

FILMS AND PUBLICATIONS ACT 65 OF 1996¹

[ASSENTED TO 30 OCTOBER 1996]	[DATE OF COMMENCEMENT: 1 JUNE 1998]
	(Unless otherwise indicated)

(Afrikaans text signed by the President)

published in
GG 17560 of 8 November 1996
commencements
(see s. 35 of this Act)

provisions	date	refer to
whole Act, except provisions listed below	1 June 1998	Proc R57 in GG 18935 of 29 May 1998
ss. 6 and 31 (1) (b)	8 November 1996	Proc R67 in GG 17575 of 8 November 1996
ss. 1-15 (Chapters 1 and 2), 31, 32, 34 and 35 (Chapter 8 except s. 33)	16 January 1998	Proc R3 in GG 18633 of 16 January 1998

as amended

by	with effect from	refer to
Films and Publications Amendment Act 34 of 1999	30 April 1999	s. 11 of Act 34 of 1999
Prevention and Combating of Corrupt Activities Act 12 of 2004	27 April 2004	s. 37 of Act 12 of 2004
Films and Publications Amendment Act 18 of 2004	2 November 2004	s. 23 of Act 18 of 2004
Films and Publications Amendment Act 3 of 2009	14 March 2010	s. 40 of Act 3 of 2009; Proc 8 in GG 33019 of 12 March 2010

Regulations under this Act — Legislation Judicially Considered

[NB: The Act was amended by the substitution for the words 'Review Board', wherever they occurred in the Act, of the words 'Appeal Tribunal' by s. 38 of the Films and Publications Amendment Act 3 of 2009 (wef 14 March 2010).]

ACT

To provide for the classification of certain films and publications; to that end to provide for the establishment of a Film and Publication Board and a Film and Publication Appeal Tribunal; to repeal certain laws; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

1 This Act has been updated to include all available historical commencement details

CHAPTER 1 DEFINITIONS (s 1)

1 Definitions

In this Act, unless the context otherwise indicates-

'Appeal Tribunal' means the Appeal Tribunal established by section 3;

[Definition of 'Appeal Tribunal' inserted by s. 1 (a) of Act 3 of 2009 (wef 14 March 2010).]

'Board' means the Film and Publication Board, established by section 3;

'certificate', in relation to a film, means the certificate referred to in section 18, issued in respect of the classification of a film;

'chief executive officer' means the chief executive officer of the Board referred to in section 4 (1) (c);

[Definition of 'chief executive officer' substituted by s. 1 (b) of Act 3 of 2009 (wef 14 March 2010).]

'child pornography' includes any image, however created, or any description of a person, real or simulated, who is or who is depicted, made to appear, look like, represented or described as being under the age of 18 years-

- (a) engaged in sexual conduct;
- (b) participating in, or assisting another person to participate in, sexual conduct; or
- (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;

[Definition of 'child pornography' inserted by s. 1 (a) of Act 34 of 1999 (wef 30 April 1999) and substituted by s. 1 (a) of Act 18 of 2004 (wef 2 November 2004) and by s. 1 (c) of Act 3 of 2009 (wef 14 March 2010).]

'classification', means any decision by the Board in terms of this Act;

'classification committee' means a classification committee referred to in section 10;

'computer software' means a programme and associated data capable of generating a display on a computer monitor, television screen, liquid crystal display or similar medium that allows interactive use;

'consumer advice' means that part of the Board's decision with regard to a film which informs the public of the fact that certain sensitivities could be offended by a film;

'Council' means the Council established by section 3;

[Definition of 'Council' inserted by s. 1 (d) of Act 3 of 2009 (wef 14 March 2010).]

'degrade'

[Definition of 'degrade' deleted by s. 1 (b) of Act 18 of 2004 (wef 2 November 2004).]

'distribute', in relation to a film or a publication, without derogating from the ordinary meaning of that word, includes to sell, hire out or offer or keep for sale or hire and, 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 thereto by such a person;

[Definition of 'distribute' substituted by s. 1 (c) of Act 18 of 2004 (wef 2 November 2004) and by s. 1 (e) of Act 3 of 2009 (wef 14 March 2010).]

'distributor', in relation to a film, means a person who conducts business in the selling, hiring out or exhibition of films;

'domestic violence' means depictions or descriptions of-

- (a) physical abuse;
 - (b) sexual abuse; or
 - (c) emotional, verbal and psychological abuse,
- and includes any other abusive behaviour involving persons who are or have been in an intimate relationship or who are family members, regardless of gender or sexual orientation;

[Definition of 'domestic violence' inserted by s. 1 (f) of Act 3 of 2009 (wef 14 March 2010).]

'executive committee'

[Definition of 'executive committee' deleted by s. 1 (g) of Act 3 of 2009 (wef 14 March 2010).]

'explicit sexual conduct' means graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of sexual conduct' in this Act;

[Definition of 'explicit sexual conduct' inserted by s. 1 (h) of Act 3 of 2009 (wef 14 March 2010).]

'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 or device;

[Definition of 'film' substituted by s. 1 (i) of Act 3 of 2009 (wef 14 March 2010).]

'game' means a computer game, video game or other interactive computer software for interactive game playing, 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;

[Definition of 'game' inserted by s. 1 (j) of Act 3 of 2009 (wef 14 March 2010).]

'identifiable group characteristic' means a characteristic that identifies an individual as a member of a group identified by race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and nationality;

[Definition of 'identifiable group characteristic' inserted by s. 1 (j) of Act 3 of 2009 (wef 14 March 2010).]

'in public' includes any place to which admission is obtained for any consideration, direct or indirect, or by virtue of membership of any association of persons or contribution towards any fund;

[Definition of 'in public' substituted by s. 1 (k) of Act 3 of 2009 (wef 14 March 2010).]

'Internet address' means a website, a bulletin board service, an Internet chat-room or newsgroup or any other Internet or shared network protocol address;

[Definition of 'Internet address' inserted by s. 1 (d) of Act 18 of 2004 (wef 2 November 2004).]

'Internet service provider' means any person who carries on the business of providing access to the Internet by any means;

[Definition of 'Internet service provider' inserted by s. 1 (d) of Act 18 of 2004 (wef 2 November 2004).]

