



**Films and Publications Amendment Act, 11
of 2019 & draft Films and Publications
Regulations, 2020**

**Meeting with Industry Stakeholders –
Adult Content Distributors**

7 August 2020



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www.fpb.org.za
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Current Status of the Films and Publications Amendment Act, 2019 and the Films and Publications Amendment Regulations, 2020



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On **19 March 2019**, at a Plenary Session of the National Assembly, the Films and Publications Amendment Bill, 2015 (Bill) was put to a vote and was passed.

Having been assented to by both Houses of Parliament, the President of the Republic of South Africa (President) assented to the Bill on **19 September 2019** thereby bringing into promulgation the Films and Publications Amendment Act, 2019 (Amendment Act). The Amendment Act shall only come into operation however **on a date fixed by the President** by proclamation in the Government Gazette.

Acknowledging that the current Regulations fail to reflect the demands and technological advances coupled with the promulgation of the Amendment Act, it has become necessary to **amend the Regulations to be appropriately aligned with the constitutional values, aimed at protecting children against disturbing and harmful content**, but also to make **adequate provision for technological advances, especially on online platforms**.

On **27 February 2020** the Minister of Communications and Digital Technologies communicated her approval for the draft Films and Publications Amendment Regulations, 2020, to be published in the Government Gazette to secure public input to same.

Acknowledging the difficult period in the history of the country, amid the precautionary lockdown and social distancing measures imposed to mitigate against the spread of the COVID-19 virus, the publication of the Notice and the draft Films and Publications Amendment Regulations, 2020 in the Government Gazette could only take place on **3 July 2020**.

Objects of the amendment to the draft Regulations



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The draft Regulations seek to amend the Regulations to –

- **Expand the objects** of the Act to include the **criminalization of the possession, production and distribution of child pornography** and **create offences for non-compliance with the Act**;
- Align the **definition of child pornography** to the definition in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);
- Give effect to the **constitutional amendments of section 16 (2)(a)** as instructed by the Constitutional Court in *Prime Media v Minister of Home Affairs and another* (CCT 113/11);
- Acknowledging that the Amendment Act **decriminalizes the online distribution of adult content** on all platforms including digital platforms, the draft Regulations – Amendment Act should be aligned accordingly;
- Align the draft Regulations – Amendment Act to the provisions of the Amendment Act which provide for the **establishment of a co-regulation system** that will allow for **accreditation by the FPB of independent classification bodies** to classify their own digital films, games and publications; and
- Allow for the **lodging of complaints by any person** about **unclassified, prohibited content, or potential prohibited content** in terms of services being offered online, the **distribution of private sexual photographs and films and filming**, and **distribution of films and photographs depicting sexual violence and violence against children**.

Proposed draft Regulation 1



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Regulation 1 (pages 872 to 880) of the draft Regulations **inserts and amends certain definitions** as outlined below, namely:

- the definition of “**Act**” has been revised to reflect the number of the Act once assented to by the President of the Republic;
- the definition of “**child pornography**” has been revised by the deletion of the words “**includes**” and “**or in such a manner that it is capable of being used for the purposes of sexual exploitation**”;
- the definition of “commercial online distributor” has been added;
- the definition of “**distribute**” has been revised with the addition of the words “**game**” and provision for streaming content;
- the definition of “**domestic violence**” has been revised to make reference to the explicit depictions or descriptions;
- the definitions of “**digital film**” and “**digital game**” have been added;
- the definition of “**film**” has been revised to include any picture intended for exhibition through **any medium, including using the internet, or device**; and
- the definition of “**online distributor**” has been added to include distributors of films, games or publications online through the internet or other electronic medium;
- the definition of a “**permit**” has been added;
- the definition of “**sexual conduct**” has been revised.

Proposed draft Regulation 7 & 8

Regulation 7 (page 888) provides for the display of certificate of classification on publications classified as "X18". If a publication is a magazine or newspaper classified as "X18", it must be distributed in a wrapper, which is marked "X18" and, except for a newspaper contemplated in section 16 (1) and (2), the certificate of classification must be conspicuously displayed on the bottom right hand corner of the magazine cover.

Where the publication is a book which is classified as "X18", the conditions of display of the certificate of classification shall be imposed by the classification committee.

Regulation 8 (pages 888 to 889) provides for the display of publications containing adult content. Any publication, including a publication that is published by a member of the Press Council of South Africa or an advertisement that falls under the jurisdiction of the Advertising Standards Authority of South Africa contemplated in section 16 (1) and (2) of the Act, containing adult content shall:

- a) be enclosed in a wrapper or bag prior to being distributed or displayed in any outlet, other than adult premises, for distribution or exhibition; and
- b) not be displayed within easy reach of children, or next to or among publications intended for children.

Except for a publication contemplated in section 16 (1) and (2), a certificate of classification shall be conspicuously displayed on the bottom right hand corner of the cover of any publication containing adult content.

Proposed draft Regulation 26



We inform. You choose.

