

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
FILM AND PUBLICATIONS
AMENDMENT BILL**

[B 37—2015]

*(As agreed to by the Portfolio Committee on Communications
(National Assembly))*

[B 37A—2015]

ISBN 978-1-4850-0000-0

No. of copies printed  400

AMENDMENTS AGREED TO

FILMS AND PUBLICATIONS AMENDMENT BILL

[B 37—2015]

CLAUSE 1

1. On page 2, from line 7, to omit paragraph (a).
2. On page 3, in line 3, after “film” to insert “or game”.
3. On page 3, in line 4, to omit “F”.
4. On page 3 from line 6, to omit paragraph (c) and to substitute the following paragraph:
 - (c) 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 32 of 2007);”;
5. On page 3, from line 17, to insert the following paragraph:
 - (c) 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;”;
6. On page 3, from line 18, to omit paragraph (e).
7. On page 3 in line 34, after “hire”, to insert “, including using the internet”.
8. On page 3, in line 41, to omit paragraph (g) and to substitute the following paragraph:
 - (e) 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;”;
9. On page 3, after line 48, to insert the following paragraphs:
 - (f) by the insertion after the definition of “domestic violence” of the following definition:

“ ‘Enforcement Committee’ means the committee established in terms of section 3;”;
 - (g) 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;”;

- (h) 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;”;

- (i) 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’ shall have 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.”;

10. On page 3, from line 57, to omit paragraph (j) and to substitute the following paragraph:

- (j) 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 25 of 2002);”;

11. On page 4, from line 1, to insert the following paragraph:

- (l) by the deletion of the definition “newspaper”;

12. On page 4 from line 1, to omit paragraph (l).

13. On page 4, from line 7, to insert the following paragraph:

- (m) 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 which is connected to the publically 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;”.

14. On page 4, from 8, to omit paragraph (m) and to substitute the following paragraph:

(m) 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);”;

15. On page 4, from line 16, to omit paragraph (n) and to substitute the following paragraphs:

(n) 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—”;

(o) 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;”;

(p) 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;”.

16. On page 4, after line 20, to insert the following paragraph:

(q) 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;”;

17. On page 4, from line 38, to omit paragraph (p) and to substitute the following paragraph:

(r) by the insertion after the definition of “**sexual violence**” of the following definitions:

“**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; **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;”.

CLAUSE 2

1. On page 4, in line 49, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 3

1. On page 4, from line 59, to omit “classification decisions of the Board” and to substitute “this Act”.

CLAUSE 4

1. On page 5, in line 6, to omit “Penalty” and to substitute “Enforcement”.
2. On page 5, in line 11, to omit “a Penalty” and to substitute “an Enforcement”.
3. On page 5, in line 6, to omit “Penalty” and to substitute “Enforcement”.
4. On page 5, from line 6, to omit paragraph (e) and to substitute the following paragraph:

- (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.”.

NEW CLAUSE

1. That the following be a new clause:

“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:

“(a) in consultation with the Minister, issue directives of general application, including classification guidelines, regarding the accreditation contemplated in section 18D, in accordance with matters of national policy consistent with the purpose of this Act;”
- (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (f);
- (c) by the substitution in subsection (1) for the fullstop at the end of paragraph (g) of the expression “; and”; and
- (d) by the addition in subsection (1) of the following paragraph:

“(h) appoint the Enforcement Committee members in terms of section 6A.”.

CLAUSE 5

1. Clause rejected.

CLAUSE 6

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Insertion of sections 6A, 6B and 6C in Act 65 of 1996

7. The following sections are hereby inserted in the principal Act after section 6:

“Composition of Enforcement Committee

6A. (1) The Enforcement Committee shall consist of four members plus a chairperson.

(2) The members of the Enforcement Committee must be appointed by the Council.

(3) The members of the Enforcement Committee must be—

- (a) a judge or retired judge of the High Court of South Africa;
- (b) an advocate or attorney with at least 10 years of appropriate experience;
- (c) a magistrate or retired magistrate with at least 10 years appropriate experience; or
- (d) a lecturer of law or a retired lecturer of law of a South African University with at least 10 years appropriate experience.