'matters of public interest' means discussions, debates or opinions on matters pertaining to the common well-being or general welfare of the public or serving the interests of the public and includes discussions, debates and opinions on matters pertaining to religion, belief or conscience;

[Definition of 'matters of public interest' inserted by s. 1 (l) of Act 3 of 2009 (wef 14 March 2010).]

'Minister' 2 means the Minister to whom the administration of this Act has been assigned;

'newspaper' includes an on-line publication of a newspaper;

[Definition of 'newspaper' inserted by s. 1 (m) of Act 3 of 2009 (wef 14 March 2010).]

'possession', in relation to a film or publication, without derogating from its ordinary meaning, includes keeping or storing in or on a computer or computer system or computer data storage medium and also having custody, control or supervision on behalf of another person;

[Definition of 'possession' inserted by s. 1 (e) of Act 18 of 2004 (wef 2 November 2004).]

'prescribed' means prescribed by regulation;

[Definition of 'prescribed' inserted by s. 1 (n) of Act 3 of 2009 (wef 14 March 2010).]

'publication' means-

- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
- (b) any writing or typescript which has in any manner been duplicated;
- (c) any drawing, picture, illustration or painting;
- (d) any print, photograph, engraving or lithograph;
- (e) any record, magnetic tape, soundtrack or any other object in or on which sound has been recorded for reproduction;

[Para. (e) substituted by s. 1 (o) of Act 3 of 2009 (wef 14 March 2010).]

(f) computer software which is not a film;

(g) the cover or packaging of a film;

(h) any figure, carving, statue or model; and

(i) any message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet;

[Para. (i) added by s. 1 (b) of Act 34 of 1999 (wef 30 April 1999).]

'Review Board'

[Definition of 'Review Board' deleted by s. 1 (p) of Act 3 of 2009 (wef 14 March 2010).]

'sexual conduct' includes-

- (i) male genitals in a state of arousal or stimulation;

- (ii) the undue display of genitals or of the anal region;
- (iii) masturbation;
- (iv) bestiality;
- (v) sexual intercourse, whether real or simulated, including anal sexual intercourse;
- (vi) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object;
- (vii) the penetration of a vagina or anus with any object;
- (viii) oral genital contact; or
- (ix) oral anal contact;

[Definition of 'sexual conduct' inserted by s. 1 (f) of Act 18 of 2004 (wef 2 November 2004).]

'sexual violence' means conduct or acts contemplated in the definitions of 'sexual conduct' and 'explicit sexual conduct' that are accompanied either by force or coercion, actual or threatened, or that induces fear or psychological trauma in a victim;

[Definition of 'sexual violence' inserted by s. 1 (q) of Act 3 of 2009 (wef 14 March 2010).]

'this Act' includes the regulations made in terms of section 31;

'visual presentation' means-

- (a) a drawing, picture, illustration, painting, photograph or image; or
- (b) a drawing, picture, illustration, painting, photograph or image or any combination thereof, produced through or by means of computer software on a screen or a computer printout.

[Definition of 'visual presentation' substituted by s. 1 (c) of Act 34 of 1999 (wef 30 April 1999).]

[Date of commencement of s. 1: 16 January 1998.]

2 Administration, powers and functions transferred to Minister of Communications - Proc 47 in GG 37839 of 15 July 2014

CHAPTER 2

FILM AND PUBLICATION BOARD: FILM AND PUBLICATION APPEAL TRIBUNAL (ss 2-15A)

2 Objects of Act

The objects of this Act shall be to regulate the creation, production, possession and distribution of films, games and certain publications to-

- (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;
- (b) protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and
- (c) make use of children in and the exposure of children to pornography punishable.

[S. 2 substituted by s. 2 of Act 34 of 1999 (wef 30 April 1999) and by s. 2 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 2: 16 January 1998.]

3 Establishment of Film and Publication Board, Council and Appeal Tribunal

(1) There is hereby established-

- (a) a juristic person which shall be known as the Film and Publication Board;
- (b) the Council; and
- (c) an Appeal Tribunal,

which shall perform the functions, exercise the powers and carry out the duties assigned to, conferred on or imposed upon them in terms of this Act or any other law.

(2) The Board and the Appeal Tribunal shall be independent and function without any bias.

(3) The seat of the Board shall be determined by the Council in consultation with the Minister.

[S. 3 substituted by s. 3 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 3: 16 January 1998.]

4 Composition of Council

(1) The Council shall consist of-

- (a) a chairperson and a deputy chairperson appointed by the Minister;
- (b) such number of members, not exceeding seven, as the Minister may appoint having regard to the need to ensure that the membership of the Council is broadly representative of the South African community and relevant stakeholders; and
- (c) the chief executive officer appointed by the Council in consultation with the Minister.

(2) (a) In the absence of the chairperson the deputy chairperson shall act as chairperson.

(b) In the absence of the chairperson and the deputy chairperson at a meeting, the Council shall elect one of the members present to act as the chairperson of that meeting

(3) Decisions of the Council shall be taken by a majority of votes, and in the case of an equality of votes, the chairperson of the meeting shall have the casting vote.

(4) A quorum of the Council is constituted by fifty per cent plus one of its total number of members.

[S. 4 amended by s. 2 of Act 18 of 2004 (wef 2 November 2004) and substituted by s. 4 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 4: 16 January 1998.]

4A Powers and duties of Council

(1) The Council shall-

- (a) in consultation with the Minister, issue directives of general application, including classification guidelines, in accordance with matters of national policy consistent with the purpose of this Act;
- (b) determine and issue a Code of Conduct for members of the Council;
- (c) in consultation with the Minister, appoint the chief executive officer;
- (d) in consultation with the Minister, determine the qualifications, experience and terms and conditions of employment of classifiers;
- (e) appoint such number of classifiers that comply with the determinations contemplated in paragraph (d), as may be required, having regard to the likely volume of applications and submissions that will be made in terms of this Act;
- (f) at least four times a year, review and report to the Minister on the functioning of the Board to ensure that the objects of this Act are implemented efficiently and that the Board discharges its obligations and responsibilities in accordance with this Act or any other law; and
- (g) exercise and perform such other functions, powers and duties as are conferred or imposed on the Council by or under this Act or any other law.

(2) When making an appointment in terms of subsection (1) (e), the Council shall-

- (a) have regard to the person's personal attributes, integrity, qualifications, knowledge and experience in the different aspects of matters likely to come before the Board; and
- (b) ensure broad representation of the South African community in terms of race, ethnicity, gender and religion and may invite the public to nominate candidates suitable for appointment as classifiers.

(3) Meetings of the Council shall be convened by the chairperson and shall be held at the premises of the Board, unless, for *bona fide* reasons, the chairperson directs that a meeting be held at another venue.

[S. 4A inserted by s. 5 of Act 3 of 2009 (wef 14 March 2010).]

5 Composition of Appeal Tribunal

[Heading substituted by s. 6 of Act 3 of 2009 (wef 14 March 2010).]

(1) The Appeal Tribunal shall consist of-

- (a) a chairperson; and
- (b) eight other members.

(2) A member of the Appeal Tribunal designated by the Minister shall act as chairperson of the Appeal Tribunal during the chairperson's absence.

[Sub-s. (2) substituted by s. 3 of Act 18 of 2004 (wef 2 November 2004).]

(3) The chairperson and four other members of the Appeal Tribunal shall constitute a quorum of the Appeal Tribunal.

(4) Decisions of the Appeal Tribunal shall be taken by a majority of votes, and in the case of an equality of votes the chairperson shall have a casting vote.

[Date of commencement of s. 5: 16 January 1998.]

6 Members of Council and Appeal Tribunal to be appointed by Minister

(1) The members of the Council and Appeal Tribunal shall be appointed by the Minister by notice in the *Gazette* after consultation with Cabinet.

(2) The Minister may, whenever it is necessary to appoint members of the Council or Appeal Tribunal, appoint an advisory panel to advise him or her with regard to the persons who are to be appointed as such members, and shall appoint one of the members of the advisory panel as the chairperson thereof.

(3) The Minister or the advisory panel may invite members of the public to nominate persons for appointment.

(4) (a) A member of the Council or Appeal Tribunal appointed in terms of subsection (1) shall-

- (i) be a fit and proper person;
- (ii) be of good and sound character; and
- (iii) not be disqualified in terms of section 7.

(b) A member of the Council or Appeal Tribunal shall have experience in, or knowledge of, any one or more of the following matters:

- (i) Community development;
- (ii) education;
- (iii) psychology;
- (iv) religion;
- (v) law;
- (vi) drama;
- (vii) literature;
- (viii) communications science;
- (ix) photography;
- (x) cinematography;
- (xi) gender matters;
- (xii) children's rights; or
- (xiii) any other relevant field of experience as may be prescribed.

[S. 6 substituted by s. 3 of Act 34 of 1999 (wef 30 April 1999) and by s. 7 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 6: 8 November 1996.]

7 Disqualifications with regard to membership of Council or Appeal Tribunal

[Heading substituted by s. 8 (a) of Act 3 of 2009 (wef 14 March 2010).]

(1) A person shall not be qualified to be appointed as a member of the Council or Appeal Tribunal, or to be such a member, if he or she-

- (a) is not a citizen of and is not permanently resident in the Republic;
- (b) at the time when the appointment is to be made, holds an office of profit in the service of the State;
- (c) directly or indirectly, whether personally or through his or her spouse, partner or associate, has a direct or indirect financial interest in the film, publishing or printing industry;
- (d) or his or her spouse, partner or associate, holds an office in or is employed by any company, organization or other body, whether corporate or incorporate, which has a direct or indirect financial interest of the nature contemplated in paragraph (c);
- (e) is an unrehabilitated insolvent;
- (f) is subject to an order of a competent court declaring him or her to be mentally ill or mentally disordered;
- (g) is convicted, after the commencement of this Act, whether in the Republic or elsewhere, of any offence for which he or she has been sentenced to imprisonment without the option of a fine;
- (h) at any time before the commencement of this Act was, or at any time after such commencement is, convicted-

- (i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or any offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004); and
 [Sub-para. (i) substituted by s. 36 (1) of Act 12 of 2004 (wef 27 April 2004) and by s. 8 (c) of Act 3 of 2009 (wef 14 March 2010).]
- (ii) elsewhere than in the Republic, of any offence corresponding materially with any offence referred to in subparagraph (i); or
- (iii) whether in the Republic or elsewhere, of any other offence involving dishonesty; or
- (i) has been or is found guilty of any offence in terms of this Act.

[Sub-s. (1) amended by s. 8 (b) of Act 3 of 2009 (wef 14 March 2010).]

(2) Whenever circumstances in relation to a member of the Council or Appeal Tribunal so change that it would have disqualified him or her from being appointed as such a member, had they have been in existence at the time of his or her appointment, the seat of that member shall become vacant, and the vacancy in such seat shall be filled in accordance with section 6.

[Sub-s. (2) substituted by s. 8 (d) of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 7: 16 January 1998.]

8 Period of office of members of Council and Appeal Tribunal

[Heading substituted by s. 9 (a) of Act 3 of 2009 (wef 14 March 2010).]

(1) Members of the Council and Appeal Tribunal shall be appointed for a period of five years.

[Sub-s. (1) substituted by s. 9 (b) of Act 3 of 2009 (wef 14 March 2010).]

(2) All such members shall upon expiry of their terms of office be eligible for reappointment.

(3) Any such member may resign by tendering a written notice of resignation to the Minister, at least three months before the date upon which such notice is to take effect.

[Date of commencement of s. 8: 16 January 1998.]

9 Removal from office

(1) The Minister may remove a member of the Council or Appeal Tribunal from office on the grounds of incapacity, incompetence, misconduct or misrepresentation.

(2) A decision to remove a member of the Council or Appeal Tribunal from office shall be based on a finding of a tribunal appointed by the Minister: Provided that the member shall have the right to be heard.

(3) The Minister may suspend a member of the Council or Appeal Tribunal from office pending the finding of the tribunal referred to in subsection (2).

