PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NOTICE 52 OF 2022

81/172488(Z 19E)



In terms of section 34 of the Films and Publications Amendment Act, 2019 (Act No. 11 of 2019, I hereby determine 1 March 2022 as the date on which the Films and Publications Amendment Act, 2019, comes into operation.

PRESIDENT

KHUMBUDZO NTSHAVHENI MINISTER OF THE CABINET

PROKLAMASIE KENNISGEWING 52 VAN 2022

81/172488(Z 19E)



Kragtens artikel 34 van die Wysigingswet op Films en Publikasies, 2019 (Wet No. 11 van 2019), bepaal ek hierby 1 Maart 2022 as die datum waarop genoemde Wet, in werking tree.

PRESIDENT

KHUMBUDZO NTSHAVHENI MINISTER VAN DIE KABINET 2 No. 42743

GOVERNMENT GAZETTE, 3 OCTOBER 2019

Act No. 11 of 2019

Films and Publications Amendment Act, 2019

GENERAL EXPLANATORY NOTE:

[]	Words in bold type in square brackets indicate omissions from existing enactments.						
		Words underlined with a solid line indicate insertions in existing enactments.						

(English text signed by the President) (Assented to 19 September 2019)

ACT

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.

B^E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 65 of 1996, as amended by section 1 of Act 34 of 1999, section 1 of Act 18 of 2004 and section 1 of Act 3 of 2009

- 1. Section 1 of the Films and Publications Act, 1996 (Act No. 65 of 1996) (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution for the definition of "certificate" of the following definition:
 - "'certificate' means, in relation to a film or game, [means] the certificate referred to in section 18, issued in respect of the classification 10 of a film;";

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Wysigingswet op Films en Publikasies, 2019

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ALGEMENE VERDUIDELIKENDE NOTA:

[1	J Woorde in vet druk tussen vierkantige hake of bestaande verordeninge aan.				ke du	lui skrappings uit		
		Woorde me bestaande ve			daaronder,	dui	invoegings	in	

(Engelse teks deur die President geteken) (Goedgekeur op 19 September 2019)

WET

Tot wysiging van die Wet op Films en Publikasies, 1996, ten einde sekere omskrywings in te voeg en te wysig; voorsiening te maak vir die stigting en samestelling van, en aanstelling van lede op, die Afdwingingskomitee; voorsiening te maak vir die bevoegdhede en pligte van die Afdwingingskomitee; die aanlyn verspreiding van films en speletjies te reguleer; die nakomingsverpligtinge van die Wet op Films en Publikasies en die voldoenings- en moniteringswerksaamhede van die Film- en Publikasieraad na aanlyn verspreiders uit te brei; die werksaamhede van nakomingsbeamptes betreffende die betreding en inspeksie van persele en fasiliteite waar die besigheid van die verkoop, verhuur of vertoon van films of speletjies bedryf word, te hersien en verder te reguleer; die klassifikasie van publikasies, films en speletjies verder te reguleer; voorsiening te maak vir akkreditasie van onafhanklike kommersiële aanlyn verspreiders deur die Film- en Publikasieraad; voorsiening te maak vir die klassifikasie van publikasies, films en speletjies deur die onafhanklike industrieklassifikasieliggame; voorsiening te maak vir vreemde- en internasionaleklassifikasiestelsels en goedkeuring daarvan deur die Film- en Publikasieraad; voorsiening te maak vir die gebruik van klassifikasiewaarderings uitgereik deur 'n vreemde- en internasionaleklassifikasieowerheid of -liggaam; voorsiening te maak vir die reg op appèl teen klassifikasies deur onafhanklike industrieklassifikasieliggame uitgereik; voorsiening te maak vir vrystellings ten opsigte van aanlyn verspreiding van films en speletjies; verder voorsiening te maak vir die verpligtinge van internet-toegangsverskaffers aangaande die bekamping van die gebruik van hul dienste in die verspreiding van verbode inhoud; strafbepalings te hersien en te versterk; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

PAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 65 van 1996, soos gewysig deur artikel 1 van Wet 34 van 1999, artikel 1 van Wet 18 van 2004 en artikel 1 van Wet 3 van 2009

- 1. Artikel 1 van die Wet op Films en Publikasies, 1996 (Wet No. 65 van 1996) (hierna die Hoofwet genoem), word hierby gewysig—
 - (a) deur die volgende omskrywings na die omskrywing van "aangeleenthede van openbare belang" in te voeg:
 - "'aanlyn medium' enige webwerf, kommunikasie- of boodskapstelsel, sosialemediafasiliteit of soortgelyke fasiliteit wat aan die publiek beskikbare internet gekonnekteer is, en enige publieke telekommunikasie boodskapstelsel;
 - 'Afdwingingskomitee' die komitee ingevolge artikel 3 gestig;";

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- (b) 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 No. 32 of 2007);";
- (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;";
- (d) by the substitution for the definition of "distribute" of the following definition:
 - "'distribute'[,] in relation to a film, game or a publication, without derogating from the ordinary meaning of that word, includes—
 - (a) to stream content through the internet, social media or other electronic mediums;
 - (b) to sell, hire out or offer or keep for sale or hire, including using the internet; and[,]
 - (c) 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, 20 and also the failure to take reasonable steps to prevent access thereof by such a person;";
- (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;";
- (f) by the substitution in the definition of "domestic violence" for the words preceding paragraph (a) of the following words:
 - "'domestic violence' means the explicit depictions or descriptions 30 of—":
- (g) by the insertion after the definition of "domestic violence" of the following definition:
 - "'Enforcement Committee' means the committee established in terms of section 3;";

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- (h) 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;";
- (i) 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, 45

inputs and direct involvement of the game player or players;";

- (j) 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' has 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;";

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- (b) deur die omskrywing van "film" deur die volgende omskrywing te vervang: "'film' enige reeks visuele beelde wat op so 'n wyse opgeneem is dat daardie beelde deur gebruikmaking van daardie opname as 'n bewegende prent gesien kan word, en ook 'n prent wat bestem is om deur 'n medium, ook deur gebruik van die internet of toestel vertoon te word;";
- (c) deur in die omskrywing van "gesinsgeweld" die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

"'gesinsgeweld' eksplisiete uitbeeldings of beskrywings van-"; (d) deur die volgende omskrywing na die omskrywing van "gesinsgeweld" in te

voeg:
"'haatspraak' ook enige spraak, gebaar, gedrag, geskrif, vertoning of artikel 16(2) van die Grondwet van die Republiek van Suid-Afrika, 1996, verbied is, wat woorde versprei, voorstaan of oordra teen enige persoon of identifiseerbare groep, welke woorde redelikerwys vertolk kan word dat dit 'n duidelike voorneme oordra om skade te berokken, leed aan te hits en haat te verkondig of te bevorder teen die genoemde persoon of identifiseerbare groep;";

(e) deur die volgende omskrywing na die omskrywing van "in die openbaar" in

"'internet' die Internet soos omskryf in artikel 1 van die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet No. 25 van 2002);

deur die omskrywing van "kinderpornografie" deur die volgende omskrywing te vervang:

'kinderpornografie' kinderpornografie soos omskryf in artikel 1 van die Wysigingswet op die Strafreg (Seksuele Misdrywe en Verwante Aangeleenthede), 2007 (Wet No. 32 van 2007);

volgende omskrywing na die omskrywing 'klassifikasiekomitee" in te voeg: 30

' 'kommersiële aanlyn verspreider' 'n verspreider met betrekking tot films, speletjies en publikasies wat deur die internet vir kommersiële doeleindes versprei word;";

(h) deur die volgende omskrywing na die omskrywing van "Minister" in te voeg: " 'niekommersiële aanlyn verspreider' enige persoon wat inhoud deur gebruik van die internet versprei, of dit moontlik maak dat inhoud deur 'n gebruiker van aanlyn dienste versprei word, vir persoonlike of private doeleindes;";

deur die omskrywing van "nuusblad" te skrap; (i)

deur die volgende omskrywings na die omskrywing van "nuusblad" in te 40

voeg:
"'Onafhanklike Kommunikasie-owerheid van Suid-Afrika' die
Onafhanklike Von die Onafhanklike liggaam gestig ingevolge artikel 3 van die Wet op die Onafhanklike Kommunikasie-owerheid van Suid-Afrika, 2000 (Wet No. 13 van 2000); 'permit' die permit ingevolge artikel 23(2) deur die Raad uitgereik aan 'n aanlyn verspreider waarin die aanlyn verspreider vrywaring kry van die voorlegging van films en speletjies aan die Raad vir klassifikasie, behoudens sodanige voorwaardes en bedinge wat die Raad gepas mag

'Persraad van Suid-Afrika' 'n vrywillige, onafhanklike, selfregulerende liggaam gestig ingevolge die Grondwet van die Persraad van Suid-Afrika en wat die Persraad se Grondwet aangeneem het, wat die Etiese Kode vir Suid-Afrikaanse Gedrukte en Aanlyn Media insluit;"

deur in die omskrywing van "publikasie" die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

'publikasie', ook, waar van toepassing, enige van die volgende, deur gebruik van die internet gepubliseer-;";

deur in die omskrywing van "publikasie" paragraaf (a) deur die volgende paragraaf te vervang:

"(a) 'n koerant, tydskrif, boek, tydskrif, pamflet, aanplakbiljet of ander drukwerk;";

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(k) 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 No. 25 of 2002);";

- (1) by the insertion after the definition of "in public" of the following definition:

 "'magazine' includes an online publication of a magazine;";

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- (m) by the deletion of the definition "newspaper";

(n) 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 facility which is connected to the publicly 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;";

(o) 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);";

(p) by the substitution in the definition of "publication" for the words preceding 35 paragraph (a) of the following words:

"'publication' means, and includes, where applicable, any of the following, published using the internet—";

(q) by the substitution in the definition of "publication" for paragraph (a) of the following paragraph:

"(a) any newspaper, <u>magazine</u>, book, periodical, pamphlet, poster or other printed matter;";

- (r) 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 45
 - game;";
 by the insertion after the definition of "Review Board" of the following
- (s) 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;";

(t) by the substitution for the definition of "sexual conduct" of the following definition:

"'sexual conduct' includes—
[i](a) [male] genitals in a state of arousal or stimulation, real or simulated;";

[ii](b) undue display of genitals or of the anal region;

(c) rape;

[iii](d) masturbation;

[iv](e) bestiality;

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7 (m) deur in die omskrywing van "publikasie" paragraaf (i) deur die volgende paragraaf te vervang: '(i) enige inhoud deur die internet beskikbaar gestel, behalwe 'n film of speletjie;"; (n) deur die omskrywing van "seksuele gedrag" deur die volgende omskrywing te vervang: " 'seksuele gedrag' ook-[i](a)[manlike] geslagsorgane in 'n toestand van opwekking of stimulering, werklik of nageboots;"; [ii](b) die onbehoorlike vertoon van geslagsorgane of van die anale 10 gebied; verkragting; [iii](d) masturbasie; [iv](e) bestialiteit: geslagsverkeer[, of dit werklik of nageboots is] met 'n persoon 15 [v](f) of 'n menslike lyk, met inbegrip van anale of mondelinge geslagsverkeer: [vi](g) seksuele kontak wat die regstreekse of onregstreekse streling of aanraking behels van die intieme dele van 'n liggaam, met inbegrip van die borste, anus, vagina, testikels of penis, met of 20 sonder enige voorwerp; [vii](h) die penetrasie van 'n vagina of anus met enige voorwerp; [viii](i) mondelinge genitale kontak; of [ix](j) mondelinge anale kontak;"; (o) deur die volgende omskrywing na die omskrywing van "seksuele gedrag" in 25 te voeg:
"'self-klassifikasie' vir die doeleindes van 'n permit in artikel 23(2)

