

Law against harmful online content comes into effect

With the operationalisation of the Films and Publications (FP) Amendment Act of 2019, South Africans will be protected against harmful content that is distributed by online distributors.



Addressing a media briefing in Pretoria on Thursday, deputy minister of communications and digital technologies Philly Mapulane said the number of companies that are in the business of selling films, games, and publications to consumers in online formats have exploded in recent years.

“Because the online world is borderless, it is now easier than ever for consumers to access news, information and entertainment created in other countries. Many of these countries have very different values and beliefs from ours here in South Africa.

“It is therefore important that this same content is reassessed before it is distributed in South Africa so that we empower our own consumers before they access the content,” the deputy minister said.

of 1 March 2022.

Chairperson of the Film and Publication Board (FPB) Council Zama Mkosi said the Amendment Act has made strides in a number of key areas to start closing that gap in a way that balances the right to free expression while protecting the public.

The Films and Publications Act 65 of 1994 established the FPB and the Appeals Tribunal as the regulator of the creation, production, possession and distribution of films, games and certain publications.

In 2015, the Films and Publications Amendment Bill advanced arguments, based on thorough research and consultation, that the FPB should extend its focus to the regulation of content on online platforms, to align with the changes in the industry.

Approaches to the classification of online content

“The FP Amendment Act introduces two approaches to the classification of online content. The first approach entails FPB entering into license agreements with online distributors.

“The agreement will allow for accreditation of the online distributor to undertake its own process of classification making use of the Classification Guidelines of the FPB,” she said.

The FPB outlines the rules of classification through the Classification Guidelines, and online distributors are required to comply with the provision of age-ratings and consumer advice in the same way as distributors of physical content do under the previous Act.

“The FPB will provide regular training to the online distributors on the application of the Classification Guidelines and conduct regular audits of films and games to ensure that they are appropriately classified.

“Should an online distributor not wish to enter into a self-classification agreement, they will be required to submit all content to the FPB for classification,” Mkosi said.

In addition, the Amendment Act draws a distinction between commercial online distributors and non-commercial online distributors.

Only commercial online distributors will be required to register and classify content.

“It is very important at this stage to emphasise that a member of the general public posting user-generated content on the internet and who does not fall within the definition of a commercial distributor is not considered a distributor under the regulations of the FPB and will not need to register or submit their content.

“Under section 18E The FPB will only have jurisdiction over non-commercial distributors in respect of complaints from the public and takedown notices can be authorised from Internet Service Providers where the content is hosted,” she said.

The process and parameters of takedown notices are found section 77 of the Electronic Communications and Transactions Act, 25 of 2002.

“Upon application by a commercial online distributor, the FPB may also accredit classification ratings by a foreign or international classification body where it finds that this aligns with the FPB’s Classification Guidelines.

Enforcement committee

“A very important change brought about by the FP Amendment Act is the establishment of an Enforcement Committee. This impartial body will conduct investigations on disputed cases that contravene the provisions of the legislation and regulations

and to impose sanctions as outlined in the Amendment Act and Regulations,” Mkosi said.

She emphasised that the content must align with the Constitution, which deems hate speech, incitement to violence, propaganda for war, child pornography and bestiality as unacceptable.

“We can now add the unauthorised distribution of private sexual photos and films; as well as content depicting sexual violence and violence against children,” Mkosi said.

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