

FEEDBACK ON THE DELIBERATIONS ON THE FILMS AND PUBLICATIONS AMENDMENT BILL [B37 – 2015]

07 MARCH 2017

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INTRODUCTION

- ❑ As per the instructions emanating from the Draft Minutes of the Portfolio Committee on Communications (PCC): 15 November 2016:
 - ❑ The DoC and Department of Planning Monitoring and Evaluation (DPME), finalised (November 2016) SEIAS on the Bill; and
 - ❑ The DoC would like to address, as requested by the Committee, the following issues :
 - The final tariff structure related to the Bill: the review of tariffs and the Department to indicate whether it agrees with the stakeholders or not;
 - Detail about the protection of children
 - Detail around issues of subjectivity versus objectivity when dealing with children's' concerns;
 - The Final Impact Assessment provides a more detailed assessment of the Films and Publications Amendment Bill, 2015; and
 - An extensive clause-by-clause amendment list.

THE FINAL TARIFF STRUCTURE RELATED TO THE BILL: THE REVIEW OF TARIFFS AND THE DEPARTMENT TO INDICATE WHETHER IT AGREES WITH THE STAKEHOLDERS OR NOT

- ❑ **The Stakeholders indicated that:**
 - ❑ The current tariff structure for physical content is considered fair and reasonable and is an 'insignificant' cost to their businesses;
 - ❑ Micro enterprises and new entrants find the tariffs for online content distribution high;
 - ❑ Classification fees and once-off registration fees are accepted; however they questioned the annual renewal of store licenses and the requirement of tax clearance certificates for the renewal;
 - ❑ Similarly, they queried the reasons for double-handling (i.e. same Film submitted twice for DVD/Blue Ray and Theatre; and
 - ❑ Online distributors raised concern about the annual fee of R795 000. They want more transparency on the assumptions underpinning the calculus of the fee.
- ❑ **The Department, having gone through the study reviewing the current tariff structure, is considering the following, subject to FPB Council and Ministerial approval:**
 - ❑ The current FPB tariffs for physical distribution of films and games to be aligned to the cost of classification, subject to government subsidy;
 - ❑ double handling is a genuine concern (One classification decision to be applicable for all release formats i.e. DVD/Blue Ray and Theatre);
 - ❑ the online distributors' fee structure should accommodate the diverse business in relation to the size of their libraries; and
 - ❑ there is a need for categories that are exempted from fees and a special fee for small releases (i.e. Educational and Promotion of cultural activities and religion).
- ❑ The draft FPB tariff structure is awaiting Council approval and thereafter, consultations' and workshops will be held with relevant stakeholders for final input before table the final draft to the Minister for approval. **(SEE ANNURE A).**

DETAIL ABOUT THE PROTECTION OF CHILDREN

- ❑ Article 19 of the United Nations Convention on the Rights of the Child (the CRC, CROC, or UNCRC) provides for the protection of children (being below the age of eighteen (18) years) in and out of the home from violence, exploitation, abuse and neglect; especially through the set of laws, policies, regulations and services needed to support prevention and response to protection-related risks.
- ❑ Existing research demonstrates that the proliferation harmful content on/off-line continue to be a concern amongst young people, and also their parents and carers.
- ❑ There is also a general recognition by most countries that the protection of children from potential harmful on/off-line requires regulatory policies and strategies to foster and ensure that the on/off-line platforms are safe for use by children.
- ❑ Protecting and addressing risks faced by children content on/off-line continues to be a policy priority for an increasing number of governments. Most governments intervene to protect children from potentially harmful content on/off-line and ensuring that children cannot easily access on/off-line content which will distress them or harm their development.
- ❑ Therefore, in this Bill the protection of children against potentially damaging images relates to the risks related to and faced by children on/off-line.
- ❑ More broadly, some of the regulatory policy children protection measures would relate to:
 - ❑ preventing inadvertent and/or deliberate access to harmful content on/off-line by children;
 - ❑ protecting the most vulnerable from potentially harmful content on/off-line content;
 - ❑ increasing the awareness of online safety issues and steps to take to reduce risks for children; and
 - ❑ the age verification systems to restrict access for under 18s to harmful content on/off-line.

DETAIL ABOUT THE PROTECTION OF CHILDREN

- ❑ Children continue to access harmful content offline and online, intentionally and unintentionally.
- ❑ Traditional mass media, Internet Service Providers (websites) and mobile operators (mobile applications “apps”) play an important role in how children are exposed to harmful content offline and online
- ❑ Government’s consultation, little or no effort has been made to date by most porn providers to prevent children from accessing their content.
- ❑ Exposure and access occur both online and offline. Even exposure is more prevalent than (ostensibly) deliberate access, access has increasingly moved from offline to online sources. Mobile phones are increasingly reported as one of the main sources of both exposure and access.
- ❑ There is evidence and sufficient expert opinion that exposure and access to harmful content offline and online can lead to distress or harm to people under 18.
- ❑ International benchmarking shows that attitudes to the protection of children and the effect of exposure and access to harmful content offline and online by children vary considerably.
- ❑ Convergence has forced many countries to act and explore new ways to respond to these technological developments to address child protection measures.
- ❑ In the United States, freedom of expression considerations have largely frustrated legislative attempts to restrict the availability of harmful content to children; whilst other countries like Russia and India take a firmer view of the harmful effects of strong harmful content.