Llassifikasie van films, speletjies en beoog, die waardering en klassifikasie van films, speletjies en publikasies ten opsigte van die geskiktheid vir gehore ingevolge die Raad se klassifikasieriglyne en die Wet;"; (p) deur die omskrywing van "sertifikaat" deur die volgende omskrywing te "'sertifikaat' met betrekking tot 'n film of speletjie, die sertifikaat in artikel 18 vermeld, ten opsigte van die klassifikasie van 'n film uitgereik;" (q) deur die volgende omskrywings na die omskrywing van "sertifikaat" in te 35 voeg:
"'skadelik' iets wat emosionele, sielkundige of morele ongemak vir iemand veroorsaak, hetsy deur 'n film, speletjie of publikasie deur enige aanlyn of vanlyn medium, met inbegrip van deur die internet en het 'skaad' 'n ooreenstemmende betekenis; 'sosiale media' ook die verskeie aanlyn tegnologiese nutsmiddels en vorme van elektroniese kommunikasie oor die internet, soos webwerwe vir sosiale netwerke en mikroblogging waardeur gebruikers aanlyn gemeenskappe vorm om inligting, idees, persoonlike boodskappe en ander inhoud te deel;"; 45 (r) deur die omskrywing van "speletjie" deur die volgende omskrywing te vervang: "'speletjie' 'n rekenaarspeletjie, videospeletjie of ander interaktiewe rekenaarprogrammatuur vir die speel van interaktiewe speletjies, ook speletjies waartoe toegang gekry word en wat gespeel word deur die internet te gebruik, waar die resultate wat in verskillende fases van die speletjie verkry word, bepaal word na aanleiding van die besluite, insette en regstreekse betrokkenheid van die speler of spelers van die spel;"; deur die volgende omskrywings na die omskrywing van "speletjie" in te voeg:
"'stroming' die lewering van films deur 'n aanlyn verspreider of 55

'tydskrif' ook 'n aanlyn publikasie van 'n tydskrif;";

uitsaaier, ook die aanlyn stroming of aflaai van films en opvangdienste wat dit moontlik maak om die tyd waarop 'n film aanlyn gekyk word te verskuif, aan die eindgebruiker van 'n aanlyn leweringsmedium, ook die

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(u)

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[v] sexual intercourse[, whether real or simulated] with a person or	
a human corpse, including anal or oral sexual intercourse;	
[vi](g) sexual contact involving the direct or indirect fondling or	
touching of the intimate parts of a body, including the breasts,	
anus, vagina, testicles or penis, with or without any object;	5
[vii](h) the penetration of a vagina or anus with any object;	
[viii](i) oral genital contact; or	
[ix](j) oral anal contact;"; and	
by the insertion after the definition of "sexual violence" of the following	
definitions:	10
" '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;	15
'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	

Substitution of heading of Chapter 2 of Act 65 of 1996

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2. The following heading is hereby substituted for the heading of Chapter 2 of the principal Act:

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

end user of an online delivery medium, including the internet;".

Amendment of section 2 of Act 65 of 1996, as substituted by section 2 of Act 34 of 25 1999 and section 2 of Act 3 of 2009

- 3. Section 2 of the principal Act is hereby amended—
 - (a) by the deletion of the word "and" at the end of paragraph (b);
 - (b) by the substitution for the full-stop at the end of paragraph (c) of a semi-colon;
 - by the addition of the following paragraphs:
 - '(d) criminalise the possession, production and distribution of child pornography; and
 - create offences for non-compliance with this Act.".

