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MEDIA STATEMENT

SOUTH AFRICA'S FILMS AND PUBLICATIONS AMENDMENT ACT DECLARED OPERATIONAL BY PRESIDENT FROM 1 MARCH 2022

A sign of changing times: Keeping our citizens protected in the digital age

03 March 2022, Pretoria

The Department of Communications and Digital Technologies (DCDT) and the Film and Publication Board (FPB) welcomes the operationalisation of the Films and Publications Amendment Act (2019) (FPA Act) by President Cyril Ramaphosa on 1 March 2022.

Deputy Minister of Communications and Digital Technologies, Mr Philly Mapulane says: “The Amendment Act comes into operation at a time when governments all over the world are grappling with the escalation in potentially harmful content on digital platforms, as we witness the entrenchment of the Fourth Industrial Revolution in society. Changes to the FPA Act seeks to modernise laws that protect the South African public from exposure to prohibited content distributed online, as well as exposure of children to harmful digital content that could have adverse psychological and behavioural impacts. It is incumbent on government to bring laws into practice that support the principals and values of our Constitution. The FPA Act seeks to balance the right to freedom of expression with the responsibility to protect our citizens from harm and to maintain social cohesion.”

Revisions to the Act came about due to the significant changes in the way that films, games and certain publications are distributed. This reflects the move away from physical distribution in cinemas and home DVDs to the online space, streaming services and social media. Prior to this, the regulation and classification of films, games and certain publications for the protection of the public in more traditional content distribution formats was already clearly entrenched in the Films and Publications Act of 1996 through the regulation of the content distribution sector, the classification and labelling of content ratings, and the protection of children from exposure to, or exploitation in, Child Sexual Abuse Material (CSAM).

Ms. Zama Mkosi, Chairperson of the Film and Board Council, says: “There have been some fundamental misperceptions about the Amendment Act since the process was started to formulate the changes that will modernise the law. This is due in part to a misunderstanding of the scope and aims of the Amendment.”

She adds: “The law brings Commercial Online Distribution of films, games and certain publications within the mandate of the FPB. We would like to emphasise to the media and the public that the Amendment Act does not require private citizens who are posting User Generated Content online to register as a distributor, nor to submit their content for classification. The classification of online content, and the labelling of the ratings of this content, is the clear responsibility of the online distributor that makes content of this nature available to the public for commercial gain, thus allowing the consumer to make informed viewing choices before accessing the content.”

The only exception for the general public is in the case of the distribution of private sexual photos and films without prior consent of those appearing in this content, and with a clear aim of causing harm. The FPA Act affirms the FPB’s role to protect any persons who might have consented during the production of content, especially sexual content, but have not agreed that such content be distributed for public consumption no matter the platform. Victims will be protected by the Amendment Act and are eligible to approach the FPB for recourse.

The FPA Act and the Regulations that support it brings the online space more fully under the auspices of the FPB as the content regulator of films, games and certain publications. The Amendment Act requires that Internet Service Providers (ISP’s) block all websites hosting prohibited content. This includes hate speech, incitement to violence, propaganda for war, child abuse and child sexual abuse material, depiction of bestiality, and material containing excessive violence or sexual violence.

Film and Publication Board Acting Chief Executive Officer, Dr. Mashilo Boloka, says: “The Bill has catered for the establishment of an Enforcement Committee (EC) to provide for speedy resolutions

in certain cases that fall under the EC, including the issuing fines. Of course, there will be cases where the FPB will work directly with our justice courts for prosecution.”

Dr Boloka says that the Amendment Act reaffirms that publications in the public interest, such as the news, may self-regulate. Entities that are members of the Press Council are exempt from classification by the FPB.

“The Bill further amends the Films and Publications Act to align the definition of child pornography in terms of criminal law (Sexual Offences and Related Matters) and decriminalises the online distribution of adult content on all platforms,” he adds. The creation, distribution and possession of child pornographic material remains illegal. The work of the FPB is focused on compliance monitoring of online adult content distributors and combating child pornography in collaboration with law enforcement.

The coming into operation of the Amendment Act on 01 March 2022 was supported by a process to review and gazette the Films and Publications Amendment Act Regulations, and now gives the FPB the go-ahead to work on creating frameworks and instruments to implement the new law. “We are working towards capacitating our people, processes and systems to fully bring the Amendment Act into implementation,” Dr Boloka comments.

“A co-regulation system is envisioned, which will include licence agreements with online distributors to undertake their own classification using the Classification Guidelines of the FPB, but dependent on training and regular audits for quality assurance by FPB,” he says. Online distributors who are unwilling to enter into these agreements will be required to submit all content to FPB for classification. The Amendment Act further makes provision for a process to recognise foreign classification systems in as far as they align to the South African system.

“We are excited about the opportunity that the Amendment Act brings us to expand our mandate and become fully immersed in the Fourth Industrial Revolution. A revised Strategy is being developed that will start to position the entity as a Regulator of the Future. We will now have the opportunity to invest in further systems and employee capacity building to back up its efficient implementation, for the benefit of South African citizens. The public may rest assured that we will continue to maintain strict protocols around the regulation of content through our thoroughly researched Classification Guidelines, which ensures a fair and transparent process during the assigning of ratings and classification elements.” Ms. Mkosi concludes.