

Att: Ms Nonkubela Jordan
The Acting Director-General,
Department of Communications and Digital Technologies
Block A3, IParioll Office Park
1166 Park Street, Hatfield
Pretoria
0001

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Facebook's response to the Department of Communications and Digital Technologies (DCDT)'s consultation on the Draft White Paper on Audio and Audiovisual Content Services Policy Framework

Section 1: Introduction

Facebook is pleased to submit these comments in response to the public stakeholder consultation of the Department of Communications and Digital Technologies (DCDT) on its Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision for South Africa 2020 ("the White Paper").

Facebook welcomes the opportunity to comment on the White Paper and commends the DCDT for its efforts in setting out new mechanisms to regulate audio and audiovisual content services ("AAVCS") that consider the technological advancements and trends which have come with the global digital revolution. We look forward to a productive dialogue with the Department regarding our shared goals of encouraging growth and consumer choice in the digital content and applications markets in South Africa.

To the extent that ~~regulation of internet~~ video services is considered necessary, we encourage the Department to ensure that any rules or policies implemented, account for the fundamental underlying differences between traditional broadcasting services, online video providers and online platforms hosting user-generated videos and are tailored to fit each specific type of service. We also encourage the Department to consider whether alternatives such as co-regulation or self-regulation would achieve the desired objectives. Digital services are highly innovative and fast changing, as are the challenges that emerge in the digital space. Self- and co-regulatory regimes would provide the benefit of being both responsive and adaptable. Industry cooperative efforts can be successful at helping keep people safe and preventing abuse on the internet, by reducing frictions and increasing efficiencies.

Facebook appreciates this opportunity to engage constructively on some of the topics covered in the White Paper. We organise this response as follows. **Section 2** addresses sections 2.1 and 2.2 of the White Paper and explains Facebook's perspectives on the Video Marketplace and Broadcasting Regulation. **Section 3** explains Facebook's concerns with the DCDT's proposal to extend authorisation or licensing requirements to online video apps. **Section 4**

underlines the negative impacts of extending content quotas to online video providers and proposes for consideration some good practices for promoting local content. **Section 5** describes, briefly, how we protect minors on our platform, and highlights how the use of self-regulatory schemes produces high levels of consumer protection while allowing for innovation. Finally, **Section 6** shares our experience in working on accessibility issues and highlights the importance of policies that promote innovation and allow for flexibility in achieving accessible solutions.

Section 2: Facebook’s Perspectives on the Video Marketplace and Broadcasting Regulation (Sections 2.1 and 2.2 of the White Paper)

The Department observes that “audio and audiovisual content consumption via the Internet are fundamentally transforming the South African audio and audiovisual landscape creating a broader content market than traditional broadcasting.” We would encourage the Department to examine fully the diversity of business models and offerings in the evolving video marketplace, comprising traditional providers of cable, broadcast, and satellite services as well as online video providers like subscription video on demand (VoD), free VoD, platforms for user-generated content (UGC), and other revenue and business models, and to consider at the outset how the particulars of the service inform what regulation may be appropriate.

Any regulation considered necessary for online video services must be tailored to fit and take account of the diversity in the online ecosystem for audiovisual content. In particular, legacy broadcast regulations should not be automatically extended to online services because of the fundamental technical and business differences between traditional services and apps. One possible way to address this would be to recognise these differences through the relevant definitions, similar to those contained in the White Paper, and to narrow such definitions in recognition of the fact that there is a marked distinction between online services and traditional forms of broadcasting, as well as within the category of online services themselves.

For example, broadcasters deliver a service to customers using spectrum, a valuable, scarce and regulated resource. Because spectrum is limited, the number of broadcasters that can operate in any market is also necessarily limited. Similarly, cable service providers own and control the underlying network infrastructure and connection to the customer’s premises, and consumers may have limited choices in their cable provider and may have costs associated with switching. Traditional broadcasting and cable regulations have been structured with those considerations in mind. In contrast, a virtually unlimited number of competing online video providers can deliver digital content and applications to customers because of the global nature of the internet. Further, online video providers typically do not control the access infrastructure and operate in a highly competitive market in which it is easy and often cost-free for consumers to switch between competing apps.