Amendment of section 3 of Act 65 of 1996, as substituted by section 3 of Act 3 of 35 2009

- 4. Section 3 of the principal Act is hereby amended—
 - (a) by the substitution for the heading of the following heading:

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

- (b) by the deletion in subsection (1) of the word "and" at the end of paragraph (b);
- (c) by the substitution in subsection (1) for the comma at the end of paragraph (c) of the expression "; and";
- (d) by the addition in subsection (1) of the following paragraph:

"(d) an Enforcement Committee."; and

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(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.".

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9 (t) deur die omskrywing van "versprei" deur die volgende omskrywing te vervang: "'versprei' met betrekking tot 'n film, speletjie of 'n publikasie, sonder om afbreuk te doen aan die gewone betekenis van die woord, ook-(a) stroom van inhoud op die Internet, sosiale media of ander elektroniese media; (b) verkoop, verhuur of aanbied of hou vir die doeleindes van verkoop of verhuring, ook deur gebruik van die internet; en[,] (c) by die toepassing van artikels 24A en 24B, [ook] 'n film, speletjie of publikasie oorhandig of vertoon aan 'n persoon onder die ouderdom van 18 jaar, en ook versuim om redelike stappe te doen om toegang daartoe deur so 'n persoon te verhoed;"; (u) deur die volgende omskrywing na die omskrywing van "speletjie" in te voeg: "'verbode inhoud' inhoud wat neerkom op propoganda vir oorlog, aanhitsing van oorlog, voorspraak vir haat wat gegrond is op 'n identifiseerbare groepkenmerke, en wat aanhitsing om skade te berokken daarstel, of ingevolge artikels 16(2), 16(4) en 18(3) verbied is;"; en (v) deur die omskrywing van "verspreider" deur die volgende omskrywing te 'verspreider' iemand wat besigheid doen in die verspreiding van films, speletjies of publikasies en ook 'n kommersiële aanlyn verspreider; Vervanging van opskrif van Hoofstuk 2 van Wet 65 van 1996 2. Die opskrif van Hoofstuk 2 van die Hoofwet word hierby deur die volgende opskrif vervang: "Film- en Publikasieraad[: Film- en Appèltribunaal], Beheerraad, Appèl- 25 tribunaal en Afdwingingskomitee". Wysiging van artikel 2 van Wet 65 van 1996, soos vervang deur artikel 2 van Wet 34 van 1999 en artikel 2 van Wet 3 van 2009 3. Artikel 2 van die Hoofwet word hierby gewysig— (a) deur die woord "en" aan die einde van paragraaf (b) te skrap; 30 (b) deur die punt aan die einde van paragraaf (c) deur 'n kommapunt te vervang; (c) deur die volgende paragrawe by te voeg: "(d) stel die besit, produksie en verspreiding van kinderpornografie strafbaar; en 35 skep misdrywe vir nienakoming van hierdie Wet.". 0

Wysiging van artikel 3 van Wet 65 van 1996, soos vervang deur artikel 3 van Wet 3 van 2009

. Artil	kel 3 van die Hoofwet word hierby gewysig—	
(a)	deur die opskrif deur die volgende opskrif te vervang:	
	"Instelling van Film- en Publikasieraad, Beheerraad [en], Appèl-	40
	tribunaal en Afdwingingskomitee";	
(b)	deur in subartikel (1) die woord "en" aan die einde van paragraaf (b) te skrap;	
(c)	deur in subartikel (1) die komma aan die einde van paragraaf (c) deur die	
	uitdrukking "; en" te vervang;	
(d)	deur in subartikel (1) die volgende paragraaf by te voeg:	45
	"(d) 'n Afdwingingskomitee."; en	
(e)	deur subartikel (2) deur die volgende subartikel te vervang:	
	"(2) Die Raad, die Beheerraad, die Afdwingingskomitee en die	
	Appèltribunaal is onafhanklik, onpartydig en verrig hul werksaamhede	
	sonder vrees, bevoordeling, of benadeling en tree ooreenkomstig	50

toepaslike reg op.".

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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) 10 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.".

