicates words against any person or identifiable group, which words could reasonably be construed to demonstrate a clear intention to be harmful, to incite harm and promote or propagate hatred against the said person or identifiable group.”;

(k) by the substitution of the definition of “**identifiable group characteristic**” of the following definition:

“ **‘identifiable group characteristic’** means a characteristic that identifies an individual as a member of a group identified by race, gender, **[sex, pregnancy, marital status,] ethnicity or [social origin, colour, sexual orientation, age, disability,] religion[, conscience, belief, culture, language, birth and nationality];**

(l) by the insertion after definition of "**identifiable group characteristic**" of the following definitions:

" **Independent Communications Authority of South Africa**" means the body established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);";

“ ‘internet’ means the Internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);”;

(m) by the substitution of the definition of **"internet service provider"** of the following definition:

“ ‘internet service provider’ means internet service provider as defined in section 70 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002);”;

(n) by the insertion after the definition of **"internet service provider"** of the following definition:

“ ‘internet access provider’ means any person who carries on the business of providing the public with access to internet-connected devices belonging to that person;”;

(o) by the insertion after the definition of **"in public"** of the following definition:

"‘magazine’ includes an online publication of a magazine;”;

(p) by the deletion of the definition **‘newspaper’**

[‘newspaper’ includes an online publication of a newspaper]

(q) by the insertion after definition of **"newspaper"** **"Minister"** of the following definitions:

~~"online distributor" in relation to a digital film, digital game or publication, means a person who conducts business in the selling, hiring out or exhibition of films, games or publications online through the internet or any other electronic medium;~~

~~**Penalty Committee** means the body established in terms of section 3;~~

“ ‘non-commercial online distributor’ means any person who distributes content using the internet, or enables content to be distributed by a user of online services, for personal or private purposes;

‘online medium’ means any website, communication or messaging system, social media facility or similar which is connected to the publically available internet, and any public telecommunications messaging system;

‘permit’ means the permit issued by the Board pursuant to section 23(2) exempting a distributor from submitting films and games to the Board for classification;”;

(r) by the insertion after the definition of "**prescribed**" of the following definitions:

“**Press Council of South Africa** means a voluntary independent self-regulatory body established in terms of the Constitution of the Press Council of South Africa and which has adopted the Press Council Constitution, ~~which includes~~ including the South African Press Code;

Press Ombudsman means the Ombudsman appointed in terms of the Constitution of the Press Council of South Africa;”;

“ ‘**Prohibited content**’ means content which amounts to propaganda for war; incitement of imminent violence; advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16(2), 16(4) and 18(3) of this Act;”;

(s) by the substitution in the definition of "**publication**" for words preceding paragraph (a) of the following:

“ ‘**publication**’ means, and includes where applicable, any of the following published using the internet.”

(t) by the substitution in the definition of "**publication**" for paragraph (a) of the following paragraph:

“(a) any newspaper, magazine, book, periodical, pamphlet, poster or other printed matter;”;

(u) by the substitution in the definition of "**publication**" for paragraph (i) of the following paragraph:

"(i) any content made available using the internet, excluding a film or game.”;[any website, message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internetinternet];”.

(v) by the insertion after the definition of "**Review Board**" of the following definition:

" '**self-classification**' means the classification of films, games and publications by a commercial online distributor in terms of section 18C.”;

(w) by the substitution for the definition of "**sexual conduct**" of the following definition:

" '**sexual conduct**' includes—

[i](a) [**male**] genitals in a state of arousal or stimulation, real or simulated;”;

[ii](b) undue display of genitals or of the anal region;

(c) rape;

[iii](d) masturbation;

[iv](e) bestiality;

[v](f) sexual intercourse[, **whether real or unintended**]with a person or a human corpse, including anal or oral sexual intercourse;

[vi](g) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, anus, vagina, testicles or penis, with or without any object;

[vii](h)the penetration of a vagina or anus with any object;

[viii](i)oral genital contact; or

[ix](j) oral anal contact;"; and

(x) by the insertion after the definition the definition of "**sexual violence**" of the following definition:

~~" **'social media'** includes the various online technology tools and forms electronic communication via the internet, such as websites for social networking and micro-blogging through which users create online communities to share information, ideas, personal messages, and other content;"~~

~~**'streaming'** means the delivery of films by an online distributor, in real time, to the end user of an online delivery medium including the internet;"~~

Substitution of heading of Chapter 2 of Act 65 of 1996

2. The following heading is hereby substituted for the heading Chapter 2 of the principal Act:

**"Films and Publication Board [; Films and Publication Appeal Tribunal],
Council, Appeal Tribunal and ~~Penalty~~ **Enforcement** ~~Committee~~"**

Amendment of section 2 of Act 65 of 1996, as substituted by section 2 of Act 34 of 1999 and section 2 of Act 3 of 2009

3. Section 2 of the principal Act is hereby amended—

- (a) by the deletion of the word "and" at the end of paragraph (b);
- (b) by the substitution for the full-stop at the end of paragraph (c) of a semi-colon; and
- (c) by the addition of the following paragraphs:

"(d) criminalise the possession, production and distribution of child pornography; and

(e) create offences for non-compliance with ~~this Act classification~~ **decision of the Board**."

Amendment of section 3 of Act 65 of 1996, as substituted by section 3 of Act 3 of 2009

4. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

**"Establishment of Film and Publication Board, Council [and],
Appeal Tribunal and ~~Penalty~~ **Enforcement** ~~Committee~~";**

- (b) by the deletion in subsection (1) of the word "and" at the end of paragraph (b);

- (c) by the substitution in subsection (1) for the comma at the end of paragraph (c) of the expression ";and";
- (d) by the addition in subsection (1) of the following paragraph:
- "(d) an ~~Penalty Enforcement~~ Committee."; and
- (e) by the substitution for subsection (2) of the following subsection:

"(2) The Board~~[and the]~~, Council, Appeal Tribunal~~and Penalty Enforcement Committee~~ shall be independent and impartial, and must perform their functions without fear, favour, or prejudice and act [and function without any bias] in the discharge of their functions and act in accordance with applicable law."