(4) The four other members of the Enforcement Committee shall have experience in or knowledge of any one or more of the following matters:

- (a) law;
- (b) law enforcement;
- (c) regulatory matters;
- (d) film, games, publications, arts, literature;
- (e) digital technology and electronic communications; or
- (f) sentencing.

(5) A member of the Enforcement Committee appointed in terms of subsection (2) shall—

- (a) be a fit and proper person;
- (b) be of good character; and
- (c) not be disqualified in terms of section 7.

(6) A quorum for a session of the Enforcement Committee shall be the chairperson plus two members and where the votes are equal, the chairperson shall have a deciding vote.

Powers and duties of Enforcement Committee

6B. (1) The Enforcement Committee shall—

- (a) investigate all cases referred to it by the Board for adjudication in respect of non-compliance with any provision of the Act by a distributor, exhibitor or any other person to whom the Act applies, except persons to whom sections 24A, 24B, 24C and 27A(2),(3) and (4) apply;
- (b) adjudicate all cases and make appropriate findings, after the Board and the respondent have been heard or granted a reasonable opportunity to be heard;
- (c) hear evidence under oath or affirmation or evidence by affidavit and come to a finding when it is convinced on a consideration of all the facts before it that such a finding is fair, reasonable and justified;
- (d) where appropriate—
 - (i) impose a fine;
 - (ii) as prescribed, suspend a registration certificate; or

- (iii) through the Board, refer a matter to the National Director of Public Prosecutions for prosecution and, in such a case, the Enforcement Committee shall not make a finding;
- (e) where a fine is not paid, at the instance of the chief executive officer, apply to a court for the enforcement of such a fine as a civil debt to the Board.
- (2) The finding of a contravention by the Enforcement Committee in terms of subsection (1) shall not be regarded as a conviction in respect of a criminal offence and no prosecution for that offence shall thereafter be competent.
- (3) An aggrieved person may appeal to the Appeal Tribunal against a finding of the Enforcement Committee.
- (4) The Minister may, from time to time and after consultation with the Board, by notice in the Gazette, adjust the amount of fines that may be imposed by the Enforcement Committee in accordance with the average of the consumer price index, as published from time to time in the Gazette, for the immediately preceding 12 months multiplied by the number of years that the amount has remained the same.
- (5) The chairperson, members of the Enforcement Committee and each member of the staff of the Enforcement Committee, must not—
 - (a) engage in any activity that may undermine the integrity of the Enforcement Committee;
 - (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
 - (c) make private use of, or profit from any confidential information obtained as a result of performing that person's official functions in the Enforcement Committee; or
 - (d) divulge any information referred to in paragraph (iii) to any third party, except as required as part of that persons official functions within the Enforcement Committee.

Removal of members of Enforcement Committee from office

- 6C. (1) The Council may remove a member of the Enforcement Committee from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.
- (2) A decision to remove a member of the Enforcement Committee from office shall be based on a finding of a disciplinary committee appointed by the Council: Provided that a member shall have a right to be heard.
- (3) The Council may suspend a member of the Enforcement Committee from office pending the finding of the disciplinary committee referred to in subsection (2A).
- (4) A member of the Enforcement Committee shall vacate his or her office when any of the circumstances referred to in section 7 becomes applicable in respect of him or her, and the Council issues him or her with a notice of removal to that effect.”.

CLAUSE 7

1. On page 6, in line 37, to omit “Penalty” and to substitute “Enforcement”.
2. On page 6, in line 41, to omit “a Penalty” and to substitute “an Enforcement”.
3. On page 6, in line 45, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 8

1. On page 6, in line 54, to omit “Penalty” and to substitute “Enforcement”.
2. On page 6, in line 56, to omit “a Penalty” and to substitute “an Enforcement”.

CLAUSE 9

1. Clause rejected

CLAUSE 10

1. On page 7, from line 28, to omit paragraph (c) and to substitute the following paragraph:

- (c) by the addition in subsection (2) of the following paragraphs:
- “(d) accredit commercial online distributors’ classification systems in terms of section 18C;
 - (e) perform the functions in respect of the complaints procedure in section 18E; and
 - (f) take such step as may be necessary in regard to—
 - (i) the accreditation of any foreign or international classification system in relation to the classification of films, games and publications;
 - (ii) the conclusion of a compliance and online distribution agreement with a commercial online distributor in relation to the online distribution in the Republic, of films, games and publications classified through the accredited foreign or international classification system; and
 - (iii) the exemption of any commercial online distributor from the classification of films, games and publications in terms of the Act.”.