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

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6. 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, and such chairperson must be a retired judge of the High Court of South Africa.
- (2) The members of the Enforcement Committee must be appointed by the Council.
- (3) The members of the Enforcement Committee shall have experience in or knowledge of any one or more of the following fields:
- (a) law;
- (b) law enforcement;
- (c) regulatory matters;
- (d) film, games, publications, arts, literature;
- (e) digital technology and electronic communications; or
- (f) sentencing.
- (4) 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.
- (5) 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—

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- (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;
- 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

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Wysiging van artikel 4A van Wet 65 van 1996, soos gewysig deur artikel 7 van Wet 3 van 2009

- 5. Artikel 4A van die Hoofwet word gewysig-
 - (a) deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:
 - "(a) in oorleg met die Minister, reik lasgewings van algemene toepassing uit, met inbegrip van klassifikasieriglyne, betreffende die akkreditasie in artikel 18D beoog, in ooreenstemming met aangeleenthede van nasionale beleid ooreenkomstig die oogmerk van hierdie Wet;";
 - (b) deur in subartikel (1) die woord "en" aan die einde van paragraaf (f) te skrap; 10
 - (c) deur in subartikel (1) die punt aan die einde van paragraaf (g) deur die uitdrukking "; en" te vervang; en
 - (d) deur in subartikel (1) die volgende paragraaf by te voeg:
 - "(h) die lede van die Afdwingingskomitee ingevolge artikel 6A aanstel.".

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Invoeging van artikels 6A, 6B en 6C in Wet 65 van 1996

6. Die volgende artikels word hierby na artikel 6 in die Hoofwet ingevoeg:

"Samestelling van Afdwingingskomitee

- **6A.** (1) Die Afdwingingskomitee bestaan uit vier lede plus 'n voorsitter, en daardie voorsitter moet 'n afgetrede regter van die Hooggeregshof van Suid-Afrika wees.
- (2) Die lede van die Afdwingingskomitee moet deur die Beheerraad aangestel word.
- (3) Die lede van die Afdwingingskomitee moet ervaring hê van of kennis hê oor enige een of meer van die volgende velde:
- (a) die reg;
- (b) wetstoepassing;
- (c) reguleringsaangeleenthede;
- (d) films, speletjies, publikasies, kunste, letterkunde;
- (e) digitale tegnologie en elektroniese kommunikasie; of
- (f) vonnisoplegging.
- (4) 'n Lid van die Afdwingingskomitee ingevolge subartikel (2) aangestel moet—
- (a) 'n gepaste en geskikte persoon wees;
- (b) van goeie inbors wees; en
- (c) nie ingevolge artikel 7 onbevoeg wees nie.

(5) 'n Kworum vir 'n sessie van die Afdwingingskomitee is die voorsitter plus twee lede en waar daar 'n staking van stemme is, het die voorsitter 'n beslissende stem.

Bevoegdhede en pligte van Afdwingingskomitee

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6B. (1) Die Afdwingingskomitee-

- (a) ondersoek alle sake deur die Raad daarheen verwys vir beregting ten opsigte van nienakoming van enige bepaling van die Wet deur 'n verspreider, tentoonsteller, of enige ander persoon op wie die Wet van toepassing is, behalwe persone op wie artikels 24A, 24B, 24C en 27A(2), (3) en (4) van toepassing is;
- (b) alle sake bereg en gepaste bevindings maak, nadat die Raad en die respondent aangehoor is of 'n redelike geleentheid gegun is om aangehoor te word;
- (c) getuienis onder eed of plegtige verklaring aanhoor of getuienis per beëdigde verklaring ontvang en 'n bevinding maak wanneer die Afdwingingskomitee by oorweging van al die feite voor die Komitee, oortuig is dat daardie bevinding billik, redelik en geregverdig is;
- (d) waar gepas—
 - (i) 'n boete oplê;
 - (ii) soos voorgeskryf. 'n registrasiesertifikaat opskort: of

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- (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; and
- (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-
- engage in any activity that may undermine the integrity of the Enforcement Committee;
- 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 | 30 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.".