Amendment of section 4A of 65 of 1996, as substituted by section 3 of Act 34 of 1999 and section 7 of Act 3 of 2009

5. Section 4A of the principal Act is amended-

- (a) by the substitution of subsection (1)(a) with the following:
- “(a) in consultation with the Minister, issue directives or policies of general application, including classification guidelines, policies regarding the training of classifiers in terms of section 18C, accreditation in terms of section 18D and the handling of complaints in terms of section 18E, in accordance with matters of national policy consistent with the purpose of this Act;”
- (b) by the deletion in subsection (1) of the word "and" at the end of paragraph (f);
- (c) by the substitution in subsection (1) for the fullstop at the end of paragraph (g) with “; and”

(d) by the insertion of new subsection (h) in section 4A(1):

“(h) appoint the Enforcement Committee members in terms of section 6A.”

Amendment Substitution of heading of section 6 of 65 of 1996, as substituted by section 3 of Act 34 of 1999 and section 7 of Act 3 of 2009

6. Section 6 of the principal Act is amended by the substitution for the heading of the following heading:

"[Members] Appointment of members of Council ~~and~~ Appeal Tribunal and Penalty Committee [to be appointed] by Minister";

(b) by the substitution for subsection (1) of the following subsection:

"(1) The members of the Council ~~and~~ Appeal Tribunal ~~and Penalty Committee~~ shall be appointed by the Minister by notice in the *Gazette* after consultation with Cabinet.";

(c) by the substitution for subsection (2) of the following subsection:

"(2) The Minister may, whenever it is necessary to appoint members of the Council ~~or~~ Appeal Tribunal ~~or Penalty Committee~~, appoint an advisory panel to advise him or her with regard to the persons who are to be appointed as such members, and shall appoint one of the members of the advisory panel as the chairperson thereof."; and

(d) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

"A member of the Council ~~or~~ Appeal Tribunal ~~or Penalty Committee~~ appointed in terms of subsection (1) shall—".

Insertion of sections 6A and 6B in Act 65 of 1996

7. The following sections are hereby inserted in the principal Act after section 6:

"Composition of **Penalty Enforcement** Committee

6A.(1) The **Penalty Enforcement** Committee shall consist of four members plus a chairperson.

(2) The members of the Enforcement Committee must be appointed by the Council.

(3) The members of the Enforcement Committee must be –

(a) a judge or retired judge of the High Court of South Africa;

(b) an advocate or attorney with at least 10 years of appropriate experience;

(c) a magistrate or retired magistrate with at least 10 years appropriate experience; or

(d) a lecturer of law or a retired lecturer of law of a South African University with at least ten years appropriate experience.

(4) The four other members of the **Penalty Enforcement** Committee shall have experience in or knowledge of any one or more of the following matters:

(a) law;

(b) law enforcement;

(c) regulatory matters;

(d) film, games, publications, arts, literature; or

(e) sentencing.

(5) A member of the Enforcement Committee appointed in terms of subsection (2) shall –

(a) be a fit and proper person;

(b) be of good character; and

(c) not be disqualified in terms of section 7.

(6) A quorum for a session of the ~~Penalty~~EnforcementCommittee shall be the chairperson plus two members and where the votes are equal, the chairperson shall have a deciding vote.

Powers and duties of ~~Penalty~~EnforcementCommittee

6B. (1) ~~The ~~Penalty~~Enforcement Committee shall—~~

- (a) investigate all cases referred to it by the chief executive officer of the ~~Board~~for adjudication in respect of non-compliance with any provision of the Act by a distributor, exhibitor or any other person to whom the Act applies, except persons to whom sections 24A, 24B, 24C and 27A(2),(3) and (4) apply;
- (b) adjudicate all cases and make appropriate findings, after the chief executive officer or his or her representative and the respondent have been heard or granted a reasonable opportunity to be heard;

(c) hear evidence under oath or affirmation or evidence by affidavit and come to a finding when it is convinced on a consideration of all the facts before it that such a finding is fair, reasonable and justified;

(d) where appropriate—

(i) impose a fine; of up to R150 000;

(ii) as prescribed, suspend a registration certificate; or

(iii) through the chief executive officer, refer a matter to the National Director of Public Prosecutions for prosecution and, in such a case, the Penalty Enforcement Committee shall not make a finding;

(e) where a fine is not paid, at the instance of the chief executive officer, apply to a court for the enforcement of such a fine as a civil debt to the Board.

(2) The finding of a contravention by the Penalty Enforcement Committee in terms of subsection (1) shall not be regarded as a conviction in respect of a criminal offence and no prosecution for that offence shall thereafter be competent.

(3) An aggrieved person may appeal to the Appeal Tribunal against a finding of the Penalty Enforcement Committee.

(4) The Minister may, from time to time and after consultation with the Board, by notice in the Gazette, adjust the amount of fines that may be imposed by the Enforcement Committee in accordance with the average of the consumer price index, as published from time to time in the Gazette, for the immediately

preceding 12 months multiplied by the number of years that the amount has remained the same.

(5) The chairperson, members of the Enforcement Committee and each member of the staff of the Enforcement Committee, must not—

(a) engage in any activity that may undermine the integrity of the Enforcement Committee;

(b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;

(c) make private use of, or profit from any confidential information obtained as a result of performing that person's official functions in the Enforcement Committee; or

(d) divulge any information referred to in paragraph (iii) to any third party, except as required as part of that person's official functions within the Enforcement Committee."

Amendment of section 7 of Act 65 of 1996, as amended by section 36 of Act 12 of 2004 and section 8 of Act 3 of 2009

8. Section 7 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

**"Disqualifications with regard to membership of Council [or],
Appeal Tribunal or Penalty Enforcement Committee";**

- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"A person shall not be qualified to be appointed as a member of the Council **[or]**, Appeal Tribunal or ~~Penalty~~ **Enforcement** Committee, or to be such a member, if he or she—"; and

- (c) by the substitution for subsection (2) of the following subsection:

"(2) Whenever circumstances in relation to a member of the Council **[or]**, Appeal Tribunal or ~~Penalty~~ **Enforcement** Committee so change that it would have disqualified him or her from being appointed as such a member, had they been in existence at the time of his or her appointment, the seat of the member shall become vacant, and the vacancy in such seat shall be filled in accordance with section 6."

