

REPUBLIC OF SOUTH AFRICA

FILMS AND PUBLICATIONS AMENDMENT BILL

*(As amended by the Portfolio Committee on Communications (National Assembly)
(proposed by the National Council of Provinces))
(The English text is the official text of the Bill)*

(MINISTER OF COMMUNICATIONS)

[B 37D—2015]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Films and Publications Act, 1996, so as to insert and amend certain definitions; to provide for the establishment, composition and appointment of members of the Enforcement Committee; to provide for the powers and duties of the Enforcement Committee; to regulate online distribution of films and games; to extend the compliance obligations of the Films and Publications Act and the compliance and monitoring functions of the Film and Publication Board to online distributors; 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 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 access providers regarding curbing the use of their services in 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 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, issued in respect of the classification of a film;”;

- (b) by the substitution for the definition of “**child pornography**” of the following definition:
 “**‘child pornography’** means child pornography as defined in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007);”;
- (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**];”;
- (d) 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 for commercial purposes using the internet;”;
- (e) 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;
 (b) to sell, hire out or offer or keep for sale or hire, including using the internet; and[,]
 (c) 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;”;
- (f) by the substitution for the definition of “**distributor**” of the following definition:
 “**‘distributor’** means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor;”;
- (g) by the substitution in the definition of “**domestic violence**” for the words preceding paragraph (a) of the following words:
 “**‘domestic violence’** means the explicit depictions or descriptions of—”;
- (h) by the insertion after the definition of “**domestic violence**” of the following definition:
 “**‘Enforcement Committee’** means the committee established in terms of section 3;”;
- (i) 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;”;
- (j) 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 decisions, inputs and direct involvement of the game player or players;”;
- (k) by the insertion after definition of “game” of the following definitions:
 “**‘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’ has the corresponding meaning;
‘hate speech’ includes any speech, gesture, conduct, writing, display or publication, made using the internet, 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.”;
- (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 No. 25 of 2002);”;
- (m) by the insertion after the definition of “**in public**” of the following definition:
- “**‘magazine’** includes an online publication of a magazine;”;
- (n) by the deletion of the definition “newspaper”;
- (o) by the insertion after definition of “**newspaper**” of the following definitions:
- “**‘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 facility which is connected to the publicly available internet, and any public telecommunications messaging system;
- ‘permit’** means the permit issued by the Board pursuant to section 23(2) to an online distributor wherein the online distributor is exempted from submitting films and games to the Board for classification, subject to such terms and conditions as the Board may deem fit.”.
- (p) 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 the Code of Ethics and Conduct for South African Print and Online Media;
- ‘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);”;
- (q) by the substitution in the definition of “publication” for the words preceding paragraph (a) of the following words:
- “**‘publication’** means, and includes, where applicable, any of the following, published using the internet—”;
- (r) 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;”;
- (s) 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;”.
- (t) by the insertion after the definition of “**Review Board**” of the following definition:
- “**‘self-classification’** for the purposes of a permit contemplated in section 23(2), means the rating and classification of films, games and publication with regard to the suitability for audiences in terms of the Board’s classification guidelines and the Act;”;
- (u) 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 simulated**] 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; 5
 - [vii](h) the penetration of a vagina or anus with any object;
 - [viii](i) oral genital contact; or
 - [ix](j) oral anal contact;” and
- (v) by the insertion after the definition of “**sexual violence**” of the following definitions: 10
- “ ‘**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; 15
- ‘**streaming**’ means the delivery of films by an online distributor or broadcaster, including the online streaming or downloading of films and catch-up services that enable time-shifted viewing of a film online, to the end user of an online delivery medium, including the internet;”.

Substitution of heading of Chapter 2 of Act 65 of 1996 20

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

“Film and Publication Board [: Film and Publication Appeal Tribunal], Council, Appeal Tribunal and 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 25

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 30
 - (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.”.

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

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 Enforcement Committee”;** 40
 - (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 Enforcement Committee.”;** and 45
 - (e) by the substitution for subsection (2) of the following subsection:
 - “(2) The Board, the Council, the Enforcement Committee and the Appeal Tribunal shall be independent, impartial and must perform their functions without fear, favour, or prejudice and act in accordance with applicable law.”.** 50

Amendment of section 4A of 65 of 1996, as amended by section 7 of Act 3 of 2009

5. Section 4A of the principal Act is amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: