



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

**Meeting with Industry Stakeholders –
Game Distributors**

6 August 2020



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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 “**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 “**game**” has been revised to include games accessed or played using the internet;
- the definition of “**sexual conduct**” has been revised.

Proposed draft Regulation 2 & 3



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Regulation 2 (pages 881 to 883), which relates to the **registration as a distributor or exhibitor**, provides for such registration through the completion of the applicable Form, alternatively, through the electronic submission accessible on the FPB's website.

The submission for registration requires a distributor or exhibitor to provide a document **confirming that the applicant's tax affairs are in order**, a declaration that the distributor warrants that it **complies with all laws and regulations** applicable to it and **proof of payment** of the prescribed fee.

Regulation 3 (pages 883 to 884), which relates to the **renewal of the registration certificate as a distributor or exhibitor**, likewise provides for such renewal through the completion of the applicable Form, alternatively, through the electronic submission accessible on the FPB's website.

An application for renewal must be made **within 30 (thirty) days** from the date of expiry of the registration certificate and must likewise include all the supporting documentation as provided for in Regulation 2.

Proposed draft Regulation 4 & 11



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Regulation 4 (page 884) shall in addition to the **conspicuous display of the registration certificate** inside all premises and in any other registered business, also be required on the platform of the video-on-demand services.

Regulation 11 (pages 890 to 892) provides for the application for the classification of games. **Every game submitted** for classification must be accompanied by:

- a) a **written report** which accurately and fully describes the game and its classifiable elements as prescribed in the Classification Guidelines of the FPB; and
- b) a **recording of the game** which illustrates how classifiable elements as prescribed in the Classification Guidelines of the FPB are presented.

The **written report** referred to in above must indicate that the game does not or will not:

- a) contain child pornography, propaganda for war or is an incitement to imminent violence;
- b) advocate hatred based on an identifiable group characteristic that constitutes an incitement to cause harm;
- c) depict explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
- d) depict bestiality, incest, rape, conduct or an act which is degrading of human beings;
- e) depict conduct which constitutes incitement of or encourages harmful behaviour;
- f) depict the explicit infliction of sexual or domestic violence;
- g) depict explicit presentation of extreme violence; or
- h) contain explicit sexual conduct.

Proposed draft Regulation 11 & 12



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Regulation 11 (pages 890 to 892) provides further that the game submitted in the application must include mechanisms to remove the bars or impediments preventing players graduating to more advanced levels or advancing further and where it is not possible to comply with such provide a reasonable explanation for such noncompliance in writing.

Where the FPB is of the opinion that a **demonstration of the game** is necessary for the proper examination of the game for classification, the Regulations provide that the applicant shall, on a date and at a time and venue appointed by the FPB, demonstrate that game to the classifiers duly appointed to classify same.

Where a game has been classified, in terms of Regulation 11 such a person who applied for the classification of that game shall provide **a classified copy thereof** to the FPB, free of charge, in the format in which it will be distributed or exhibited.

Regulation 12 (pages 892 to 894) provides for the specification for the labelling of content.

The label reflecting the classification rating of every publication, film and game shall be in a prescribed form and shall be conspicuously displayed on the landing page of the online medium, the online medium catalogue and at the point of sale of the commercial online distributor services.

Proposed draft Regulation 13 & 15



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An application for the **re-classification of a publication, film or game** shall be made only after a period of **1 (one) year** from the date when the publication, film or game was first classified, on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and accompanied by the proof of payment of the prescribed fee in terms of **Regulation 13 (pages 894 to 898)**.

A request may also be made by a member of the public who is aggrieved or offended by a classification decision in respect of a publication, film or game, shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, together with proof of payment of the prescribed fee.

In terms of **Regulation 15 (pages 899 to 901)**, the FPB may recognize a foreign classification system in terms of **section 18D of the Amendment Act** upon application by a commercial online distributor, subject to alignment of the foreign ratings to the FPB's classification guidelines and payment of the prescribed fee.

Such an application for the accreditation 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 15



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The application in terms of **Regulation 15** must indicate:

- a) the **accessibility by the FPB** of the applicant'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, Regulations and the Classification Guidelines of the FPB**.

The FPB shall, upon receipt of the application:

- a) **acknowledge receipt** of the application for the accreditation of any foreign or international classification system in relation to the classification of films or games **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.

On approval of the application, the FPB shall issue the applicant within 7 (seven) days a **Notice of Accreditation of the foreign or international classification system** in terms of section 18D of the Act.

The foreign or international classification system approved by the FPB in terms of section 18D of the Act shall **only be valid for 1 (one) year** but may be renewed annually on payment of the annual prescribed fee.

Proposed draft Regulation 16 & 17



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Regulation 16 (page 902) provides for the submission of online content for classification where any person, other than 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) of the Act, who has been issued with a registration certificate by the FPB as a distributor of a publication, film or game and who wishes to distribute online any publication, film or game shall, unless that publication, film or game is already classified by the FPB, submit such publication, film or game for classification.

An application by a **commercial online distributor for an annual Permit to conduct classifications of publications, films or games** is provided for in terms of **Regulation 17 (pages 902 to 905)** and shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website which shall be 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.

On approval of the application, the FPB shall issue the applicant with a Permit in terms of section 18C of the Act within **7 (seven) days** which shall accredit the applicant to be an authorized distributor and undertake **self-classification** of its own publications, films or games in accordance with the Act, these Regulations and the Classification Guidelines of the FPB.

The Regulations shall further prescribe that the distributor provide the FPB on a monthly basis a product list of all publications, films and games offered for sale or hire through the online medium.

Proposed draft Regulation 17, 18, 19 & 20



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Further, in terms of Regulation 17, in those instances where any of the publications, films or games be in conflict with, or the distributor not classify publications, films or games in accordance with the Act, these Regulations and the Classification Guidelines of the FPB and the distributor **fails to remedy any noncompliance within 30 (thirty) days** of receipt of written notice from the FPB calling upon it to do so, the **Permit shall be suspended** pending the rectification or remedying of such noncompliance.

The Permit in terms of section 18C of the Act may be renewed annually on payment of the annual prescribed fee.

In addition to the commercial online distributor being required in terms of **Regulation 18 (pages 905 to 906)** to classify the films, games and publications which has not been classified by the FPB, the **commercial online distributor must display the classification on the details page of the applicable content.**

Representatives of the commercial online distributor responsible for the classification of publications, films and games intended for distribution in South Africa must **attend a training workshop no less than 2 (two) times per year** in terms of **Regulation 19 (page 906).**

The FPB shall be entitled to have access to, and the classification decisions of, the publications, films or games of the commercial online distributor in terms of **Regulation 20 (pages 906 to 907)** in order to assess whether the classification decision by the commercial online distributor is in line with the Act, the Regulations and Classification Guidelines of the FPB, for the duration of the Permit.

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