Amendment of section 8 of Act 65 of 1996, as amended by section 9 of Act 3 of 2009

9. Section 8 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

"Period of office of members of Council **[and], Appeal Tribunal and ~~Penalty~~ **Enforcement** Committee"; and**

- (b) by the substitution for subsection (1) of the following subsection:

"(1) Members of the Council **[or]**, Appeal Tribunal and ~~Penalty~~ **Enforcement** Committee shall be appointed for a period of five years."

SubstitutionAmendment of section 9 of Act 65 of 1996, as substituted by section 4 of Act 34 of 1999 and section 10 of Act 3 of 2009

10. The following section is hereby substituted for ~~s~~Section 9 of the principal Act is hereby amended:

(a) by the insertion of subsection (1A) of the following:

“(1A) The Council may remove a member of the Enforcement Committee from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.”

(b) by the insertion of subsection (2A) of the following:

“(2A) A decision to remove a member of the Enforcement Committee from office shall be based on a finding of a tribunal appointed by the chief executive officer: Provided that a member shall have a right to be heard.”

(c) by the insertion of subsection (3A) of the following:

“(3A) The Council may suspend a member of the Enforcement Committee from office pending the finding of the tribunal referred to in subsection (2A).”

(d) by the substitution of subsection (4) of the principal Act with the following:

“(4) A member of the Council [or], Appeal Tribunal or Penalty Enforcement Committee shall vacate his or her office when any of the circumstances referred to in section 7 becomes applicable in respect of him or her, and the Minister issues him or her with a certificate to that effect.”

"Removal from office

9. (1) The Minister may remove a member of the Council~~[or]~~, Appeal Tribunal ~~or Penalty Committee~~ from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.

(2) A decision to remove a member of the Council~~[or]~~, Appeal Tribunal ~~or Penalty Committee~~ from office shall be based on a finding of a tribunal appointed by the Minister: Provided that the member shall have a right to be heard.

(3) The Minister may suspend a member of the Council~~[or]~~, Appeal Tribunal ~~or Penalty Committee~~ from office pending the finding of the tribunal referred to in subsection (2).

(4) A member of the Council~~[or]~~, Appeal Tribunal ~~or Penalty Committee~~ shall vacate his or her office when any of the circumstances referred to in section 7 becomes the applicable in respect of him or her, and the Minister issues him or her with a certificate to that effect."

Amendment of section 9A of Act 65 of 1996, as inserted by section 11 of Act 3 of 2009

11. Section 9A of the principal Act is hereby amended—

- (a) by the deletion in subsection (2) of the word "and" at the end of paragraph (b);
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) determine an application made under section 18(1) for registration as a distributor or exhibitor of films[,]or games [or publications.];"and";and

(c) by the addition in subsection (2) of the following paragraphs:

"(d) accredit commercial online distributors' classification systems in terms of section 18C;

(e) perform the functions in respect of the complaints procedure in section 18E; and

(f) take such step as may be necessary in regard to—

(i) the accreditation of any foreign or international classification system in relation to the classification of digital films, digital games and publications;

(ii) the conclusion of a compliance and online distribution agreement with a commercial online distributor in relation to the online distribution in the Republic, of digital films, digital games and publications classified through the accredited foreign or international classification system;
and

(iii) the exemption of any commercial online distributor from the classification of digital films, digital games and publications in terms of the Act."

Substitution of section 11 of Act 65 of 1996, as substituted by section 13 of Act 3 of 2009

12. The following section is hereby substituted for section 11 of the principal Act:

**"Administrative support for Council [and], Appeal Tribunal and
Penalty Enforcement Committee**

11. The administrative work connected with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Council [and], Appeal Tribunal and Penalty Enforcement Committee shall be performed by the staff of the Board."

Substitution of section 12 of Act 65 of 1996, as substituted by section 14 of Act 3 of 2009

13. The following section is hereby substituted for section 12 of the principal Act:

"Remuneration

12. The members and staff of the Council, Appeal Tribunal, Penalty Enforcement Committee, an advisory panel and any person appointed as an expert to assist or advise the Council, [or] Appeal Tribunal or Penalty Enforcement Committee, shall receive such remuneration, allowances and other benefit as may be determined by the Minister in consultation with the Minister of Finance."

Amendment of section 13 of Act 65 of 1996, as amended by section 15 of Act 3 of 2009

14. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The expenditure in connection with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Board, Council, Appeal Tribunal, Penalty Enforcement Committee and an advisory panel shall be defrayed from money appropriated by Parliament for **[the] that** purpose."

Substitution of section 14 of Act 65 of 1996, as amended by section 4 of Act 18 and substituted by section 16 of Act 3 of 2009

15. The following section is hereby substituted for section 14 of the principal Act:

"Annual report

14. (1) The Council shall, as soon as practicable after the end of each financial year, prepare a report on all the activities of the Board, Council, **[and]** Appeal Tribunal and Penalty Enforcement Committee during that financial year, and on the financial position of the Board, Council **[and]**, Appeal Tribunal and Penalty Enforcement Committee as at the end of that financial year.

(2) The report contemplated in subsection (1), together with the audited balance sheet and accounts pertaining to the funds of the Board, Council [and], Appeal Tribunal and ~~Penalty Enforcement~~ Committee shall be submitted to the Minister for tabling in Parliament."

Substitution of section 15A of Act 65 of 1996, as inserted by section 18 of Act 3 of 2009

16. The following section is hereby substituted for section 15A of the principal Act:

"Functions and powers of compliance officers

15A. (1) A compliance officer may, for the purpose of **[achieving the objects of this Act] –**

- (a) ~~achieving the objects of this Act, and of [and of] –~~
- (b) ~~[advising] advise the~~ **advising** distributors and exhibitors of films and games, of the requirements of this Act with regard to the distribution or exhibition of films and games; and
- (c) ~~[ensuring] ensure~~ **ensuring** that all films and games offered for sale or hire by a distributor ~~or an online distributor,~~ have been classified and labelled in terms of this Act and that all such films and games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have

been imposed on the distribution of such films and games by the Board,

[enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted].