Further, online video services offer users greater choice and control than traditional television broadcasting services do. Broadcasting regulations were designed for traditional, linear services

on which consumer choice in content is limited. For online video apps, particularly video on demand, users are in control and can consume the content they want anytime, anywhere.

Another difference is the degree of editorial control exerted by the provider, which determines the level of effective responsibility and control over the content viewed by users. Specifically, broadcasters and other on demand providers exercise editorial responsibility over the content they offer, which means they select what content is available to users on the service.

In contrast, platforms that host user-generated content typically do not exercise the degree of editorial control over content traditionally asserted by broadcast, cable, or subscription providers. Instead, these applications not only give users significantly more choice and freedom, these platforms also empower users themselves to play a more central role in expressing diverse ideas and opinions through the production and publication of video content. The simplicity with which users can produce and publish their own content creates new opportunities to reach expanded audiences more easily and broadly, thereby giving rise to more diverse, local, and niche content offerings and exchanges of ideas. In the context of Facebook, for example, it bears highlighting that while users are bound by the platform's Community Standards, Facebook does not publish or create any content that users share on the platform. Furthermore, although video-sharing platforms typically determine the organization of the user-generated content (UGC) by automatic means or algorithms, they host content created and uploaded directly by users. The Department should distinguish platforms for user-generated content (UGC) from broadcast, cable, and subscription Video on Demand (VoD) services and exclude user-generated content platforms from any revised broadcasting regulations.

As the Department notes, "South Africans now have access to a wide spectrum of local and international drama, comedy, sports and news." But disproportionate requirements that are not adapted to the nature of the online video distribution services could reduce this consumer choice and, in fact, hinder the development of diverse, locally relevant content, so we encourage the Department to consider the negative impact especially for smaller start-ups of regulatory requirements that may serve as barriers to entry.

In particular, extending regulation designed for traditional broadcast providers to online on demand services or platforms for user-generated content is a fundamental mismatch that risks undermining the objectives that regulation tries to achieve. Such a regulatory approach would create significant regulatory burdens that would harm South Africa's freedom of expression, creativity, and innovations; deprive consumers of valuable content and ideas; eliminate a valuable mechanism for South African content creators to reach new audiences and stifle the broader social and economic benefits that these platforms enable in South Africa.

To the extent that additional regulation of internet video services is considered necessary, it is important to ensure that any rules or policies implemented recognize these fundamental underlying differences and are tailored to each specific type of service.

As we noted in our introduction, we also encourage the Department to consider whether alternatives such as co-regulation or self-regulation are preferable to achieve the stated objectives. Self- and co-regulatory regimes may be more responsive and adaptable to the highly innovative and fast changing nature of digital services. Such regimes prioritise ongoing dialogue between private actors and national authorities, as opposed to a static response that may be outmoded by the time that regulatory measure has been enacted. Advertising and protection of minors are areas which usually operate under self-regulatory principles in the EU, with very good results. Industry cooperative efforts can be successful at helping keep people safe and preventing abuse on the internet, by reducing frictions and increasing efficiencies. This approach has been emphasized by the EU Audiovisual Media Service Directive, which encourages the use of co-regulation and the fostering of self-regulation through codes of conduct.

It is also essential that any regulations protect and promote consumer interests without stifling innovation or competition. We note that one of the Department's aims is to create a "level playing field between competing services by imposing regulations and public interest obligations." We encourage the Department to exercise caution in pursuing this goal and ensure that any regulation deemed necessary for online video providers is tailored to fit and appropriate for the diverse online video ecosystem.

Before pursuing regulations that aim to create a "level playing field" between traditional broadcasters and online video services, we encourage the Department to consider the various ways that broadcasters are adapting to digital technologies. A 2020 study by Frontier Economics into the competitive interplay between traditional broadcasters and online video service providers in the Asia Pacific (APAC) found "no consistent evidence of the growth of online video service providers negatively affecting traditional broadcasters, with a number of traditional broadcasters adapting to the challenges arising from the growth of digital technologies."¹ Indeed, the report found that "EBITDA profit margins remain above or close to 30% in most cases – with many companies adapting and maintaining profitability." The study noted that broadcasters have adapted to digital technologies by broadening their content offerings, deepening their engagement with consumers, adapting their advertising provisions, and offering new digital services, and the study concluded that "[t]his suggests there is no clear overall case for further government intervention to 'level the playing field'." The study concluded that demands to "level the playing field" "can be motivated by sector participants' (understandable) desire to raise rivals' costs, rather than to achieve public policy goals. Incautious intervention can choke off investment, competition and innovation, and lead to unintended consequences (e.g., higher prices for consumers to recover higher costs)."