CLAUSE 11

1. On page 7, in line 45, to omit “Penalty” and to substitute “Enforcement”.
2. On page 7, in line 48, to omit “a Penalty” and to substitute “an Enforcement”.

CLAUSE 12

1. On page 8, in line 5, to omit “Penalty” and to substitute “Enforcement”.
2. On page 8, in line 7, to omit “a Penalty” and to substitute “an Enforcement”.

CLAUSE 13

1. On page 8, in line 16, to omit “Penalty” and to substitute “Enforcement”.

CLAUSE 14

1. On page 8, in line 24, to omit “Penalty” and to substitute “Enforcement”.

2. On page 8, in line 26, to omit “a Penalty” and to substitute “an Enforcement”.
3. On page 8, in line 29, to omit “a Penalty” and to substitute “an Enforcement”.

CLAUSE 15

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Substitution of section 15A of Act 65 of 1996, as inserted by section 18 of Act 3 of 2009

16. The following section is hereby substituted for section 15A of the principal Act:

“Functions and powers of compliance officers”

15A. (1) A compliance officer may, for the purpose of achieving the objects of this Act—

- (a) **[advising]** advise the distributors and exhibitors of films and games, of the requirements of this Act with regard to the distribution or exhibition of films and games; and
- (b) **[ensuring]** ensure that all films and games offered for sale or hire by a distributor or an online distributor have been classified and labelled in terms of this Act and that all such films and games display, in the prescribed manner, the classification reference number, the age restriction, consumer advice and such other conditions as may have been imposed on the distribution of such films and games by the Board,

[enter any premises, with the consent of the person in charge of such premises, on or in which the business of the sale, hire or exhibition of films or games is being conducted].

(1A) For the purpose of subsection (1), the compliance officer may—

- (a) at all reasonable times, with the consent of the person in charge of such premises or with the assistance of a member of the South African Police Service, enter any premises on or in which the business of the sale, hire or exhibition of films or games is being conducted;
- (b) at all reasonable times, with the consent of the person in charge of such premises or facility or the assistance of the South African Police Services, enter any premises or facilities that are used to store films or games being distributed or intended for distribution, and view and take copies of all the information, reports, documents and other material needed for the inspection of labelling; with the consent of the person in charge of such premises or the assistance of the South African Police Services, enter the premises of any internet access providers to check compliance with this Act;
- (c) review a product list of all films and games offered for sale or hire through the internet which can be accessed by any persons;
- (d) with the consent of the person in charge of operating the online medium or the assistance of the South African Police

Services, review a product list of all films and games offered for sale or hire through an online medium which can be accessed by a closed group of persons;

- (e) in the prescribed form, issue a compliance notice and notice to remove from display, including from display in an online medium, unclassified films or games;
- (f) with the consent of the person in charge of such premises or the assistance of the South African Police Services, seize any unclassified film or game or any film or game that does not comply with the requirements of this Act;
- (g) direct that the film, game or publication contemplated in paragraph (vii) be removed from display, including from display in an online medium, or offer for sale or hire until it complies with the requirements of this Act or complies with any decision of the Board with regard to its distribution;
- (h) request the production of a certificate of registration as a distributor or exhibitor of film or games issued by the Board;
- (i) where relevant, request the production of a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24; and
- (j) with the consent of the person in charge of the premises or the assistance of the South African Police Services, examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24(2).

(2) Any entry and inspection of premises or facility made in terms of subsection (1) may occur at any reasonable time but must be conducted with strict regard for decency and order, and with regard to each person's right to dignity, freedom, security and privacy.

(3) A record shall be kept of any material seized in terms of subsection (1) indicating the purpose of seizure and the material seized: Provided that the person from whom the material is seized, if identifiable, is provided with a copy of such a record.

(4) In order to give effect to the objects of the Act and fulfillment of the functions of the compliance officer provided for in this section, the Minister may, with the concurrence of the Minister of Police, deploy a member of the South African Police Service within the Board to carry out any compliance or monitoring duties."

CLAUSE 16

1. On page 9, from line 49, to omit subsection (1) and to substitute the following subsection:

"(1) Any person may request, in the prescribed manner, that a publication, other than a **[bona fide newspaper]** publication that is published by a member of the Press Council of South Africa **[a body, recognised by the Press Ombudsman which subscribes, and adheres, to a code of conduct that must be enforced by that body,]** or an advertisement that falls under the jurisdiction of the Advertising Standards Authority of South Africa, which **[is to be or]** is being distributed in the Republic, be classified in terms of this section."

2. On page 9, from line 57, to omit paragraph (b) and to substitute the following paragraph:

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Any person, except the publisher of a [newspaper] publication contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that—”;

3. On page 10, after line 7, to insert the following paragraphs:
 - (e) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
“(c) incites imminent violence; or”;
 - (f) by the substitution in subsection (2) for paragraph (c) with paragraph (d) of the following paragraph:
“(c) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm and imminent violence,”;
4. On page 10, in line 28, to omit “violent”.
5. On page 10, in line 28, after “conduct”, to insert “accompanied by explicit violence”.
6. On page 10, in line 30, to omit “bestially” and to substitute “bestiality”.

NEW CLAUSE

1. That the following be a new clause:

Substitution of heading of Chapter 4 of Act 65 of 1996

18. The following heading is hereby substituted for the heading of Chapter 4 of the principal Act:

“Classification of films and games, self-classification, accreditation, complaints and prohibited content”.

CLAUSE 17

1. On page 10, in line 59, to omit “publication” and to substitute “film or game”.
2. On page 11, in line 4, to omit “violent”.
3. On page 11, in line 4, after “conduct”, to insert “accompanied by explicit violence”.
4. On page 10, in line to omit “sexual or”.
5. On page 11, in line 29, after “broadcasting”, to insert “and online streaming”.
6. On page 11, in line 32, to omit “; and”, and to substitute a full-stop.
7. On page 11, from line 33, to delete paragraph (d).

CLAUSE 19

1. Clause rejected.

NEW CLAUSE

2. That the following be a new clause:

Insertion of sections 18C, 18D, 18E, 18F and 18G in Act 65 of 1996

19. The following sections are hereby inserted in the principal Act after section 18:

“Self-classification

18C. (1) The Board may, on application and upon payment of the prescribed fee, by a commercial online distributor approve and accredit such commercial online distributor to conduct classifications of films, games and publications.

(2) A commercial online distributor of films, games or publications contemplated in subsection (1) shall not be subject to section 18(1)(b) provided that—

- (a) the commercial online distributor referred to in subsection (1) has been accredited by the Board to classify its own films, games or publications;
- (b) the commercial online distributor applies the classification guidelines as determined by the Board in consultation with the Minister;
- (c) the decisions of the commercial online distributor comply with the requirements as may be set by Board from time to time;
- (d) the registered distributors remain subject to classifications which were issued before such commercial online distributor was approved and may apply for re-classification by the Board only after two years of a classification decision of the Board;
- (e) the commercial online distributor informs the Board of all its “XX” and “X18” classifications of films, games and publications and any other classification of films, games and publications so that the Board may publish these classifications in the *Gazette*, after which such classifications are deemed to have been made by the Board; and
- (f) if a film, game or publication is already classified, or is subsequently classified, by the Board the commercial online distributor may not classify or re-classify differently to the Board’s classification of the said film, game or publication.

(3) The Board may provide training to commercial online distributors contemplated in subsection (1) in terms of this Act.

(4) The commercial online distributor shall upon demand by the Board make available all its classification decisions in relation to films, games and publications, for auditing purposes.

(5) The accreditation of a commercial online distributor may, after due inquiry, be suspended by the Board—

- (a) if the commercial online distributor acts contrary to the provisions of this section,
- (b) until the Board is satisfied that the commercial online distributor will comply with the provisions of this section in the future, and commercial online distributor may also be subject to prosecution for an offence in terms of this Act.