~~(1A) For the purpose of subsection (1), the compliance officer may~~

~~at all reasonable times, enter any premises,~~

- (i) ~~with the consent of the person in charge of such premises or with the assistance of a member of the South African Police Service, enter any premises on or in which the business of the sale, hire or exhibition of films, publications or games is being conducted;~~
- (ii) ~~at all reasonable times, with the consent of the person in charge of such premises or facility or the assistance of the South African Police Services, enter any premises or other facilities that are used to store films or games or publications being distributed or intended for distribution, in order to gain access, free of charge, to and view and take copies of all the information, reports, documents and other material needed for the inspection of labelling; and to access the premises of any internet service access providers, to check compliance with the Act, subject to the limitation imposed by section 24(3)(g);~~

- (iii) with the consent of the person in charge of such premises or the assistance of the South African Police Services, enter the premises of any internet access providers to check compliance with this Act;
- (iv) review a product list of all films and games offered for sale or hire through the internet which can be accessed by any persons;
- (v) with the consent of the person in charge of operating the online medium or the assistance of the South African Police Services, review a product list of all films and games offered for sale or hire through an online medium which can be accessed by a closed group of persons;
- (vi) in the prescribed form, issue a compliance notice and notice to remove from display, including from display in an online medium, unclassified films or games; or publications;
- (vii) with the consent of the person in charge of such premises or the assistance of a member of the South African Police Services, seize any unclassified film or game or publication or any film or game or publication that does not comply with the requirements of this Act;
- (viii) direct that the film, game or publication contemplated in paragraph (vii) be removed from display, including from display in an online medium, or offer for sale or hire until it complies with the requirements of this Act or complies

with any decision of the Board with regard to its distribution;

(ix) request the production of a certificate of registration as a distributor or exhibitor ~~erof~~ film or games issued by the Board; ~~and~~

(x) where relevant, request the production of a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24; and

(xi) ~~with the consent of the person in charge of the premises or the assistance of the South African Police Services,~~ examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2); ~~with the consent of the person in charge of the premises.~~

(2) Any entry and inspection of premises or facility made in terms of subsection (1) ~~may occur at any reasonable time but~~ must be conducted with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(3) A record shall be kept of any material seized in terms of subsection (1) indicating the purpose of seizure and the material seized: ~~Provided that the person from whom the material is seized, if identifiable, is provided with a copy of such a record.~~

(4) In order to give effect to the objects of the Act and fulfillment of the functions of the compliance officer provided for in this section, the Minister may ~~in necessary circumstances and~~ with the concurrence of

the Minister of Police, deploy a member of the South African Police Service within the Board to carry out any compliance or monitoring duties."

Amendment of section 16 of Act 65 of 1996, as substituted by section 19 of Act 3 of 2009

17. Section 16 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) Any person may request, in the prescribed manner, that a publication, other than a **[bona fide newspaper]**~~ermagazinepublication~~ that is published by a member of the Press Council of South Africa**[a body, recognized by the Press Ombudsman which subscribes, and adheres, to a code of conduct that must be enforced by that body, and, other than]**or an advertisement that falls ~~within~~under the jurisdiction of the Advertising Standards Authority of South Africa, which [is to be or] is being distributed in the Republic, be classified in terms of this section."

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"Any person, except the publisher of a **[newspaper,]**~~magazine or advertisement~~publication contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—";

(c) by the deletion in subsection (2) of paragraph (a);

(d) by the deletion of subsection 16(2)(a) of the Act

(e) by substitution in subsection (2) for paragraph (a) with paragraph (b) of the following paragraph:

"(a) **[advocates]** amounts to propaganda for war;"

(f) by the substitution in subsection (2) for paragraph (b) with paragraph (c) of the following paragraph:

"(b) incites imminent violence; or";

(g) by the substitution in subsection (2) for paragraph (c) with paragraph (d) of the following paragraph:

"(c) the advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm and imminent violence;"

(g) by the substitution for subsection (3) of the following subsection:

"(3) The Board shall refer any publication submitted to the Board in terms of subsection (1) or (2) to a classification committee for examination and classification of such publication: Provided that the classification committee must render a decision as soon as is possible so as not to unreasonably delay the publication that has been referred to it for classification.";

(g) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:

"(ii) the advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm,

unless, judged within context, the publication is **[, except with respect to child pornography,]** a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;" and

(h) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs, respectively:

"(b) classify the publication as "XX" if it contains—

- (i) explicit ~~violent~~ sexual conduct accompanied by explicit violence **[which violates or shows disrespect for the right to human dignity of any person];**
- (ii) ~~bestiality~~, incest ~~[,]~~ or rape **[or conduct or an act which is degrading of human beings;**
- (iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour];**
- (iv) explicit infliction of **[sexual or]** domestic violence; or
- (v) explicit visual presentations of extreme violence,

unless, judged within context, the publication is **[, except with respect to child pornography,]** a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified **["X18 or"]** with reference to the guidelines relating to

the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

- (c) classify the publication as "X18" if It contains explicit sexual conduct, unless, judged within context, the publication is **[, except with respect to child pornography,]** a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or".