We also encourage the Department to bear in mind the benefits that online video services generate for the broader internet ecosystem. Online video services are an essential element in the internet value chain. Innovation in this field has led to a rich and diverse internet, and has stimulated consumer demand for broadband internet access, which in turn is a key driver for

¹ See Frontier Economics, Broadcasters Adapting to Digital Transformation in APAC, 2020, available at: <https://www.frontier-economics.com/media/4451/broadcasters-adapting-to-digital-transformation-in-apac.pdf>.

network operators to upgrade and expand their networks. In addition to ensuring that any regulation is fit for purpose, we urge the Department to refrain from adopting regulatory requirements that could limit innovation and unintentionally hinder broadband deployment.

We agree with the Department's observation that "attempting to regulate broadcasting as one did in the past no longer makes sense in an era of diverse content available on multiple platforms." If there is a need to "level the playing field," we would encourage the Department to consider eliminating outmoded regulations on traditional providers, rather than increasing regulatory burdens on innovative, dynamic, and consumer-focused services that promote diverse content. Undue regulatory burdens would be detrimental to the stated public policy goals.

There are numerous examples of regulators and international organisations across the world that have deliberately chosen to avoid burdening dynamic, competitive, and hugely popular services with broadcast rules - rules designed for businesses with substantial barriers to entry and that use scarce public spectrum or rights of way.

For instance, in Hong Kong, the Commerce and Economic Development Bureau (CEDB) has initiated a review of its broadcasting regulatory framework "with the aim of relaxing obsolete statutory requirements." The CEDB did not propose to extend existing obligations for traditional audiovisual services to online apps in part because "[t]hrough OTT and other Internet TV and radio programme services are gaining their prominence, traditional media ... are still highly pervasive and accessible to all in the family, young and old."²

Singapore's Infocomm Media Development Authority uses a "class license" scheme. Under the scheme, Video On-Demand services automatically receive permission to provide their services,³ contingent upon their continued compliance with the "Code of Conduct for Over-the-Top, Video-on-Demand and Niche Services."⁴

Although the Malaysian Communications and Multimedia Commission (MCMC) regulates online video services, those services remain exempt from the licensing regime, rate regulation, local content quota and "made in Malaysia" requirements.⁵

The amendment to the European Union's Audiovisual Media Services Directive (AVMSD), signed at the end of 2018 and now being transposed into national law across Europe, recognizes traditional broadcasters as distinct from on-demand programming services like Netflix and video-sharing platform services like YouTube. "Taking into account the degree of choice and user

²Hong Kong Commerce and Economic Development Bureau, Review of Television and Sound Broadcasting Regulatory Regimes, Consultation Paper, February 2018, available at https://www.cedb.gov.hk/ccib/eng/paper/pdf/BOTOREview_1%28eng%29.pdf.

³ See <https://www.imda.gov.sg/regulations-and-licensing/Licensing>.

⁴ Singapore INFOCOMM Media Development Authority, Content Code for Over-the-Top, Video-on-Demand and Niche Services, available at <https://www.imda.gov.sg/-/media/Imda/Files/Regulations-and-Licensing/Regulations/Codes-of-Practice/Codes-of-Practice-Media/OTT-VOD-Niche-Services-Content-Code-updated-29-April-2019.pdf>.

⁵ See <https://www.mcmc.gov.my/en/sectors/broadband/types-of-licenses-application-procedures>.

control over services, the AVMSD makes a distinction between linear (television broadcasts) and non-linear (on-demand) services.”⁶

Brazil’s General Telecommunications Law expressly distinguishes between the lesser-regulated activities that “add, to a telecommunications service that supports it, new features related to the access, storage, presentation, handling or recovery of information,” and the more heavily regulated telecommunications services, which are “the transmission, emission or reception, by wire, radio, optical means or any other electromagnetic process, of symbols, characters, signals, writing, images, sounds or information of any nature”.

The Commonwealth Telecommunications Organisation (CTO), a non-profit international treaty organization and the oldest and largest Commonwealth intergovernmental organisation in the field of Information and Communication Technologies (ICT), has a diverse range of members spanning Asia, Africa, Europe, and the Caribbean, including developed countries, developing countries, Least Developed Countries, Small Island Developing States and Landlocked Developing Countries. In its 2020 report *Over the Top (OTT) Applications & the Internet Value Chain: Recommendations to Regulators, Policy Makers and Tax Authorities*, the CTO noted that “[r]ushing to regulate OTTs resulted in clear negative impacts on consumers, the ICT sector and economic growth in several countries.” It concluded that “if the calls from the many stakeholders to regulate OTTs do not point to any market failure nor to any evidence of unhappiness on the part of consumers and citizens in relation to their OTT services, they should be treated cautiously. Regulators must continue to follow best-practice regulatory theory and practice.”⁷

In its September 2015 Resolution “Process to Determine Dominant carrier in the Pay-TV Market” Mexico’s Instituto Federal de Telecomunicaciones concluded: “Currently over the top (OTT) services are not substitutes for Pay TV service. OTT services, such as Netflix, are not substitutes for Pay TV, since: i) they mainly focus on offering a catalog of audiovisual content that has previously been provided on other platforms (cinema, movie rental, restricted television or broadcast television); ii) unlike those of Pay TV, they do not offer linear programming in particular and do not offer the signal with the highest audience, and iii) they depend on the capacity of Internet connection, which in Mexico registers low speeds.”⁸

The International Telecommunication Union in its report *Economic impact of OTTs on National Telecommunication/ICT Markets*,⁹ released in 2020 concluded “[n]ew disruptive models of service delivery should not be regulated merely because they threaten an existing model, since such innovation and competition serve consumer interest. Regulators must also be cautious about the impact of their actions on innovation and competition. While important public policy considerations need to be addressed, regulation of OTTs driven solely by the motivation of” levelling the playing

⁶ Shaping Europe’s Digital Future, Policy, General Principles, available at <https://ec.europa.eu/digital-single-market/en/general-principles>.

⁷ Commonwealth Telecommunications Organisation, *Over The Top (OTT) Applications & the Internet Value Chain Recommendations to Regulators, Policy Makers and Tax Authorities*, 2020, at p. 32, available at <https://cto.int/wp-content/uploads/2020/05/CTO-OTT-REPORT-2020.pdf>.

⁸ http://www.ift.org.mx/sites/default/files/contenidogeneral/unidad-de-competencia-economica/versionpublicaresolucionai-dc-002-2015_0.pdf

⁹ Available at <https://www.itu.int/en/ITU-D/Study-Groups/2018-2021/Pages/OngoingWork.aspx>.

field” between traditional and digital modes of service delivery would be detrimental to consumer interests.”¹⁰ The report states that, “[t]here are several different facets and features of new regulatory frameworks. Many regulators believe that the best route forward is for a light-touch, flexible approach to regulation. Such an approach is based more on principles – including consumer protection, investment promotion, and competition – than on codified rules that require strict adherence. Interestingly, some have argued that if governments were to design new models of regulation that are light-touch, flexible, and recognize the scale and quantity of market impact of an OTT player, they may encourage more OTT players to conform to regulation.”¹¹

More recently, the ITU recommended that, “[i]n order to promote a competitive landscape for the benefit of consumers and innovation, Member States... examine the appropriate level of regulations both to OTT providers and traditional telecommunications providers, which may include refraining from extending legacy telecommunication regulations to providers of OTTs and examining the reduction of the regulatory burden upon traditional networks and telecommunications services.”¹²

Even under “Open Internet” rules, the Federal Communications Commission of the United States, which regulates broadcasters and telecommunications carriers in the United States, has never regulated OTT providers like Netflix.¹³