(6) No film, game or publication may be distributed in the Republic unless it has been classified in terms of section 16, section 18, this section or section 18D, and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film, game or publication and appearing next to the logo of the Board.

Approval of accredited foreign or international classification systems by the Council

18D. (1) The Council may, on application by an online distributor wishing to distribute films, games or publications in the Republic using classification ratings issued by a foreign or international classification authority or body, approve the use of classification ratings issued by the foreign or international classification authority or body.

(2) The Council may approve the application contemplated in subsection (1), subject to such conditions as the Board may consider necessary in relation to the online distribution of films or games.

(3) The Council shall, in considering the application contemplated in subsection (1), take into account—

- (a) the accessibility by the Board of the distributor'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 and the Council's classification guidelines.

(4) An application in terms of subsection (1) must be accompanied by the payment of the prescribed fee, determined by the Minister.”

Complaints against prohibited content

18E. (1) Any person may complain to the Board about unclassified, prohibited content, or potential prohibited content, in relation to services being offered online by any person, including commercial online distributors and non-commercial online distributors.

(2) If, upon investigation by the Board or by the compliance officers in terms of section 15, it is established that there is merit in the complaint and or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of this Act or has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D, the matter must be referred to the Board which may, subject to due process of law—

- (a) in the case of a non-commercial online distributor, issue a take-down notice in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act 25 of 2002); or
- (b) in the case of internet service providers, issue a take-down notice in terms of section 77 of Electronic Communications and Transactions, 2002 (Act 25 of 2002)

(3) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the prohibited content.

(4) In the case of content hosted outside of the Republic that is found to contain child pornography, the Board shall refer the matter to the South African Police Service or to the hotline in the country concerned for the attention of law enforcement officials in that country.

(5) For the purposes of this section an “internet service provider” means the service provider contemplated in section 70 and section 77 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

Prohibition against distribution of private sexual photographs and films

18F. (1) No person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made—

- (a) without the consent of the individual or individuals who appear in the photograph or film; and
- (b) with the intention of causing that individual harm.

(2) It is a defence for a person charged with an offence under this section to prove that he or she reasonably believed that the disclosure was necessary for the purposes of preventing, detecting or investigating crime.

(3) The prohibition referred to in subsection (1) shall apply notwithstanding that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.

(4) For the purposes of this section and section 24E a photograph or film is “private” if, judging from the context in which the photograph or film is taken or made, it was not intended by any individual in the photograph or film to be seen by others.

(5) For the purposes of this section a photograph or film is “sexual” if such photograph or film—

- (a) it shows all or part of an individual’s exposed female breasts, anus, genitals or pubic area;
- (b) it shows something that a reasonable person would consider to be sexual because of its nature; or
- (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual.

(6) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published the private sexual photograph or film.

Prohibition against filming and distribution of films and photographs depicting sexual violence and violence against children

18G. (1) No person may create, produce or distribute in any medium, including the internet, and social media any films or photographs depicting sexual violence and violence against children.

(2) For the purposes of this section “photograph or film” means a still or moving image in any form that—

- (a) consists of, or includes one or more photographed or filmed images; or
- (b) appears to consist of or includes one or more photographed or filmed images.
- (c) The prohibition in subsections (1) and (2) shall apply despite that the individual who appears in the photograph or film might have consented to the original creation of such photograph or film.”.

(3) The reference in subsection (2)(b) to photographed or filmed images includes photographed or filmed images that have been altered in any way.

(4) For the purposes of this section “photographed or filmed image” means a still or moving image that—

- (a) was originally captured by photography or filming, or
- (b) is part of an image originally captured by photography or filming.

(5) For the purposes of this section “filming” means making a recording, on any medium, from which a moving image may be produced by any means.

(6) References to a photograph or film include—

- (a) a negative version of an image described in subsection (2), and
- (b) data stored by any means which is capable of conversion into an image described in subsection (2).

(7) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider shall be compelled to furnish the Board or a member of the South African Police Services with information of the identity of the person who published a film or photograph depicting sexual assault and violence against children.