(4) A member of the Council or Appeal Tribunal shall vacate his or her office when any of the circumstances referred to in section 7 become applicable in respect of him or her, and the Minister issues him or her with a certificate to that effect.

[S. 9 substituted by s. 4 of Act 34 of 1999 (wef 30 April 1999) and by s. 10 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 9: 16 January 1998.]

9A Composition, functions and management of Board

(1) The Board shall consist of the chief executive officer and such number of officers as determined by the Council.

(2) The functions of the Board shall be to-

- (a) appoint classification committees to examine and determine, in accordance with any classification guidelines issued by the Council, the classification of any film, game or publication submitted to the Board under this Act;
- (b) determine an application made in terms of section 22 or 23 for an exemption in respect of any film, game or publication; and
- (c) determine an application made under section 18 (1) for registration as a distributor or exhibitor of films, games or publications.

(3) The chief executive officer shall be responsible for all matters relating to the administration and management of the Board, including-

- (a) the appointment of administrative staff;
- (b) the appointment of compliance officers;
- (c) the submission to the Council of the quarterly reports contemplated in section 4A (1) (f); and
- (d) the submission of the annual report and financial statements contemplated in section 55 of the Public Finance Management Act, 1999 (Act 1 of 1999).

(4) The chief executive officer may delegate any power conferred on him or her.

[S. 9A inserted by s. 11 of Act 3 of 2009 (wef 14 March 2010).]

10 Classification committees

(1) The Board shall appoint classification committees as may be prescribed.

[Sub-s. (1) substituted by s. 12 of Act 3 of 2009 (wef 14 March 2010).]

(2) Decisions of a classification committee shall be taken by a majority of votes: Provided that where there is an equality of votes the Board shall appoint an additional member to such committee so as to enable the committee to come to a majority decision.

[Sub-s. (2) substituted by s. 12 of Act 3 of 2009 (wef 14 March 2010).]

(3) A decision of a classification committee shall for the purposes of this Act be deemed to be a decision of the Board.

[Date of commencement of s. 10: 16 January 1998.]

11 Administrative support for Council and Appeal Tribunal

The administrative work connected with the performance of the functions, the exercise of the powers and the carrying out of the duties of the Council and Appeal Tribunal shall be performed by the staff of the Board.

[S. 11 substituted by s. 13 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 11: 16 January 1998.]

12 Remuneration

The Members and staff of the Council, Appeal Tribunal, an advisory panel and any person appointed as an expert to assist or advise the Council, or Appeal Tribunal, shall receive such remuneration, allowances and other benefits as may be determined by the Minister in consultation with the Minister of Finance.

[S. 12 substituted by s. 14 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 12: 16 January 1998.]

13 Expenditure

(1) The expenditure in connection with the performance of the functions, the exercise of powers and the carrying out of the duties of the Council, Appeal Tribunal and an advisory panel shall be defrayed from money appropriated by Parliament for the purpose.

[Sub-s. (1) substituted by s. 15 of Act 3 of 2009 (wef 14 March 2010).]

(2) The chief executive officer shall be the accounting officer of the Board.

[Sub-s. (2) substituted by s. 15 of Act 3 of 2009 (wef 14 March 2010).]

(3) The books of account and financial statements shall be audited by the Auditor-General.

[Date of commencement of s. 13: 16 January 1998.]

14 Annual report

(1) The Council shall, as soon as practicable after the end of each financial year prepare a report on all the activities of the Council and Appeal Tribunal during that financial year, and on the financial position of the Council and Appeal Tribunal as at the end of that financial year.

(2) The report contemplated in subsection (1), together with the audited balance sheet and accounts pertaining to the funds of the Council and Appeal Tribunal shall be submitted to the Minister for tabling in Parliament.

[S. 14 amended by s. 4 of Act 18 of 2004 (wef 2 November 2004) and substituted by s. 16 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 14: 16 January 1998.]

15

[S. 15 amended by s. 5 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 17 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 15: 16 January 1998.]

15A Functions of compliance officers

(1) A compliance officer may, for the purpose of achieving the objects of this Act and of-

- (a) advising 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 that all films and games offered for sale or hire by a distributor have been classified 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.

(2) Upon entry of any premises contemplated in subsection (1), the compliance officer may-

- (a) request the production of a certificate of registration as a distributor or exhibitor of films or games issued by the Board and, where relevant, a licence to conduct the business of adult premises issued by a licensing authority contemplated in section 24 of this Act;
- (b) examine or inspect any premises being used to conduct the business of adult premises for compliance with the conditions contemplated in section 24 (2) of this Act;
- (c) examine or inspect any film or games being offered for sale or hire for compliance with the requirements of this Act with regard to the distribution of that film or game; and
- (d) instruct that films, games and publications being offered for sale or hire that do not comply with the requirements of this Act or any decision of the Board with regard to the distribution of that film, game or publication be removed from any display or offer for sale or hire until such products comply with the requirements of this Act or any decision of the Board with regard to their distribution.

(3) When performing any function in terms of this section, a compliance officer may request the assistance of a police official of the South African Police Service.

[S. 15A inserted by s. 18 of Act 3 of 2009 (wef 14 March 2010).]

CHAPTER 3

COMPLAINTS AND APPLICATIONS CONCERNING PUBLICATIONS (ss 16-17)

16 Classification of publications

(1) Any person may request, in the prescribed manner, that a publication, other than a *bona fide* newspaper that is published by a member of a body, recognised by the Press Ombudsman, which subscribes, and adheres, to a code of conduct that must be enforced by that body, which is to be or is being distributed in the Republic, be classified in terms of this section.

(2) Any person, except the publisher of a newspaper contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that-

- (a) contains sexual conduct which-
 - (i) violates or shows disrespect for the right to human dignity of any person;
 - (ii) degrades a person; or
- (iii) constitutes incitement to cause harm;
- (b) advocates propaganda for war;
- (c) incites violence; or
- (d) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm,

shall submit, in the prescribed manner, such publication for examination and classification to the Board before such publication is distributed, exhibited, offered or advertised for distribution or exhibition.

(3) The Board shall refer any publication submitted to the Board in terms of subsection (1) or (2) to a classification committee for examination and classification of such publication.