Substitution of heading of Chapter 4 of Act 65 of 1996

18. The following heading is hereby substituted for the heading Chapter 4 of the principal Act:

“Classification of Films and Games, Self-classification, Accreditation, Complaints and Prohibited Content”

Amendment of section 18 of Act 65 of 1996, as amended by section 7 of Act 18 of 2004 and substituted by section 21 of Act 3 of 2009

19. Section 18 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3)(a) for the words following subparagraph (ii) of the following words:

"unless, judged within context, the film or game is [**except with respect to child pornography,**] a *bona fide* documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest, in which event the ~~publication~~film or game shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;";

(b) by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs, respectively:

"(b) classify the film or game as "XX" if it [~~depicts~~contains]—

- (i) explicit ~~violent~~sexual conduct accompanied by explicit violence [**which violates or shows disrespect for the right to human dignity of any person**];
 - (ii) bestiality, incest[,]or rape [**conduct or an act which is degrading of human beings**];
 - (iii) **conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour;**
 - (iv) explicit infliction of [**sexual or**]domestic violence; or
 - (v) explicit visual presentations of extreme violence,
- unless, in respect of the film or game, judged within context, the film or game is [**except with respect to child pornography,**] a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be [**classified "X18" or**]classifiedwith reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

(c) classify the film or game as "X18" if it contains explicit sexual conduct, unless, judged within context, the film or game is **[, except with respect to child pornography,]** a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; or";

(c) by the substitution for subsection (6) of the following subsection:

"(6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the purposes of broadcasting as defined in the Electronic Communications Act, 2005 (Act 36 of 2005), be exempt from the duty to apply for classification of a film or game and **[, subject to section 24A (2) and (3)]**, shall in relation to a film or game, not be subject to any classification or condition made by the Board in relation to that film or game."~~;~~ ~~and~~

~~(d) by the addition of the following subsections:~~

~~"(7) The exemption to the broadcasters contemplated in subsection (6) shall not apply to a broadcaster who stream contents through the internet.~~

~~"(8) In order to give effect to the objects of the Act and fulfilment of the obligations provided for in this section, the Independent Communications Authority of South Africa may not issue or renew any broadcasting license to a broadcaster who also stream contents~~

~~through the internet, unless such broadcaster is also registered with the Board as a distributor in terms of subsection (1).~~

~~(9) For purposes of this section streaming content through the internet does not amount to broadcasting."~~

Repeal of sections 18A and 18B

20. Sections 18A and 18B of the principal Act are hereby repealed.

Insertion of sections 18C, 18D, 18E, 18F and 18G in Act 65 of 1996

21. The following sections are hereby inserted in the principal Act after section 18:

~~"Self-classification" Independent classification of digital films, digital games and Certain publications~~

18C. (1) The Board Council may, on application and upon payment of the prescribed fee, by an independent industry classification bodycommercial online distributorwhich has been established by some or all of the distributors registered in terms of section 18(1)(a), approve and accredit such classification bodycommercial online distributor to conduct classifications of digital films, digital games and publications.

(2) Acommercial online distributor of digital films, digital games or publications that is a member of the classification body

contemplated in subsection (1) shall not be subject to section 18(1)(b) provided that—

- (a) the ~~classification body~~ commercial online distributor referred to in subsection (1) has been accredited by the ~~Board~~ Council to classify its own ~~digital~~ films, ~~digital~~ games or publications;
- (b) the ~~classification body~~ commercial online distributor applies the classification guidelines as determined by the ~~Board~~ Council in consultation with the Minister;
- (c) the decisions of the ~~classification body~~ commercial online distributor comply with the requirements ~~set out in section 10 and any other requirements~~ as may be set by ~~Board~~ Council from time to time ~~and by the founding body of the classification body~~;
- (d) the registered distributors remain subject to classifications which were issued before such ~~classification body~~ commercial online distributor was approved and may apply for re-classification by the Board only after two years of a classification decision of the Board;
- (e) the ~~classification body~~ commercial online distributor informs the Board of all its "XX" and "X18" classifications of ~~digital~~ films, ~~digital~~ games and publications and any other classification of ~~digital~~ films, ~~digital~~ games and publications so that the Board may publish these classifications in the *Gazette*, after which such classifications are deemed to have been made by the Board; ~~and~~
- (f) if a ~~digital~~ film, ~~digital~~ game or publication is already classified, ~~or is subsequently classified~~, by the Board the ~~classification body~~ commercial online distributor ~~will not have jurisdiction to~~ may not

classify or re-classify differently to the Board's classification of the said digital film, digital game or publication.:

(g) if some or all distributors of digital films, digital games and publications wish to set up a classification body, that body shall be subject to this section.

(3) The Board may provide training to commercial online distributors contemplated in subsection (1) in terms of this Act.

(4) The classification body commercial online distributor shall upon demand by the Board make available all its classification decisions in relation to digital films, and digital games and publications, for auditing purposes.

(5) The accreditation of a classification body commercial online distributor may, after due inquiry, be suspended by the Board— Council, for a maximum period of 12 months or indefinitely,

(a) if the classification body commercial online distributor acts contrary to the provisions of this section,

(b) until the Board is satisfied that the commercial online distributor will comply with the provisions of this section in the future, and in addition,

a commercial online distributor may also be subject to prosecution for an offence in terms of this Act.

(6) No digital film, or digital game or publication may be distributed in the Republic unless it has been classified in terms of section 16, section 18, this section or section 18D, and a clearly visible label indicating the

age limit and the nature of content is displayed on or in connection with the film, ~~or~~ game or publication and appearing next to the logo of the Board.

Approval of accredited foreign or international classification systems
by the Board

18D. (1) The Board may, in its discretion, on application by an online distributor wishing to distribute digital films, digital games or publications in the Republic using classification ratings issued by a foreign or international classification authority or body, approve the use of classification ratings issued by the foreign or international classification authority or body.

(2) The Board may approve the application contemplated in subsection (1), subject to such conditions as the Board may consider necessary in relation to the online distribution of digital films or digital games.

(3) The Board shall, in considering the application contemplated in subsection (1), take into account—

(a) the accessibility by the Board of the distributor's online service for compliance, monitoring and auditing purposes; and

(b) the alignment of the foreign or international ratings to the applicable ratings in terms of the Act and the Council's classification guidelines.;

and

(4) An application in terms of subsection (1) must be accompanied by the payment of the prescribed fee, determined by the Minister."

Complaints against ~~digital content services distributed online~~ Prohibited Content

18E. (1) Any person may complain to the Board about unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors.