Prohibition against propaganda for war; incitement of imminent violence and advocacy of hatred that is based on identifiable group characteristics, and that constitutes incitement to cause harm

18H. No person may distribute through any medium including the internet and social media, any film, game or publication which amounts to propaganda for war, incites imminent violence or advocates hate speech.

Display of classification decisions

18I. (1) Where a film, or game has been classified or exempted from classification in terms of this Act, or such film or game has been classified by a commercial online distributor referred to in section 18C, the film or game must—

- (a) if it is a film or game approved for sale or hire, display a label in the prescribed form;
- (b) if it is a film or game approved for sale or hire online, must conspicuously display the Board’s classification decision and logo on the landing page of the online medium, the online medium catalogue and at the point of sale of the commercial online distributor services.

(2) The format, including the size and design, as well as the manner of the display of certificates of classification on films or games approved for distribution or exhibition, must be prescribed.

(3) No film or game may be distributed in the Republic, unless it has been classified in terms of section 18, 18C or 18D and a clearly visible label indicating the age limit and the nature of content is displayed on or in connection with the film or game.

Re-classification

18J. (1) Any person may, after a period of two years from the date when a film, game or publication was first classified in terms of this Act, apply to the Board in the prescribed manner, for a less restrictive classification of that film, game or publication.

(2) Any member of the public who is aggrieved or offended by a classification decision in respect of a film, game or publication, may in prescribed manner and upon payment of a prescribed fee, apply to the Board for re-classification of such film, game or publication.

(3) The Board shall, upon receipt of the application contemplated in subsections (2) and (3), inform the distributor in writing of the application for re-classification and request the

distributor to make representations before a decision is made as to whether or not to reclassify the film, game or publication.”.

CLAUSE 22

1. On page 15, from line 23, to omit subsection (6) and to substitute the following subsection:

“(6) Where a commercial online distributor of a film or game is a commercial online distributor referred to in section 18C, such commercial online distributor shall not have the right to appeal to the Appeal Tribunal against a classification by that commercial online distributor in line with a Board classification, unless the Board, based on a complaint in terms of section 18G, imposes a more onerous classification, in which case that commercial online distributor may appeal to the Appeal Tribunal against such a classification.”.

CLAUSE 24

1. On page 16, in line 25, to omit “newspaper, magazine or advertisement” and to substitute “publication”.
2. On page 17, in line 13, after “knowingly”, to insert “, or who ought to have reasonably known”.

CLAUSE 25

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 24B of Act 65 of 1996, as inserted by section 29 of Act 3 of 2009

25. Section 24B of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“[Prohibition, offences] Offences and penalties [on possession of films, games and publications] in respect of child pornography and sexual exploitation of children”;
- (b) by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs, respectively:
 “(a) unlawfully possesses child pornography;
 (b) creates, produces or in any way contributes to, or assists in the creation or production of child pornography;
 (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of child pornography; or”;
- (c) by the addition of the following subsections:
 “(4) A court which convicts a person of an offence in terms of subsection (1)(b) may, where a penalty is not prescribed in respect of that offence by any other Act of Parliament, impose a sentence as referred to in section 276 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977),

which that court considers appropriate and which is within that court's penal jurisdiction.

(5) Any person who contravenes subsection (1)(d), is liable—

- (a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or
- (b) in the case of a second and subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

(6) Any person who contravenes subsection (1)(a) or (c), is liable—

- (a) in the case of a first conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment;
- (b) in the case of a second conviction, to a fine or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment; or
- (c) in the case of a third or subsequent conviction, to a fine or to imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

(7) Any person who contravenes the provisions of subsection (2), is liable, on conviction, to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

(8) Any person who contravenes the provisions of subsection (3) is liable—

- (a) in the case of a first conviction, to a fine of R1 000 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment; or
- (b) in the case of a second or subsequent conviction, to a fine of R2 000 000 or to imprisonment for a period not exceeding 10 years or to both such fine and imprisonment.”.

CLAUSE 27

1. On page 18, from line 7, to omit section 24E and to substitute the following section:

“**24E.** (1) Any person who knowingly distributes private sexual photographs and films in any medium including the internet and social media, without prior consent of the individual or individuals in the said sexual photographs and films with the intention to cause the said individual harm shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) Any person who knowingly distributes private sexual photographs and films in any medium including through the internet, without prior consent of the individual or individuals and where the individual or individuals in the photographs or films is identified or identifiable in the said photographs and films, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R300 000 or to imprisonment for a period not exceeding four years or to both a fine and such imprisonment.”.