In its 2020 Digital Regulation Handbook,¹⁴ designed to promote “best practices related to the digital economy”¹⁵ the World Bank notes: “As policymakers start to implement their digital plans and adapt their regulatory frameworks to the digital economy, *it is crucial that they avoid the mere extrapolation or expansion of existing, potentially outdated laws and regulations to new players or new topics*. Instead, policymakers should adopt measures – which may include deregulation, a self-regulation, or a co-regulatory approach – that will lead to greater innovation, easier deployment of new and emerging technologies, incentivize investment, and focus on inclusivity and collaboration.”¹⁶

Section 3 - Licensing (Section 3.1 and 3.4 of the White Paper)

We welcome the acknowledgment in the White Paper that video sharing platform services (VSPS) should not be regulated and support the proposal that the regulation of hate speech, the protection of minors and related manners can be addressed through a self-regulated code. This is important in recognition of the role that VSPS plays in informing, educating or entertaining the public, and the limited editorial responsibility that the VSPS provider has over the user-generated content shared on the platform.

¹⁰ Id. at 19.

¹¹ Id. at 20.

¹² OTT Recommendation, D.1101,

¹³ See, e.g., <https://thehill.com/policy/technology/274847-fcc-in-agreement-agency-cant-regulate-netflix>.

¹⁴ The World Bank and the International Telecommunications Union, Digital Regulation Handbook, available at: <https://www.itu.int/en/myitu/Publications/2020/08/31/09/09/Digital-Regulation-Handbook>.

¹⁵ Id. at iii.

¹⁶ Id. at 4 (emphasis added).

However, we encourage the Department to refrain from imposing a requirement for online video apps to obtain an authorization or license. The extension of authorization or licensing requirements to online video apps would be inconsistent with international standards and create barriers to entry that would limit consumer choice. Further, the conditions that justify licensing requirements for traditional broadcasters do not exist in the context of online video apps.

As the Department notes in paragraph 2.1.2 of the White Paper, “one of the key rationales for regulating radio (FM/AM) and television (VHF/UHF) services transmitted via terrestrial radio frequency spectrum was that radio frequency spectrum is a scarce resource.” Because spectrum is limited, the number of broadcasters that can operate in any market is also necessarily limited. Similarly, cable service providers own and control the underlying network infrastructure and connection to the customer’s premises, often accessing public rights of way, and consumers may have limited choices in their cable provider and may have costs associated with switching.

In contrast, a virtually unlimited number of competing online video providers can deliver digital content and applications to customers because of the global nature of the internet, without relying on radio frequency spectrum or public rights of way to deliver video content to consumers. In this sense, the scarcity rationale for licensing traditional broadcasters does not exist in the context of online video apps. Further, unlike the markets for traditional broadcasters and cable service providers, competition in the online video space is fast-paced, multi-faceted, and continuously evolving. The market for online video has low barriers to entry and is constantly in flux with new entrants, making it easy and often cost-free for consumers to switch between competing apps.

Low barriers to entry and the open nature of the internet are key to the continued growth, and active competition of the digital economy. Licensing requirements for online video apps would create new barriers to entry and raise the cost-of-service provision, which would in turn reduce consumer choice, hinder the development of locally relevant content, and stifle internet-based innovation to the detriment of consumers. We are also concerned that South Africa imposing a licensing requirement on online services might set precedent for other countries to follow suit with reciprocal regulations, one effect of which would be to build walls impeding South African digital entrepreneurs trying to expand beyond South Africa’s borders. To the contrary, the Department should rather prefer an approach that promotes competition in the market. Given the fundamental differences between traditional broadcasters and online video providers, as well as the potential to stifle innovation in the online video marketplace, we strongly encourage the Department to refrain from imposing licensing or authorization requirements on online video providers.

There is also a key consideration in respect of the implementation and enforcement of such a requirement, taking into account questions of the jurisdiction of South Africa regulators and the transborder nature of the internet. In our view, it would be inimical to the open and diverse nature of the internet for the government to impose firewalls or other similar restrictions on online video apps that do not meet the licensing requirements but may nevertheless be able to offer relevant and valuable content to the South African public. We are concerned that the proposed approach

may have a myriad of unintended consequences that undermine the objectives that the White Paper seeks to achieve.

