



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

**Meeting with Industry Stakeholders –  
WASPA, ISPA**

**17 August 2020**



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[www.fpb.org.za](http://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 *Print 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 “**film**” has been revised to include any picture intended for exhibition through **any medium, including using the internet, or device**; and
- the definition of “**internet service provider**” has been added to mean the service provider contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);
- the definition of “**sexual conduct**” has been revised.

# Proposed draft Regulation 28 & 29



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**Regulation 28 (page 926 to 927)** provides for the process where, in terms of section 27A of the FP Act an internet service provider may apply for registration. Such an application 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.

Every internet service provider shall, when making an application for registration as an internet service provider, indicate in the application form **all measures, or steps taken or put in place to ensure that children are not exposed to child pornography and pornography.**

The FPB may, in terms of section 27A of the Act, require an internet service provider to **demonstrate that the measures contemplated** are still effective. No person may host any website or provide access to the internet as an internet service provider, unless such person is registered with the FPB in terms of section 27A of the Act.

**Regulation 29 (page 927)** provides for the display of registration certificate which shall be **conspicuously displayed** in the premises at which the business of the internet service provider is being conducted.

# Approval and promulgation procedure

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**