(4) The classification committee shall, in the prescribed manner, examine a publication referred to it and shall-

- (a) classify that publication as a 'refused classification' if the publication contains-
 - (i) child pornography, propaganda for war or incitement of imminent violence; or
 - (ii) the advocacy of hatred based on any identifiable group characteristic and that constitutes incitement to cause harm, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest;
- (b) classify the publication as 'XX' if it contains-
 - (i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - (ii) bestiality, incest, rape or conduct or an act which is degrading of human beings;
- (iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour;
- (iv) explicit infliction of sexual or domestic violence; or
- (v) explicit visual presentations of extreme violence, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified 'X18' or classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;
- (c) classify the publication as X18 if it contains explicit sexual conduct, unless, judged within context, the publication is, except with respect to child pornography, a *bona fide* documentary or is a publication of scientific, literary or artistic merit or is on a matter of public interest, in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful and age-inappropriate materials; or
- (d) if the publication contains material which may be disturbing or harmful to or age-inappropriate for children, classify that publication, with reference to the relevant guidelines, by the imposition of appropriate age-restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials.

(5) Where a publication has been classified as a 'refused classification' or has been classified 'XX' or 'X18', the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.

(6) Where a publication submitted to the Board in terms of this section contains child pornography, the chief executive officer shall refer that publication to a police official of the South African Police Service for investigation and prosecution.

[S. 16 substituted by s. 19 of Act 3 of 2009 (wef 14 March 2010).]

17

[S. 17 substituted by s. 6 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 20 of Act 3 of 2009 (wef 14 March 2010).]

CHAPTER 4 APPLICATIONS FOR, AND CLASSIFICATION OF FILMS (ss 18-18B)

18 Classification of films and games

(1) Any person who distributes, broadcasts or exhibits any film or game in the Republic shall in the prescribed manner on payment of the prescribed fee-

- (a) register with the Board as a distributor or exhibitor of films or games; and

(b) submit for examination and classification any film or game that has not been classified, exempted or approved in terms of this Act or the Publications Act, 1974 (Act 42 of 1974).

(2) The Board shall refer any film or game submitted under subsection (1) (b) to a classification committee for examination and classification.

(3) The classification committee shall in the prescribed manner, examine the film or game referred to it and shall-

(a) classify the film or game as a 'refused classification' if the film or game-

(i) contains child pornography, propaganda for war or incites imminent violence; or

(ii) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm,

unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest;

(b) classify the film or game as 'XX' if it depicts-

(i) explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;

(ii) bestiality, incest, rape, conduct or an act which is degrading of human beings;

(iii) conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour;

(iv) explicit infliction of sexual or domestic violence; or

(v) explicit visual presentations of extreme violence,

unless, in respect of the film or game, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified 'X18' or classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

(c) classify the film or game as 'X18' if it contains explicit sexual conduct, unless, judged within context, the film or game is, except with respect to child pornography, a *bona fide* documentary or is of scientific, dramatic or artistic merit, in which event the film or game shall be classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials; or

(d) if the film or game contains a scene which may be disturbing or harmful to, or age-inappropriate for children, classify that film or game with reference to the relevant guidelines issued by the Board by the imposition of appropriate age restrictions and such other conditions as may be necessary to protect children in the relevant age categories from exposure to such materials.

(4) Where a film or game has been classified as a 'refused classification' or has been classified as 'XX' or 'X18', the chief executive officer shall cause that classification decision to be published by notice in the *Gazette*, together with the reasons for the decision.

(5) Where a film or game submitted to the Board in terms of this section contains child pornography, the chief executive officer shall refer that film or game to a police official of the South African Police Service for investigation and prosecution.

(6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the purposes of broadcasting, be exempt from the duty to apply for classification of a film or game and, subject to section 24A (2) and (3), shall, in relation to a film or game, not be subject to any classification or condition made by the Board in relation to that film or game.

[S. 18 amended by s. 7 (a) and (b) of Act 18 of 2004 (wef 2 November 2004) and substituted by s. 21 of Act 3 of 2009 (wef 14 March 2010).]

18A Display of classification decisions

(1) Where a film, game or publication has been classified or exempted from classification in terms of this Act it must-

- (a) if it is a film or game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or game:
Certificate of Classification No.:
Classification and Consumer Advice:
Any other condition imposed;
- (b) if it is a publication, display either on the front of the cover or on the wrapper of the publication, where applicable display the following information-
 - (i) classification and consumer advice; or
 - (ii) any other condition aimed at the protection of children; or
- (c) if it is a film approved for exhibition in public, display on all advertisements and illustrated exhibitions associated with that film the classification, consumer advice and any other condition imposed by the Board with respect to the exhibition of that film in public.

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

[S. 18A inserted by s. 22 of Act 3 of 2009 (wef 14 March 2010).]

18B Re-classification

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, in the prescribed manner, for a less restrictive classification of that film, game or publication.

[S. 18B inserted by s. 22 of Act 3 of 2009 (wef 14 March 2010).]

CHAPTER 5 RIGHT TO APPEAR, AND TO APPEAL TO APPEAL TRIBUNAL AND SUPREME COURT (ss 19-21)

19 Right to appear, to be represented, to adduce evidence, to address, to have case and arguments properly considered, and to be informed of grounds of decision

The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for classification in terms of section 16, or the reclassification of a film, game or publication, or for a permit, exemption or licence, or who is the publisher of a publication which is the subject of an application for classification, or whose financial interest could be detrimentally affected by a decision of the Board on such application, or with regard to an exemption or permit, the withdrawal of which is being considered, or who appeals to the Appeal Tribunal against a decision with regard to such an application, shall have the right-

- (a) to appear in person before the Board, classification committee or Appeal Tribunal, or to be represented or assisted by a legal practitioner or by any other person of his or her choice, to adduce oral or written evidence and, subject to a reasonable time-limit imposed by the chairperson concerned, to address that committee, the Board or Appeal Tribunal, in the language of his or her choice; and
- (b) to have his or her case and arguments duly considered and to be informed, in writing, of the decision of the Board or Appeal Tribunal, of the reasons for and grounds upon which such decision is based, which shall include, in the case of a 'refused classification' or a 'XX' classification of a publication, film or game a reference to the particular section of the Act which formed the basis of the decision.