Lastly, for present purposes, we do not address our additional concerns with this section (which include the lack of clarity regarding the proposed thresholds and regulatory requirements, the lack of definition of “programming”, the complexity of the proposed regime and the need to amend a plethora of other legislation), as our core submission is that online video apps should not be required to obtain an authorization or license. With that said, we are willing to further engage on these additional issues and add comments should it become necessary to do so in the future.

Section 4 - Best Practices for Promoting Local Content (Section 5.2 of the White Paper)

One of the Department’s overarching policy principles and objectives is “to ensure the preservation of South African national identity and culture and that South African creative industries benefit from expenditure on programming by AAVCS providers who target South African consumers.” Promoting high quality local content to better serve consumers is a shared goal of the government and industry. Nevertheless, we encourage the Department to refrain from extending content quotas to online video providers.

While content quotas may be well-intended, they are an inefficient mechanism to promote the creation of locally relevant content. A recent NERA study found that “extending local content regulations designed for traditional video distributors to OTTs would hinder innovation and reduce choice for both consumers and producers of digital video.”¹⁷ The study concluded that local content requirements ultimately reduce both the quantity and the diversity of digital video content available to consumers.

Indeed, online services may be forced to respond to content quotas by limiting the amount of international content available to South African consumers, thereby reducing choice and diversity of content for South African consumers and resulting in South African users having a different, more limited experience than users worldwide. Alternatively, providers might be forced to license a greater amount of inexpensive, potentially lower quality South African titles to meet the quota, potentially reducing the availability of high quality South African and other content.

Content quotas also restrict the ability of content creators to participate freely in the global media market, and they may also reduce consumer choice in content. Allowing online video providers to transmit any lawful content encourages competition and diversification, promotes content creation particularly of niche and independent programming, and benefits consumers by enabling them to access a wide variety of content.

¹⁷ NERA Economic Consulting, The Impact of Online Video Distribution on the Global Market for Digital Content, 2019, available at: <https://www.nera.com/content/dam/nera/publications/2019/NERA-The-Impact-of-Online-Video-Distribution.pdf>.

We also note that extending content quotas designed for traditional video distributors to online video providers may not have the intended practical effect of increasing viewership for locally relevant and locally produced content. Whereas consumers have limited choice in traditional broadcast content, consumers of online video content can choose what to watch at any given time. Therefore, even if online video providers were required to meet local content quotas, there is no guarantee that consumers in the local market would necessarily view that content.

We are also concerned that implementing local content quotas may invite other countries to enact reciprocal quotas, effectively raising barriers to the spread of South African content abroad and thereby reducing the available market for South African content producers and hurting South Africa's content creation industry. This could be particularly damaging to niche and independent content producers that may rely on a global audience accessed over the Internet to survive. It would also stifle the growing demand and supply of South African content.

As the NERA study notes, "one factor driving demand for local content is the desire for [online video distribution platforms] to differentiate themselves by varying their content mixes."¹⁸ Indeed, since online video providers seek to make content available that responds to the tastes and preferences of their users, there has been a growing trend to include more content of national origin within their catalogs. This has not been the result of the imposition of content quotas, but rather a response to the demand and preferences of users.

From a practicability perspective, we also note that the White Paper is unclear on how this would be implemented. In particular, the discussion on the promotion of South African content and languages refers to both OCS and VSPS, but only makes proposals for how this would be implemented in respect of OCS. Furthermore, the White Paper provides little detail in respect of how the proposed "graduated" approach would operate, or how "30% of the video catalogue" would be calculated for online platforms. We submit that this is illustrative of the practical challenges that would be experienced in seeking to impose such quotas on online video providers, whose content is not measurable in the same way as traditional broadcasters.

We encourage the Department to refrain from imposing regulatory requirements that would undermine the current market dynamics that encourage online video providers to make more locally relevant content available to their users. Rather than impose a content quota, we encourage the Department to adopt an approach that promotes competition and focuses on programs to develop and support the South African content creation industry.