DETAIL ABOUT THE PROTECTION OF CHILDREN

- The desire and right of parents and policy-makers to protect children from age-inappropriate sexual content and exposure in all platforms including the Internet is valid (***Professor Brian McNair 2016 submission to the Australian Senate Inquiry on harm being done to Australian children through access to pornography on the Internet***).
- The Protection of children and young people continue to be an important policy and regulatory issue, which continues to require forward-looking analysis, more effective and smarter approaches.
- Children and young people are seen as the most vulnerable group/users of the online and offline platforms
- Children are at risk from harmful and inappropriate content, online and off-line
- Cross government, industry operators, academics, non-governmental organisations and children organisations; through children insights, dialogue and strategic coordination approaches and initiatives; are forced to jointly develop awareness measures, policies and regulatory protection strategies to help and ensure protection of children online and off-line
- Government's policy approach also includes "education" as a key pillar to prevent potential risks and promote better use of online and off-line platforms by children.

MUCH DETAIL ABOUT THE PROTECTION OF CHILDREN

- In summarising, governments and all other stakeholders take into account some of the following principles, when formulating policies for the protection of children against harmful content offline and online:
 - 1) Empowerment of children and parents to evaluate and minimise risks and engage online in a secure, safe and responsible manner;
 - 2) Proportionality to the risks faced by children without restricting the opportunities and benefits of the offline and online platforms for children as well as for other users; and consistency with fundamental values of democratic societies (freedom of expression and privacy protection) as they apply to all individuals including children;
 - 3) Flexibility, where age-appropriate/restrictions are established; all stakeholders strive to ensure that such restrictions are respected; and technology neutrality to ensure their sustainability;
 - 4) Identifying government bodies with responsibility and authority to implement these policy objectives and to co-operate across borders;
 - 5) Supporting a co-ordinated response from all stakeholders by facilitating open dialogue in order to foster synergies, benefit from the expertise of all stakeholders including parents, educators and the children themselves and take into account their perspectives;
 - 6) Integrating digital media literacy and skills in school curricula; with a focus on risks and appropriate online behaviour;
 - 7) Support evidence-based policies and conducting regular impact assessments of regulatory policies; and
 - 8) Fostering further research on age verification systems which enable children to protect themselves against offline and online risks.

ISSUES OF SUBJECTIVITY VERSUS OBJECTIVITY WHEN DEALING WITH CHILDREN'S' CONCERNS (1)

- ❑ Within the protection of children against harmful research; there has been a deliberate move towards evidence based policy making and engagement in socio-economic impacts analysis to ensure that the legislative frameworks are objective.
- ❑ Government engages in its own research, and at times engages experts to gather qualitative and quantitative evidence from children, parents, educators, researchers, policymakers, industry; which enables these experts to record and interpret data professionally to avoid and screen out as much of the subjectivity as possible and ensure objectivity/reliability of their research findings
- ❑ When it comes to protection of children against harmful content it is easier and possible to come up with subjective observations or research findings due to the exposure of children to harmful content. Researchers and experts may slant their research towards censorship or regulatory policy that is detrimental to the sector.
- ❑ By interviewing children, parents, industry and other experts; whilst at the same time engaging in a socio-economic impact assessment might allow for objective findings and help develop a high-proof forward regulatory policy for protection of children, thereby increasing the reliability and policy certainty for all stakeholders affected by the policy.

ISSUES OF SUBJECTIVITY VERSUS OBJECTIVITY WHEN DEALING WITH CHILDREN'S' CONCERNS (2)

- ❑ Across the globe there is general consensus that even though this a difficult topic to study, there continues to be a need for further quality research “to evaluate the potential harmful impacts of sexualised media, advertising and products on children and young people” and on harmful content and its impact on children and young people over time, shaped by appropriate frameworks, particularly by a critical understanding of gender, inequality and aggression.
- ❑ When dealing with children's concerns, there is ethical difficulties when it comes to interviewing children in relation to online pornography and never to ask a child directly about this unless that child raises it first. ***(Professors Lelia Green, Catherine Lumby and Alan Mckee, in their 2016 submission to the Australian Senate Inquiry on harm being done to Australian children through access to pornography on the Internet)***
- ❑ Research has also indicated that “the key drivers of behavioural change among children and young people are peer support and educative approaches, rather than simply legislative prescription” ***(Australian Human Rights Commission)***
- ❑ In this regard, the planned digital media literacy and related skills might assist children and young people in resisting online pornography and other risks.
- ❑ Effective age appropriate education/information and digital media literacy programmes may assist children and young people with critical reading and analysis to “know what constitutes wrong, reportable behaviour and to whom it should be reported.

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

- ❑ A systematic approach to evidence-based policy making is essential to determine policy priorities and through SEIAS we were able to detect that government regulatory policies and strategies to foster and ensure that the on/off-line platforms are safe for use by children and therefore protected from potential harmful on/off-line requires are in their infancy. (**See Annexure B**)
- ❑ Analysis suggests that digital convergence has also complicated the protection of children. The Protection of children continue to be an important policy and regulatory issue, which continues to require forward-looking analysis, more effective and smarter approaches.
- ❑ What remains clear is all countries operate their own policy measures and mixes of characteristics, priorities, and style of government. The regulatory policy making would usually include various stakeholders (e.g. government/operators/civil society/researchers/educators/parents) at different levels and a blend of legislative, regulatory, technical, awareness and educational/digital media literacy initiatives and measures.
- ❑ The Department and FPB engage quantitative and qualitative regional, continental and international comparative regulatory policy analysis to develop the empirical foundations and share information about national policy approaches to address children's concerns and protect children; and in particular develop the empirical foundations.

AN EXTENSIVE CLAUSE-BY-CLAUSE AMENDMENT LIST

SEE ANNEXURE C

CONCLUSION

- ❑ The protection of children against harmful online/offline content is in the interest of society in general; and
- ❑ We consider it of importance that the government and its regulatory agencies remains involved in the implementation of these protections within the limits of the Constitution and the protections of all kinds of freedom that have to be balanced against those rights and their protections.
- ❑ The Bill before you has significantly improved and once passed the FPB will be able to implement it effectively.

Thank you.