Amendment of section 7 of Act 65 of 1996, as amended by section 36 of Act 12 of 2004 and section 8 of Act 3 of 2009

- 7. Section 7 of the principal Act is hereby amended—
 - (a) by the substitution for the heading of the following heading:
 - "Disqualifications with regard to membership of Council [or], 50 Appeal Tribunal or Enforcement Committee";
 - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 - "A person shall not be qualified to be appointed as a member of the Council [or], Appeal Tribunal or Enforcement Committee, or to be such 55 a member, if he or she-"; and

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- (iii) deur die Raad, 'n aangeleentheid na die Nasionale Direkteur vir Openbare Vervolgings verwys vir vervolging en, in so 'n geval, maak die Afdwingingskomitee nie 'n bevinding nie; en
- (e) waar 'n boete nie betaal word nie, op inisiatief van die hoofuitvoerende beampte, by 'n hof aansoek doen om die afdwinging van so 'n boete as 'n siviele skuld aan die Raad.
- (2) Die bevinding van 'n oortreding deur die Afdwingingskomitee ingevolge subartikel (1) word nie geag 'n skuldigbevinding te wees ten opsigte van 'n strafregtelike misdryf nie en geen vervolging vir daardie misdryf sal daarna bevoeg wees nie.
- (3) Iemand wat te na gekom voel, kan by die Appèltribunaal appelleer teen die besluit van die Afdwingingskomitee.
- (4) Die Minister kan, van tyd tot tyd en na oorleg met die Raad, by kennisgewing in die *Staatskoerant*, die bedrag van boetes wat deur die Afdwingingskomitee opgelê kan word, aanpas ooreenkomstig die verbruikersprysindeks, soos van tyd tot tyd in die *Staatskoerant* gepubliseer, vir die voorafgaande 12 maande maal die getal jare wat die bedrag onveranderd gebly het.
- (5) Die voorsitter, lede van die Afdwingingskomitee en elke personeellid van die Afdwingingskomitee, moet nie—
- (a) by enige aktiwiteit betrokke raak wat die integriteit van die Afdwingingskomitee kan ondermyn nie;
- (b) deelneem aan enige ondersoek, verhoor of besluit betreffende 'n aangeleentheid ten opsigte waarvan daardie persoon 'n regstreekse finansiële belang of enige soortgelyke persoonlike belang het nie;
- (c) privaat gebruik maak van, of wins maak nie uit enige vertroulike inligting verkry na aanleiding van die verrigting van daardie persoon se amptelike werksaamhede in die Afdwingingskomitee; of
- (d) enige inligting in paragraaf (iii) bedoel openbaar maak aan enige derde party nie, behalwe soos vereis as deel van daardie persoon se 30 amptelike werksaamhede binne die Afdwingingskomitee.

Ontheffing uit amp van lede van Afdwingingskomitee

- **6C.** (1) Die Beheerraad kan 'n lid van die Afdwingingskomitee uit die amp onthef op gronde van ongeskiktheid, onbevoegdheid, wangedrag of wanvoorstelling.
- (2) 'n Besluit om 'n lid van die Afdwingingskomitee uit die amp te onthef moet gegrond wees op 'n bevinding van 'n dissiplinêre komitee deur die Beheerraad aangestel: Met dien verstande dat 'n lid 'n reg het om aangehoor te word.
- (3) Die Beheerraad kan 'n lid van die Afdwingingskomitee uit die amp onthef hangende die bevinding van die dissiplinêre komitee in subartikel (2A) bedoel.
- (4) 'n Lid van die Afdwingingskomitee ontruim sy of haar amp wanneer enige van die omstandighede in artikel 7 bedoel, van toepassing word ten opsigte van hom of haar, en die Beheerraad 'n kennisgewing van ontheffing 45 te dien effekte aan hom of haar uitreik."