Section 5 - Protection of Consumers and Minors (Section 5.3 of the White Paper)

Protecting the safety of our users, especially minors, is one of our most important responsibilities and a top priority for Facebook. We have a long history of partnerships with a variety of stakeholders invested in the safety of our community on Facebook and across our family of apps to gain from their expertise and guidance. In South Africa, we work with government and law

¹⁸ NERA Study at 22.

enforcement agencies, global and local NGOs, academics, and experts to develop the best policies, build tools, and create safety resources and programs.

We have clear policies that say what is and is not allowed to share on our platforms which we call our Community Standards. We invest heavily in tools that give people the power to control what they see and what others see about them on Facebook and Instagram, and to report things to us. When it comes to minors, we take extra precautions. We've designed many of our features to remind them who they're sharing with and to limit interactions with strangers. For example, we protect sensitive information — including minors' contact information, school or birthday — from appearing in search to a public audience. Additionally, we take steps to remind minors that they should only accept friend requests from people they know. We also recognize that bullying can be especially harmful to minors and have built extensive tools to prevent bullying and address it when it happens. These tools help to detect and remove harmful content from our platforms proactively to perform enforcement of our policies at scale.

We have built out relationships with over 500 online safety organizations globally, including specialists in the prevention of bullying and child exploitation and supporting victims. We also maintain an ongoing committee of advisors with expertise in child development, kid's online safety and media, and child health.

In South Africa, we work with government and law enforcement agencies and the South Africa Police Service, local NGOs, academics, and experts to develop the best policies, tools, and resources to foster a positive and safe online experience for South Africans. We also conduct digital literacy and digital parenting workshops with our government and civil society partners across the country. Some of the partners and experts we have engaged, and forged partnerships within South Africa include Digify Africa, Media Monitoring Africa, Phambano Technologies, Childline South Africa, and Diana Shwartz Attorneys.

Our Community Standards prohibit various categories of harmful content, from violent content, objectionable content and content that contravenes people's safety (including suicide and self-injury, child exploitation, adult sexual exploitation, bullying and harassment, human exploitation, and privacy violations). Although our Community Standards are aimed at protecting all of our users, some policies are especially important to minors, such as those related to age-appropriate experiences, child sexual exploitation imagery, nudity, bullying or graphic violence.

As a general rule, content which may impair the physical, mental or moral development of minors should not appear or be accessible to minors on our platform. There are a variety of measures in place to ensure that young people who use our services have age-appropriate experiences.

- **Age requirement:** Facebook, Instagram, Messenger and WhatsApp require everyone to be at least 13 years old before they can create an account (in some jurisdictions, this age limit may be higher). It violates our terms of services to provide a false age when creating an account.

- **Age ranges/age-appropriate experiences:** We've built many special protections into Facebook for all minors, regardless of location. Giving children an age-appropriate online experience is very important to us. We have implemented robust privacy and safety measures to protect young people who use our services.
 - For minors, we've designed many of our features to remind them of who they're sharing with and to limit interactions with strangers.
 - We prevent minors from receiving messages from strangers and we protect sensitive information such as minors' contact information, school or birthday appearing to a public audience.
 - Messages sent to minors from adults who are not friends (or friends of the minor's friends) are filtered out of the minor's inbox.
 - Additionally, we take steps to remind minors that they should only accept friend requests from people they know.
 - Because it's important for minors in particular to think before they share their location, location sharing is off for them by default. When either an adult or minor turn on location sharing, we include a consistent indicator as a reminder that they're sharing their location.
 - New minor users are automatically defaulted to share with 'friends' only and their default audience options for posts do not include "public."
 - If a minor wants to share publicly, the first time they go to do so, they must go to their settings to enable the option and we remind them about the meaning of posting publicly.
 - Our facial recognition products are not available to anyone under 18.
 - Advertisers are not allowed to show ads to minors that "promote products, services, or content that are inappropriate, illegal, or unsafe, or that exploit, mislead, or exert undue pressure on the age groups targeted."
 - We require Page administrators to clarify the audience suitable for their page. They can also restrict access to under 18s depending on content. We ask that Page admins age-gate their pages when they promote regulated goods such as alcohol, tobacco, or products aimed at an 18+ audience.
 - On Instagram we have created anti-bullying tools to ensure young people have a safe and positive experience. For example, we've built a new way to identify and report bullying in photos and we introduced a camera effect to help spread kindness in Stories:
<https://instagram-press.com/blog/2018/10/09/new-tools-to-limit-bullying-and-spread-kindness-on-instagram>.
 - We remove content that glorifies violence or celebrates the suffering or humiliation of others, but we allow graphic content (with some limitations) to help people raise