[S. 19 amended by s. 5 of Act 34 of 1999 (wef 30 April 1999) and substituted by s. 23 of Act 3 of 2009 (wef 14 March 2010).]

20 Appeal to Appeal Tribunal

(1) The Minister or any person who has lodged a complaint with the Board that any publication be referred to a classification committee for a decision and classification in terms of section 16, and any person who applied for the classification of a film or game, or the publisher or distributor of a publication which formed the subject of any complaint

or application in terms of section 16, may within a period of 30 days from the date on which he or she was notified of the decision, in the prescribed manner appeal to the Appeal Tribunal.

[Sub-s. (1) substituted by s. 6 of Act 34 of 1999 (wef 30 April 1999) and by s. 24 (a) of Act 3 of 2009 (wef 14 March 2010).]

(2) The chairperson of the Appeal Tribunal-

- (a) may, on good cause shown, suspend the decision appealed against in terms of subsection (1), until the decision is given on the appeal;
- (b) shall convene a meeting of the Appeal Tribunal and inform the appellant of the date and time when the appeal is to be heard;
- (c) may determine the procedure to be followed;
- (d) may call upon any person who in his or her opinion is an expert on any matter relevant to the appeal, including any person who has experience in or knowledge of any matter referred to in section 6 (4), to give assistance to the Appeal Tribunal.

(3) The Appeal Tribunal may refuse the appeal and confirm the decision in question, or allow the appeal, either wholly or in part, and give such decision as the Board should, in its view, have given, and amend the classification of the film, game or publication, specifying the section of this Act upon which the classification is in terms of its decision based, and may impose other conditions in respect of the distribution or exhibition of the film, game or publication.

[Sub-s. (3) amended by s. 8 of Act 18 of 2004 (wef 2 November 2004) and substituted by s. 24 (b) of Act 3 of 2009 (wef 14 March 2010).]

(4) The chief executive officer shall, in the case of a successful appeal against a decision whereby an application for registration, exemption, permit or licence is refused, issue the requisite certificate of registration, exemption, permit or licence, subject to the conditions, if any, imposed by the Appeal Tribunal.

[Sub-s. (4) substituted by s. 24 (b) of Act 3 of 2009 (wef 14 March 2010).]

(5) A decision of the Appeal Tribunal shall for the purposes of this Act be deemed to be a decision of the Board.

21

[S. 21 amended by s. 7 of Act 34 of 1999 (wef 30 April 1999) and repealed by s. 25 of Act 3 of 2009 (wef 14 March 2010).]

CHAPTER 6 EXEMPTIONS: PUBLICATIONS AND FILMS (ss 22-24C)

22 Exemption of persons from certain sections, and exclusions from application of this Act

(1) The Board may on receipt of an application in the prescribed form, subject to such conditions as it may deem fit, exempt in writing any person or institution from section 24A, 24B or 24C if it has good reason to believe that *bona fide* purposes will be served by such an exemption.

[Sub-s. (1) substituted by s. 26 (a) of Act 3 of 2009 (wef 14 March 2010).]

(2) Where the Board after due inquiry has good reason to believe that the conditions of an exemption are not complied with or that the *bona fide* purposes are no longer present, it may withdraw the exemption.

[Sub-s. (2) substituted by s. 26 (a) of Act 3 of 2009 (wef 14 March 2010).]

(3)

[Sub-s. (3) deleted by s. 26 (b) of Act 3 of 2009 (wef 14 March 2010).]

23 Exhibition of films to distributor of films not prohibited by this Act

(1) The provisions of section 24A (1), (2) (a) and (3) shall not prohibit the exhibition of any film or game to any person in the course of his or her business as a distributor of films or games or to the representative of such distributor acting for the purposes of such business.

(2) The Board may, in its discretion and subject to such conditions as it may deem fit to impose, either by means of a permit, issued in the prescribed form, or by notice in the *Gazette*, exempt from classification any particular film or game, any particular class

of films or games, or any film or game intended for exhibition to a particular group of persons or under any particular circumstances, and may at any time, after due inquiry, withdraw any such permit or exemption: Provided that if such exemption was granted by notice in the *Gazette*, the chief executive officer shall by notice withdraw the exemption.

[S. 23 substituted by s. 27 of Act 3 of 2009 (wef 14 March 2010).]

24 Exemption in respect of distribution of certain publications and films: Adult premises

(1) Any person may exhibit in public or distribute any film, game or publication classified as 'X18' in terms of this Act if such person is the holder of a licence to conduct the business of adult premises, issued by a licensing authority in terms of relevant national, provincial or local government laws: Provided that such exhibition or distribution takes place on or from within premises forming part of a building.

[Sub-s. (1) substituted by s. 28 (a) of Act 3 of 2009 (wef 14 March 2010).]

(2) Any exemption granted in terms of subsection (1) may be suspended by the Board for a period not exceeding one year, if the Board, after the holding of an inquiry, is satisfied that-

- (a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned;
- (b) a film, game or publication was displayed or exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, game or publication could be seen from any point outside the premises concerned;
- (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or
- (d) any film, game or publication classified as 'X18' in terms of a decision of the Board, published in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises-
 - (i) to a person who is not the holder of a similar licence; or
 - (ii) in a manner which was not in accordance with regulations made under this Act with the aim of preventing the delivery of such films, games or publications to persons under the age of 18 years.

[Sub-s. (2) substituted by s. 28 (a) of Act 3 of 2009 (wef 14 March 2010).]

24A Prohibitions, offences and penalties on distribution and exhibition of films, games and publications

(1) Any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16 (1) of this Act which has-

- (a) except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16 (1), not been classified by the Board;
- (b) been classified as a 'refused classification'; or
- (c) been classified as 'XX',

shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of films or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified 'X18', shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

- (4) Any person who knowingly distributes or exhibits any film, game or publication-
- (a) classified as 'X18'; or
 - (b) which contains depictions, descriptions or scenes of explicit sexual conduct, unless such film, game or publication is a *bona fide* documentary or is of scientific, literary or artistic merit or is on a matter of public interest,
- to a person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(5) Any person who knowingly distributes a film, game or publication which has been classified by the Board without displaying, clearly and conspicuously and in the prescribed manner, the classification reference number, the age restriction, consumer advice and any other condition imposed on the distribution of that film, game or publication shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(6) Any person who knowingly advertises a film or game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

(7) Any person who knowingly and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or game, a trailer advertising a film or a game with a more restrictive classification than the featured film or game, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

[S. 24A inserted by s. 29 of Act 3 of 2009 (wef 14 March 2010).]