Regulation 26 provides for the application for exemption to distribute films, games and publications classified as "X18" at a **physical premises**. Any person who intends to apply for an exemption to distribute a publication, film or game classified as "X18" in terms of section 24 (1) of the Act at a physical premises, shall first obtain a licence to conduct the business of adult premises, issued by a licensing authority in terms of the Businesses Act, 1991 (Act No. 71 of 1991), before submitting an application for an exemption on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and submit the application to the FPB, accompanied by:

- a) the licence issued by the licensing authority;
- b) proof of registration of the business of the applicant in terms of the applicable legislation;
- c) a document confirming that the applicant's tax affairs are in order;
- d) a declaration that the applicant warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;
- e) proof of payment of the prescribed fee; and
- f) an illustration in the form of a photograph, of the prominent display at the entrance of the premises, prohibiting the entry of persons under the age of 18 (eighteen) years.

Notices stating that no persons under the age of 18 (eighteen) years may enter the licensed premises where films, games or publications classified as "X18" are distributed shall be conspicuously displayed on the outer side of the entrance to such premises.

Proposed draft Regulation 26



We inform. You choose.

A film, game or publication classified as "X18" may not be distributed on any of the platforms listed here, namely:

- a) by **mail order**;
- b) on **social networking sites**; or
- c) by any **retail outlet** other than adult premises.

Regulation 27 (pages 922 to 926) provides for the application for exemption to distribute publications, films and games classified as "X18" online. Such an application for exemption in terms of section 24 (3) of the Amendment Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by:

- a) proof of registration of the business of the applicant in terms of the applicable legislation;
- b) a document confirming that the applicant's tax affairs are in order;
- c) a declaration that the applicant warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained; and
- d) proof of payment of the prescribed fee.

Proposed draft Regulation 27



We inform. You choose.

The application must indicate how the distributor shall ensure:

- a) that children under the age of 18 (eighteen) **would not be able to access** a film or game classified as “X18” online or any promotion of such a film or game;
- b) that the **classification and age restriction** are clearly displayed on the screen of the user **throughout the screening**;
- c) that the **user has confirmed that he or she is 18 (eighteen) years or older** prior to commencing viewing of the film, playing the game or viewing the promotion of the film or game;
- d) that it 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 FPB; and
- e) the **keeping of a register**, solely for his or her private records and kept for 1 (one) year from the date on which distribution took place, of all instances where access was granted to a user, whose name, address and verified age must be noted in the register kept for that purpose.

The FPB shall, upon receipt of an application referred to above:

- a) **acknowledge receipt** of the application for exemption by a registered film or game distributor to distribute a film or game classified as “X18” online in terms of section 24 (3) of the Act within 7 (seven) days; and
- b) if the application meets all the requirements, inform the applicant **in writing of the outcome** within 30 (thirty) days; or
- c) where the application does not meet all the requirements, **inform the applicant in writing** to submit the outstanding documents or information before the application shall be considered.

Proposed draft Regulation 27



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On approval of the application, the FPB shall issue the applicant with a **Notice of Exemption in terms of section 24 (3) of the Amendment Act** within 7 (seven) days.

Until such time that the application as contemplated in sub-regulation 27.1 is approved by the FPB, the distributor **shall not be exempted to distribute** a film or game classified as “X18” online.

Should a distributor, knowingly or negligently, grant access to a film or game classified as “X18” to a child under the age of 18 (eighteen) then he or she shall be **guilty of an offence** as contemplated in section 24A (4) of the Act.

The exemption by a registered film or game distributor to distribute a film or game classified as “X18” online in terms of section 24 (3) of the Act shall only be valid for **1 (one) year** but may be renewed annually on payment of the annual prescribed fee.

Approval and promulgation procedure



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Section 31A of the FP Act prescribes the **procedure for the amendment of any regulation**, where a notice must be published in the Gazette –

- a) Setting out the draft regulation which has been developed;
- b) Specifying where a copy of the draft regulations may be obtained; and
- c) Inviting written comments to be submitted on the proposed regulations within a specified period.

It is on this basis that **once approved by Council of the FPB**, the draft Regulations and the draft Regulations for the Appeals Tribunal, shall be **submitted to the Executive Authority** of the institution for its consideration and approval prior to the process set out above taking place.

Way forward



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26 November 2019	Industry Interviews (Physical, Online and Game Distributors)	Interviews with selected distributors on the Films and Publications Amendment Act, 2019 and draft Films and Publications Regulations with the view to securing feedback and inputs on same
27 February 2020	Minister of Communications and Digital Technologies	Confirmation of approval of the draft Films and Publications Regulations, 2020 for the publication of same in the Government Gazette for public consideration and input
3 July 2020	Government Printers (Government Gazette)	Place the draft Films and Publications Regulations, 2020 in the Government Gazette and request comment and inputs from the public by 17 August 2020
6 July 2020	Communications, FPB	Place the draft Films and Publications Regulations, 2020 on the FPB's Website and provide notification to the public through the FPB's social media pages
3 – 17 August 2020	Distributor Engagements (Online)	Obtain verbal inputs/ representation from distributors on proposed regulations
1 – 31 October 2020	FPB team consolidating inputs and drafting responses to public submissions	All inputs received from stakeholders will be consolidated into a reasons document to be used to amend any provisions to regulations
1 – 30 September 2020	FPB Council	Council to consider public inputs and revised regulations.
1 November 2020	Minister of Communications and Digital Technologies	Communicate submission of the draft Films and Publications Regulations, 2020 for the consideration and approval by the Minister of Communications and Digital Technologies
1 January 2021	Government Printers (Government Gazette)	Place the approved Films and Publications Regulations, 2019 in the Government Gazette



Thank You