awareness about issues. Still, this content may be inappropriate for minors even if it does not violate our policies. If this content is reported to us, we age-gate it, meaning this content will not be accessible to 13–18-year-olds, and we put a warning screen on it, letting those who can see it (18+) know that they are about to watch graphic material. For greater detail, see [here](#).

- These measures that Facebook employs demonstrate that there are better ways to address harmful content - such as focusing on age appropriateness of materials and content and providing safety measures - instead of an over-broad restriction on vague or loose categories of content.

We also refer the Department to Facebook’s written submission to the Films and Publications Board in relation to the Draft Films and Publications Amendment Regulations, 2020¹⁹. Our submission in that proceeding summarized Facebook’s existing policies and standards around harmful or prohibited content, including detailed explanations of: (i) child exploitation reporting; (ii) Facebook’s Safety Centre; (iii) Community Guidelines; and (iv) Facebook’s education initiatives.

While we support the overarching aim of protecting minors on online video services, to the extent that additional regulation of internet video services is considered necessary, we strongly encourage the Department to consider the specific nature of online services, in particular the additional control exercised by users as compared to linear broadcasting services. In the case of platforms for user generated content, the fact that users have the editorial control over the uploaded content should be also considered. We also strongly recommend the use of self-regulatory schemes as able to produce high levels of consumer protection while ensuring innovation.

It is noted that the White Paper states that “[w]hilst this draft white paper does not seek to introduce extensive regulation of VSPS, the protection of children and consumers remains equally relevant. Prohibited content which is distributed by VSPS must be taken down following the process outlined in the Electronic Communications and Transactions Act or any other relevant legislation that may be enacted in the future.” We are in support of the position that VSPS should not be regulated in this regard but submit that the White Paper should recognise the self-regulatory measures taken by VSPS providers themselves to protect children and consumers through their own terms of service, as well as the internal mechanisms that VSPS providers have in place for complaints to be lodged for the removal of content.

Section 6 - Accessibility (Section 5.5 of the White Paper)

Access to our products by people with disabilities is fundamental to achieving our mission of bringing the world closer together, and Facebook takes seriously our commitment to accessibility. Our investments in video captioning and award-winning artificial intelligence tools are significant

¹⁹ Facebook, Comments on South Africa’s Draft Films and Publications Amendment Regulations (2020), attached at Appendix 1

steps in improving access on the platform. We have several closed captioning features to help people who are hearing impaired: closed captions for videos on Facebook via caption file upload; automatic video captioning for ads and Pages, Facebook Live and Workplace Live, and Instagram TV; and real-time captioning in Facebook Live broadcasts. Our automatic photo description technology (automatic alt text or “AAT”) describes objects in photos to people with vision loss who use screen readers, and our face recognition accessibility tool helps people who use screen readers to know more about who is in their photos.

We observe that in developing accessibility policies and regulation, it is important to avoid overly prescriptive regulations that may lock consumers into particular technologies and quickly become outdated. Instead, we encourage policies that promote innovation and allow for flexibility in achieving accessible solutions.

Building products that are accessible requires a workforce that can represent and advocate for the diversity of our users. At Facebook, disability inclusion is one of our top priorities. Facebook was recognized as one of the “2020 Best Places to Work for Disability Inclusion” in the American Association of Persons with Disabilities’ and Disability: IN’s Disability Equality Index for the third year in a row.

Conclusion

Facebook commends the DCDT’s efforts in developing this White Paper to regulate audio and audiovisual content in a manner that promotes investment in the audio and audio-visual content industries and facilitates socio-economic development. Facebook is grateful for the opportunity to provide these comments and welcomes the opportunity to provide an oral submission or additional comments in the future.

Yours sincerely



Nomonde Gongxeka-Seopa
Head of Public Policy, Southern Africa Region
[On behalf of Facebook, Inc.]