24B Prohibition, offences and penalties on possession of films, games and publications

- (1) Any person who-
- (a) unlawfully possesses;
 - (b) creates, produces or in any way contributes to, or assists in the creation or production of;
 - (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; or
 - (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children, shall be guilty of an offence.

(2) Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed and fails to-

- (a) report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and
- (b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion, shall be guilty of an offence.

(3) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence.

[S. 24B inserted by s. 29 of Act 3 of 2009 (wef 14 March 2010).]

24C Obligations of internet access and service providers

(1) For the purposes of this section, unless the context otherwise indicates-

- (a) **'child-oriented service'** means a contact service and includes a content service which is specifically targeted at children;
- (b) **'contact service'** means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other;
- (c) **'content'** means any sound, text, still picture, moving picture, other audio visual representation or sensory representation and includes any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers;
- (d) **'content service'** means-
 - (i) the provision of content; or
 - (ii) the exercise of editorial control over the content conveyed via a communications network, as defined in the Electronic Communications Act, 2005 (Act 35 of 2005), to the public or sections of the public; and
- (e) **'operator'** means any person who provides a child-oriented contact service or content service, including Internet chat-rooms.

(2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall-

- (a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;
- (b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;
- (c) provide a mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;
- (d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and
- (e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.

(3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

[S. 24C inserted by s. 29 of Act 3 of 2009 (wef 14 March 2010).]

CHAPTER 7 PROHIBITION OF CONDUCT CONTRARY TO CLASSIFICATIONS (ss 25-30B)

25

[S. 25 amended by s. 9 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 30 of Act 3 of 2009 (wef 14 March 2010).]

26

[S. 26 amended by s. 10 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 30 of Act 3 of 2009 (wef 14 March 2010).]

27

[S. 27 amended by s. 8 of Act 34 of 1999 (wef 30 April 1999) and by s. 11 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 30 of Act 3 of 2009 (wef 14 March 2010).]

27A Registration and other obligations of Internet service providers

(1) Every Internet service provider shall-

- (a) register with the Board in the manner prescribed by regulations made under this Act; and
- (b) take all reasonable steps to prevent the use of their services for the hosting or distribution of child pornography.

(2) If an Internet service provider has knowledge that its services are being used for the hosting or distribution of child pornography, such Internet service provider shall-

- (a) take all reasonable steps to prevent access to the child pornography by any person;
- (b) report the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such Internet address, to a police official of the South African Police Service; and
- (c) take all reasonable steps to preserve such evidence for purposes of investigation and prosecution by the relevant authorities.

(3) An Internet service provider shall, upon request by the South African Police Service, furnish the particulars of users who gained or attempted to gain access to an Internet address that contains child pornography.

(4) Any person who-

- (a) fails to comply with subsection (1) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
- (b) fails to comply with subsection (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

[Sub-s. (4) substituted by s. 31 of Act 3 of 2009 (wef 14 March 2010).]

[S. 27A inserted by s. 12 of Act 18 of 2004 (wef 2 November 2004).]

28

[S. 28 amended by s. 13 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 32 of Act 3 of 2009 (wef 14 March 2010).]

29

[S. 29 amended by s. 14 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 32 of Act 3 of 2009 (wef 14 March 2010).]

30 Punishment

(1)

[Sub-s. (1) substituted by s. 15 (a) of Act 18 of 2004 (wef 2 November 2004) and deleted by s. 33 (a) of Act 3 of 2009 (wef 14 March 2010).]

(1A)

[Sub-s. (1A) inserted by s. 15 (b) of Act 18 of 2004 (wef 2 November 2004) and deleted by s. 33 (a) of Act 3 of 2009 (wef 14 March 2010).]

(2)

[Sub-s. (2) deleted by s. 33 (a) of Act 3 of 2009 (wef 14 March 2010).]

(3)

[Sub-s. (3) substituted by s. 15 (c) of Act 18 of 2004 (wef 2 November 2004) and deleted by s. 33 (b) of Act 3 of 2009 (wef 14 March 2010).]

(4) (a) If any person who has contravened or failed to comply with section 24A (1), (2) (a), (5), (6), (7), 24C (2) or 27A (1) (a) agrees to abide by a decision of the Board and deposits with the Board such sum as the Board may determine but not exceeding the greater of two thousand rand or two times the prescribed classification costs, where applicable, on each such contravention or failure to comply, the Board may, after conducting an enquiry, determine the matter summarily and may, without legal proceedings, order forfeiture by way of penalty of the whole or any part of the amount so deposited.

[Para. (a) substituted by s. 33 (b) of Act 3 of 2009 (wef 14 March 2010).]

(b) There shall be a right of appeal to the Minister from any determination or order of the Board under paragraph (a), as long as that right is exercised within a period of three months from the date of such determination or order.

[Para. (b) substituted by s. 33 (b) of Act 3 of 2009 (wef 14 March 2010).]

(c) The imposition of a penalty under paragraph (a) shall not be regarded as a conviction in respect of a criminal offence but no prosecution for that offence shall thereafter be competent.

[Sub-s. (4) added by s. 15 (d) of Act 18 of 2004 (wef 2 November 2004).]

30A Extra-territorial jurisdiction

(a) Any citizen or permanent resident of the Republic who commits any act outside the Republic which would have constituted an offence under this Act had it been committed within the Republic, shall be guilty of the offence which would have been so constituted and liable to the penalty prescribed for such offence in this Act.

(b) No prosecution under this section shall be instituted without the written consent of a Director of Public Prosecutions.

(c) For the purpose of this section, any court in the Republic and any Director of Public Prosecutions shall have jurisdiction.