2. On page 18, from line 22, to omit section 24G and to substitute the following section:

“Prohibitions, offences and penalties on propaganda for war, incitement of imminent violence, and advocacy of hatred based on an identifiable group characteristic and that constitutes incitement to cause harm

24G. Any person who knowingly distributes in any medium, including the internet and social media any film, game or publication which amounts to propaganda for war, incites imminent violence, or advocates hate speech, shall be guilty of an offence and liable upon conviction, to a fine not exceeding R150,000 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.”.

CLAUSE 28

1. On page 18, from line 33, to omit paragraph (a) and to substitute the following paragraph (a):

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If an **[Internet]** internet **[service]** access provider has knowledge that its services are being used for the hosting or distribution of child pornography, propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm, such **[Internet]** internet service provider shall—”;

2. On page 18, in line 40, to omit “subsection (1)” and to substitute “subsections (1) and (2)”.

CLAUSE 30

3. On page 30, in line 8, to omit “Penalty” and to substitute “Enforcement”.

NEW CLAUSE

1. That the following be a new clause:

Insertion of section 31A in Act 65 of 1996

31. The following section is hereby inserted in the principal Act after section 31:

“Procedure for making regulations

31A. (1) The Minister must, before making or amending any regulations referred to in section 31, publish a notice in the *Gazette*—

- (a) setting out that draft regulations have 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.

(2) After complying with subsection (1), the Minister may—

- (a) amend the regulations; and

(b) subject to subsection (3), publish the regulations or directives in final form in the *Gazette*.

(3) (a) The Minister must, within 30 days before publication of the regulations in the *Gazette*, as referred to in subsection (2)(b), table them in Parliament.

(b) Subsection (1) does not apply in respect of any amendment of the regulations as a result of the process referred to in paragraph (a)."

CLAUSE 32

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of arrangement of sections in Act 65 of 1996

33. The arrangement of sections after the long title of the principal Act is hereby amended—

(a) by the substitution for the heading of Chapter 2 of the following heading:

"Film and Publication Board [: Film and Publication Appeal Tribunal], Council, Appeal Tribunal and Enforcement Committee";

(b) by the substitution for item 3 of the following item:

"3. Establishment of Film and Publication Board, Council [and], Appeal Tribunal and Enforcement Committee";

(c) by the substitution for item 6 of the following item:

"6. [Members] Appointment of members of Council and Appeal Tribunal [to be appointed] by Minister";

(d) by the insertion after item 6 of the following item:

**"6A. Composition of Enforcement Committee
6B. Powers and duties of Enforcement Committee";**

(e) by the substitution for item 7 of the following item:

"7. Disqualifications with regard to membership of Council [or], Appeal Tribunal or Enforcement Committee";

(f) by the substitution for item 8 of the following item:

"8. Period of office of members of Council [and], Appeal Tribunal and Enforcement Committee";

(g) by the substitution for item 11 of the following item:

"11. Administrative support for Council [and], Appeal Tribunal and Enforcement Committee";

(h) by the substitution for item 15A of the following item:

"15A. Functions and powers of compliance officers";

(i) by the substitution for the heading of Chapter 4 of the following heading:

"Classification of Films and Games, Self-classification, Accreditation, Complaints and Prohibited Content"

(j) by the deletion of items 18A and 18B;

(k) by the insertion after item 18 of the following items:

"18C. Self-classification

18D. Approval of accredited foreign or international classification systems by the Board

18E. Complaints against content services distributed online

18F. Prohibition against distribution of private sexual photographs and films

18G. Prohibition against filming and distribution of films and photographs depicting sexual assault and violence against children";

- (l) by the substitution for the heading of Chapter 5 of the following heading:
 “Right to **[Appear,]** appear and to **[Appeal]** appeal to Appeal Tribunal **[and Supreme Court]**”; and
- (m) by the insertion after item 24C of the following item:
 “**24D.** Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board”.

LONG TITLE

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.