(2) If, upon investigation by the Board or by the compliance officers in terms of section 15, the Board establishes it is established that there is merit in the complaint and or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of this Act or online has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D, the matter must be referred to the Board which may—

(a) in the case of a non-commercial online distributor, issue a take-down notice in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act 25 of 2002); or

(b) in the case of internet service providers, issue a take-down notice in terms of section 77 of Electronic Communications and Transactions, 2002 (Act 25 of 2002)

(c) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board and/or a member of the South African Police Services with information of the identity of the person who published the prohibited content.

(a) — in the case of a hosting service, issue a take-down notice;

~~(b) in the case of a live content service, issue a service cessation notice;~~

~~and~~

~~(c) in the case of a link service, issue a link deletion notice.~~

(3) In the case of content hosted outside of the Republic that is found to contain child pornography, the Board shall refer the matter to the South African Police Service or to the hotline in the country concerned for the attention of law enforcement officials in that country.

Prohibition against distribution of private sexual photographs and films

18F. (1) No person may expose, through any electronic medium, including the internet and a social networking sites, a private sexual photograph or film if the disclosure is made without the consent of anthe individual or individuals who appear/s in the photograph or film., and

~~(b) with the intention of causing that individual distress.~~

(2) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

~~(3) The prohibition referred to in subsection (1) shall apply notwithstanding that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.~~

(4) For the purposes of this section and section 24E a photograph or film is “private” if, judging from the context in which the

photograph or film is taken or made, it was not intended by any individual in the photograph or film to be seen by others. it shows something that is not of a kind ordinarily seen in public.

(5) For the purposes of this section a photograph or film is “sexual” if such photograph or film—

(a) it shows all or part of an individual’s exposed genitals or pubic area;

(b) it shows something that a reasonable person would consider to be sexual because of its nature; or

(c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(6) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board and/or a member of the South African Police Services with information of the identity of the person who published the private sexual photograph or film.

Prohibition against filming and distribution of films and photographs depicting sexual assault and violence against children

18G. (1) No person may create, produce or distribute in any ~~electronic~~ medium, including the internet, ~~and a social networking sites~~ any films or photographs depicting sexual assault and violence against children.

(2) For the purposes of this section “photograph or film” means a still or moving image in any form that—

(a) consists of, or includes one or more photographed or filmed images, ~~and or~~

(b) appears to consist of or includes one or more photographed or filmed images.

(3) The reference in subsection (2)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(4) For the purposes of this section “photographed or filmed image” means a still or moving image that—

(a) was originally captured by photography or filming, or

(b) is part of an image originally captured by photography or filming.

(5) For the purposes of this section “filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(6) References to a photograph or film include—

(a) a negative version of an image described in subsection (2), and

(b) data stored by any means which is capable of conversion into an image described in subsection (2).

(7) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board and/or a member of the South African Police Services with information of the identity of the person who published a film or photograph depicting sexual assault and violence against children.

Prohibition against propaganda for war; incitement of imminent violence; and hate speech advocacy of hatred that is based on

identifiable group characteristics, and that constitutes incitement to cause harm

18H. No person may distribute through any ~~electronic~~ medium including the internet ~~and social networking sites~~, any film, game or publication which ~~advocates amounts to~~ propaganda for war; incites ~~imminent violence;~~ or advocates ~~hate speech.~~ hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm.

Display of classification decisions

18I. (1) Where a ~~digital~~ film, ~~or digital~~ game ~~or publication~~ has been classified or exempted from classification in terms of this Act, or such film ~~or game~~ has been classified by an ~~industry classification body~~ commercial online distributor referred to in section 18C, the ~~digital~~ film ~~or digital~~ game ~~or publication~~ must—

- (a) if it is a film or game approved for sale or hire, display a label in the prescribed form; ~~and or~~
- (b) if it is a ~~digital~~ film, ~~or digital~~ game ~~or publication~~ approved for sale or hire online, must conspicuously display the Board's classification decision and logo on the landing page of the online medium website, the website online medium catalogue and at the point of sale of the commercial online distributor services.

(2) The format, including the size and design, as well as the manner of the display of certificates of classification on films, ~~or~~ games ~~and~~ ~~publications~~ approved for distribution or exhibition, must be prescribed.

(3) No film or game may be distributed in the Republic, unless it has been classified in terms of section 18, ~~or~~ 18C or 18D and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film or game.

Re-classification

18J. (1) Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply to the Board in the prescribed manner, for a less restrictive classification of that film, game or publication.

(2) Any member of the public who is aggrieved or offended by a classification decision in respect of a film, game or publication, may in prescribed manner and upon payment of a prescribed fee, apply to the Board for re-classification of such film, game or publication.

(3) The Board shall, upon receipt of the application contemplated in subsections (2) and (3), inform the distributor in writing of the application for re-classification and request the distributor to make representations before a decision is made as to whether or not to reclassify the film, game or publication."

Substitution for the heading of Chapter 5 of Act 65 of 1996

22. The following heading is hereby substituted for the heading of Chapter 5 of the principal Act:

"Right to [Appear,] appear and to [Appeal] appeal to Appeal Tribunal [and Supreme Court]".

Amendment of section 19 of Act 65 of 1996, as amended by section 5 of Act 34 of 1999 and substituted by section 23 of Act 3 of 2009

23. Section 19 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"[The Minister or any] Any person who has [lodged a complaint with] made a request to the Board [that any] for a publication to be referred to a classification committee for classification in terms of section 16(1) or submitted a publication for classification in terms of section 16(2), or the person who has applied for the classification or the reclassification of a film, game or publication, or for a permit, exemption or licence, or who is the publisher of a publication which is the subject of an application for classification, or whose financial interest could be detrimentally affected by a decision of the Board on such application, or with regard to an exemption or permit, the withdrawal of which is being considered, or who appeals to the Appeal Tribunal against a decision with regard to such an application, shall have the right—".