[S. 30A inserted by s. 16 of Act 18 of 2004 (wef 2 November 2004).]

30B Presumptions and proof

(1) If in any prosecution in terms of this Act it is proved that-

- (a) any message or communication, including a visual presentation, was placed on any distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that it was so placed by the registered subscriber or user;
- (b) access was gained or attempted to be gained to child pornography on a distributed network, including the Internet, by means of the access provided or granted to a registered subscriber or user, it shall be presumed, in the absence of evidence to the contrary which raises reasonable doubt, that such access was gained or attempted to be gained by the registered subscriber or user.

(2) If in any prosecution it is necessary to prove that-

- (a) any application for registration or classification in terms of this Act has or has not been made to the Board; or
- (b) any film, game or publication has or has not been submitted to the Board in terms of this Act.

[Para. (b) substituted by s. 34 of Act 3 of 2009 (wef 14 March 2010).]

- (c) any decision or classification has or has not been made or that any restriction or condition has or has not been imposed by the Board in terms of this Act; or
- (d) a certificate of exemption has or has not been issued, granted, withdrawn, cancelled or suspended by the Board; or
- (e) a decision or classification of the Board has or has not been suspended by the Appeal Tribunal,
a certificate, issued under the authority of the executive committee of the Board, shall, upon its mere production, be *prima facie* proof of such fact.

[S. 30B inserted by s. 16 of Act 18 of 2004 (wef 2 November 2004).]

CHAPTER 8 REGULATIONS, AMENDMENT AND REPEAL OF LAWS (ss 31-35)

31 Regulations

(1) The Minister may-

- (a) in consultation with the Minister of Finance, make regulations, regarding fees payable in respect of any application, exemption, permit or appeal under this Act;
[Date of commencement of para. (a): 16 January 1998.]
- (b) make regulations relating to the procedure with regard to the nomination of persons as candidates for the Council or Appeal Tribunal, further relevant experience in terms of section 6 (4) (a) of this Act and the experience of persons who may be appointed as members of the advisory panel referred to in section 6 (1);
[Date of commencement of para. (b): 8 November 1996.]
- (c) after consultation with the Council, make regulations relating to-

- (i) the procedures and forms for making any application or submission under this Act;
- (ii) the form of any certificate to be issued in terms of this Act; and
- (iii) the format and details of the display or exhibition of decisions of the Board with respect to films, games and publications classified in terms of this Act;
- (d) after consultation with the Appeal Tribunal, make regulations regarding the procedures and forms for the submission of appeals to the Appeal Tribunal;
- (e) make regulations on any matter that may be prescribed under this Act; and
- (f) make regulations generally on any matter required for the better achievement of the objects and purposes of this Act.

[Sub-s. (1) substituted by s. 35 (a) of Act 3 of 2009 (wef 14 March 2010).]

(2)

[Sub-s. (2) deleted by s. 35 (b) of Act 3 of 2009 (wef 14 March 2010).]

(3) (a) Within two years after the commencement of this Act the Board shall publish the guidelines which the Board and the Appeal Tribunal apply in order to determine what is harmful or disturbing in terms of Schedules 3 and 8 in the *Gazette*.

(b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in paragraph (a), the Board shall publish the said guidelines in the *Gazette* and, where necessary, amend them.

(c) Together with every publication of guidelines referred to in paragraphs (a) and (b) an appeal shall be made on the public to make representations concerning such guidelines, within 30 days after publication thereof.

[Date of commencement of sub-s. (3): 16 January 1998.]

[Date of commencement of s. 31: 16 January 1998.]

32

[S. 32 repealed by s. 36 of Act 3 of 2009 (wef 14 March 2010).]

[Date of commencement of s. 32: 16 January 1998.]

33 Repeal of laws

The laws mentioned in Schedule 12 are hereby repealed to the extent set out in the third column.

34

Amends Schedule 1 to the Businesses Act 71 of 1991 by adding item 2 (h).

[Date of commencement of s. 34: 16 January 1998.]

35 Short title and commencement

This Act shall be called the Films and Publications Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

[Date of commencement of s. 35: 16 January 1998.]

Schedule 1

[Schedule amended by s. 9 of Act 34 of 1999 (wef 30 April 1999) and by s. 17 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedule 2

[Schedule 2 amended by s. 18 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedule 3

[Schedule 3 substituted by s. 19 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedules 4 and 5

[Schedule 4 and 5 repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedule 6

[Schedule 6 amended by s. 10 of Act 34 of 1999 (wef 30 April 1999) and by s. 20 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedules 7, 8 and 9

[Schedules 7, 8 and 9 repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedule 10

[Schedule 10 substituted by s. 21 of Act 18 of 2004 (wef 2 November 2004) and repealed by s. 37 of Act 3 of 2009 (wef 14 March 2010).]

Schedule 11

[Schedule 11 repealed by s. 22 of Act 18 of 2004 (wef 2 November 2004).]

Schedule 12 **ACTS REPEALED** (Section 33)

No. and year of Act	Title	Extent of repeal
Act 44 of 1958	Post Office Act, 1958	The proviso to section 29 (2)
Act 37 of 1967	Indecent or Obscene Photographic Matter Act, 1967	The whole
Act 42 of 1974	Publications Act, 1974	The whole
Act 18 of 1977	Transkei Publications Act, 1977	The whole
Act 79 of 1977	Publications Amendment Act, 1977	The whole
Act 109 of 1978	Publications Amendment Act, 1978	The whole
Act 36 of 1979	Bophuthatswana Publications Act, 1979	The whole
Act 44 of 1979	Publications Amendment Act, 1979	The whole
Act 70 of 1979	Divorce Act, 1979	In so far as it relates to the Publications Act, 1974
Act 15 of 1983	Venda Publications Act, 1983	The whole
Act 60 of 1986	Publications Amendment Act, 1986	The whole
Act 51 of 1991	Transfer of Powers and Duties of the State President Act, 1991	In so far as it relates to the Publications Act, 1974
Act 90 of 1992	Publications Amendment Act, 1992	The whole
Act 206 of 1993	Abolition of Restrictions on Free Political Activity Act, 1993	Section 1