Amendment of section 20 of Act 65 of 1996, as amended by section 6 of Act 34 of 1999, section 8 of Act 18 of 2004 and section 24 of Act 3 of 2009

24. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) **[The Minister or any]**Any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint or **[application]**a submission in terms of section 16, may, within a period of 30 days from the date on which he or she was notified of the decision of the Board, in the prescribed manner, appeal to the Appeal Tribunal."; and

(b) by the addition of the following subsection:

"(6) Where a **commercial online** distributor of a film or game is a **member of an industry classification body commercial online distributor** referred to in section 18C, such **commercial online distributor** shall not have the right to appeal to the Appeal Tribunal against a classification by that **industry classification body commercial online distributor in line with a Board classification** unless the Board, based on a complaint in terms of section 18G, imposes a more onerous classification, in which case that **commercial online distributor** may appeal to the Appeal Tribunal against such a classification."

Amendment of section 24 of Act 65 of 1996, as amended by section 28 of Act 3 of 2009

25. Section 24 of the principal Act is hereby amended by the addition of the following subsection:

"(3) Any person who is registered as a film or game distributor in terms of section 18(1)(a) may, subject to an exemption being granted by the Board, distribute a film or game classified as "X18" online, subject to the following conditions:

(a) The distributor shall ensure to the satisfaction of the Board that children ~~under the age of 18~~ would not be able to access such a film or game online;

(b) the distributor shall ensure that the classification and age restriction are clearly displayed on the screen of the user throughout the screening;

(c) the user must confirm that he or she is 18 years or older prior to commencing viewing of the film or playing the game;

(d) the distributor shall not distribute any promotion of the film or game to be accessed without it being paid for by way of a credit card or another child secure method agreed to by the Board and, for the purposes of this subsection, the promotion of the film shall be subject to the same conditions regarding distribution as the main feature of the film or game;

(e) the distributor shall keep, solely for his or her private records, a register of all instances where access was granted to a user, whose name,

address and verifiable age must be noted in the register kept for that purpose;

(f) the register referred to in paragraph (e) must be kept for one year from the date when distribution took place;

(g) the chief executive officer may approach a court *ex parte* for the production of the register referred to in paragraph (e) if he or she has reasonable cause to believe that the online distributor is supplying material to children under the age of 18;

(h) if the film or game is exhibited online in a public place, that place must be a licensed premises in terms of subsection (1);

(i) the Board may, after due inquiry, suspend an exemption for a maximum period of 12 months if any of the conditions specified in this subsection have not been met by the distributor;

(j) a distributor who knowingly or negligently grants access to a film or game classified as "X18" to a child under the age of 18 shall be guilty of an offence as contemplated in section 24A(4); and

(k) the inquiry instituted by the Board in terms of paragraph (i) must continue even if criminal proceedings have been instituted against the distributor."

Substitution of section 24A of Act 65 of 1996, as inserted by section 29 of Act 3 of 2009

26. The following section is hereby substituted for section 24A of the principal Act:

"Prohibitions, offences and penalties on ~~distribution and exhibition~~ possession of films, games and publications

24A. (1) Any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding **[six]** eight months or to both a fine and such imprisonment.

(2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16**[(1)](2)****[of this Act]**which has except with respect to broadcasters that are subject to regulation by the Independent Communication Authority of South Africa and except with regard to a ~~newspaper, magazine or advertisement~~publication contemplated in section 16(1)—

- (a) **[except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16(1),]** not been classified by the Board;
- (b) been classified as a "refused classification"; or
- (c) been classification as "XX" or would have been so classified had it been submitted for classification,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R500 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of film or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified "X18", or would have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(4) Any person who knowingly distributes or exhibits any film, game or publication—

- (a) classified as "X18"; or
- (b) which contains depictions, descriptions or scenes of explicit sexual conduct, **[unless such film, game or publication is a bona fide documentary or is of scientific, literary or artistic merit or is on a matter of public interest]**which would have justified an "X18" classification,

to a person under age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) Any person who knowingly distributes a film, game or publication which has been classified by the Board without displaying, clearly

and conspicuously and in the prescribed manner, the classification reference number, the age restriction, consumer advice and any other condition imposed on the distribution of that film, game or publication, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(6) Any person who knowingly advertises a film or game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding ~~[six]~~eight months or both a fine and such imprisonment.

(7) Any person who knowingly, or who ought reasonably to have known, and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or game, a trailer advertising a film or a game with a more restrictive classification than the featured film or game, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding ~~[six]~~eight months or to both a fine and such imprisonment."

Amendment of section 24B of Act 65 of 1996, as inserted by section 29 of Act 3 of 2009

27. Section 24B of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words following paragraph (d) of the following words:

"shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.";

- (b) by the substitution in subsection (2) for the words following paragraph (b) of the following words:

"shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment."; and

- (c) by the substitution for subsection (3) of the following subsection:

"(3) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R400 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."

Amendment of section 24C of Act 65 of 1996, inserted by section 29 of Act 3 of 2009

28. Section 24C of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"Any person who fails to comply with subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment."

Insertion of section 24D in Act 65 of 1996

29. The following section is hereby inserted in the principal Act after section 24C:

"Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board

24D. Any person who furnishes the Board with false or misleading information on the Board's online submission system with respect to registration online to—

(a) classify a film or game;

(b) renew registration; or

(c) apply for the submission of a game for classification,

shall be guilty of an offence and liable, upon conviction to a fine not exceeding R15 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Prohibitions, offences and penalties on distribution of private sexual photographs and films

“24E.(1) Any person who knowingly distributes private sexual photographs and films in any ~~electronic~~ medium including the internet ~~and a social networking sites~~, without prior consent of the individual ~~or individuals~~ in the said sexual photographs and films ~~with the intention to cause the said individual distress~~ shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) ~~Any person who knowingly distributes private sexual photographs and films in any medium including through the internet, without prior consent of the individual or individuals and where the individual or individuals in the photographs or films is identified or identifiable in the said photographs and films, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R300 000 or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.”.~~

Prohibitions, offences and penalties on filming and distribution of films and photographs depicting sexual assault and violence against children

24F. Any person who knowingly creates, produces or in any way contributes to or assists in any film or photograph which contains depictions, descriptions

or scenes of sexual assault and violence against children shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Prohibitions, offences and penalties on propaganda for war; incitement of imminent violence; and hate speech advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm

24G. Any person who knowingly distributes in any electronic medium, including the internet, and a social networking sites any film, game or publication which advocates amounts to propaganda for war; incites imminent violence; or advocates hate speech hatred based on an identifiable group characteristic, and that constitutes incitement to cause harm shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment."

Amendment of section 27A of Act 65 of 1996, as amended by section 31 of Act 3 of 2009

- 30.** Section 27A of the principal Act is hereby amended—
- (a) **by the substitution of the heading of “27A. Registration and other obligations of Internet service providers” with the following:**

“27A. Registration and other obligations of [Internet service] internet access providers”

(b) by the substitution of the introduction of subsection (1) as follows:

“Every [**Internet service**]internet access provider shall—“

(c) by the substitution of subsection (2) as follows:

"(2) If an [**Internet**]internet[**service**]access provider has knowledge that its services are being used for the hosting or distribution of child pornography, amounts to propaganda for war; incites imminent violence; or advocates hatred based on an identifiable group characteristic and that constitutes incitement to cause ~~harm~~racism and hate speech, such [**Internet**]internet[**service**]access provider shall";

(d) by the substitution of subsection (3) as follows:

“(3) An [**Internet service**]internet access provider shall, upon request by the South African Police Service, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography.”

by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively:

- "(a) fails to comply with subsections (1) and (2) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
- (b) fails to comply with subsection (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding

R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment."

Repeal of section 30 of Act 65 of 1996

31. Section 30 of the principal Act is hereby repealed.

Amendment of section 31 of Act 65 of 1996, as amended by section 35 of Act 3 of 2009

32. Section 31 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) make regulations relating to the procedure with regard to the nomination of persons as candidates for the Council **[or]**, Appeal Tribunal and Penalty Enforcement Committee, further relevant experience in terms of section 6 (4)(a)**[of this Act]** and the experience of persons who may be appointed as members of the advisory panel referred to in section 6**[(1)](2)**;"

(b) substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in paragraph (a), the **[Board]**Council, in consultation with the Minister, shall publish the **[said]** guidelines in the *Gazette* and, where necessary, amend them."

Insertion of section 31A in Act 65 of 1996

33. The following section 31A is inserted in the principal Act after section 31:

“31A(1) The Minister or Council, as the case may be, before making or amending any regulations or directives referred to in sections 4A and 31, must publish a notice in the Gazette—

(a) setting out that draft regulations or directives have been developed;

(b) specifying where a copy of the draft regulations or directives may be obtained; and

(c) inviting written comments to be submitted on the proposed regulations or directives within a specified period.

- (2) After complying with subsection (1) and after consultation with the Council in respect of the draft regulations or directives, the Minister may—

(a) amend the draft regulations or directives; and

(b) subject to subsection (3), publish the regulations or directives in final form in the Gazette.

- (3)

(a) The Minister or Council, as the case may be, must, within 30 days before publication of the regulations in the Gazette, as referred to in subsection (2)(b), table them in Parliament.

(b) Subsection (1) does not apply in respect of any amendment of the regulations as a result of the process referred to in paragraph (a)."

Substitution of expression in Act 65 of 1996

34. The principal Act is hereby amended by the substitution for the expression "Internet" of the expression "internet" wherever it occurs.

Amendment of arrangement of sections in Act 65 of 1996

35. The arrangement of sections after the long title of the principal Act is hereby amended—

(a) by the substitution for the heading of Chapter 2 of the following heading:

"Film and Publication Board [: Film and Publication Appeal Tribunal], Council, Appeal Tribunal and Penalty Enforcement Committee";

(b) by the substitution for item 3 of the following item:

"3. Establishment of Film and Publication Board, Council [and], Appeal Tribunal and Penalty Enforcement Committee";

(c) by the substitution for item 6 of the following item:

"6. [Members] Appointment of members of Council and Appeal Tribunal and Penalty Committee [to be appointed] by Minister";

(d) by the insertion after item 6 of the following item:

"6A. Composition of Penalty Enforcement Committee

6B. Powers and duties of Penalty Enforcement Committee";

- (e) by the substitution for item 7 of the following item:
- "7. Disqualifications with regard to membership of Council [~~or~~],
Appeal Tribunal or ~~Penalty Enforcement~~ Committee";
- (f) by the substitution for item 8 of the following item:
- "8. Period of office of members of Council [~~and~~], Appeal Tribunal
and ~~Penalty Enforcement~~ Committee";
- (g) by the substitution for item 11 of the following item:
- "11. Administrative support for Council [~~and~~], Appeal Tribunal and
~~Penalty Enforcement~~ Committee";
- (h) by the substitution for item 15A of the following item:
- "15A. Functions and powers of compliance officers";
- (i) ~~by the substitution for the heading of Chapter 4 of the following heading:~~
- ~~**"Classification of Films and Games, Self-classification,
Accreditation, Complaints and Prohibited Content"**~~
- (j) by the deletion of items 18A and 18B;
- (k) by the insertion after item 18 of the following items:
- "18C. ~~Self-classification~~~~Independent classification of digital films,
digital games and publications~~
- 18D. Approval of accredited foreign ~~or international~~ classification
systems by the Board
- 18E. Complaints against content services distributed online
- 18F. ~~Display of classification decisions~~Prohibition against distribution
of private sexual photographs and films

18G. ~~Re-classification~~ Prohibition against filming and distribution of films and photographs depicting sexual assault and violence against children";

(l) by the substitution for the heading of Chapter 5 of the following heading:
"Right to **[Appear,]**appear and to **[Appeal]**appeal to Appeal Tribunal **[and Supreme Court]**";

~~(l) — by the substitution for item 24A of the following item:~~

~~"**24A.** Prohibitions, offences and penalties on **[distribution and exhibition]** possession of films, games and publications"; and~~

(m) by the insertion after item 24C of the following item:

"**24D.** Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board".

Short title and commencement

33. This Act is called the Films and Publications Amendment Act, 2015, and shall come into operation on a date fixed by the President by proclamation in *Gazette*.