Wysiging van artikel 7 van Wet 65 van 1996, soos gewysig deur artikel 36 van Wet 12 van 2004 en artikel 8 van Wet 3 van 2009

- 7. Artikel 7 van die Hoofwet word hierby gewysig-
- (a) deur die opskrif deur die volgende opskrif te vervang:

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- "Onbevoegdhede met betrekking tot lidmaatskap van Beheerraad [of], Appèltribunaal of Afdwingingskomitee";
- (b) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 - "'n Persoon is nie bevoeg om as lid van die Beheerraad [of]. 5 Appèltribunaal of Afdwingingskomitee aangestel te word, of om so 'n lid te wees nie, as hv of sy—"; en

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(c) by the substitution for subsection (2) of the following subsection:

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

Amendment of section 8 of Act 65 of 1996, as amended by section 9 of Act 3 of 2009

8. Section 8 of the principal Act is hereby amended—

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

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

(b) by the substitution for subsection (1) of the following subsection:

"(1) Members of the Council [or], Appeal Tribunal and Enforcement
Committee shall be appointed for a period of five years.".

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Amendment of section 9A of Act 65 of 1996, as inserted by section 11 of Act 3 of 2009

- 9. Section 9A of the principal Act is hereby amended—
 - (a) by the deletion in subsection (2) of the word "and" at the end of paragraph (b);
 - (b) by the substitution in subsection (2) for paragraph (c) of the following 20 paragraph:
 - "(c) determine an application made under section 18(1) for registration as a distributor or exhibitor of films[,] or games [or publications.]; and"; and
 - (c) by the addition in subsection (2) of the following paragraphs: 25
 - "(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.".

Substitution of section 11 of Act 65 of 1996, as substituted by section 13 of Act 3 of 2009

10. The following section is hereby substituted for section 11 of the principal Act:

"Administrative support for Council [and], Appeal Tribunal and 45 Enforcement Committee

11. 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 and an Enforcement Committee shall be performed by the staff of the Board."

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(c) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Wanneer die omstandighede met betrekking tot 'n lid van die Beheerraad [of], Appeltribunaal of Afdwingingskomitee so verander dat dit hom of haar onbevoeg sou gemaak het om as so 'n lid aangestel te word indien dit tydens sy of haar aanstelling bestaan het, raak die amp van daardie lid vakant, en die vakature in daardie amp word ooreenkomstig artikel 6 gevul.".

Wysiging van artikel 8 van Wet 65 van 1996, soos gewysig deur artikel 9 van Wet 3 van 2009

8. Artikel 8 van die Hoofwet word hierby gewysig-

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(a) deur die opskrif deur die volgende opskrif te vervang:

'Ampsduur van lede van Beheerraad [en], Appèltribunaal en Afdwingingskomitee"; en

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) ['n] Lede van die beheerraad [en], Appèltribunaal en 15 Afdwingingskomitee word vir 'n tydperk van vyf jaar aangestel.".

Wysiging van artikel 9A van Wet 65 van 1996, soos ingevoeg deur artikel 11 van Wet 3 van 2009

9. Artikel 9A van die Hoofwet word hierby gewysig-

(a) deur in subartikel (2) die woord "en" aan die einde van paragraaf (b) te skrap; 20

(b) deur paragraaf (c) in subartikel (2) deur die volgende paragraaf te vervang: '(c) om te beslis oor 'n aansoek wat ingevolge artikel 18(1) vir

registrasie as 'n verspreider of vertoner van films[,] of speletjies [of publikasies] ingedien is[.]; en"; en

(c) deur die volgende paragrawe by subartikel (2) te voeg:

"(d) om kommersiële aanlyn verspreiders se klassifikasiestelsels ingevolge artikel 18C te akkrediteer;

om die werksaamhede ten opsigte van die klagteprosedure in artikel 18E te verrig; en

om die nodige stappe te doen rakende-

(i) die akkreditasie van enige vreemde of internasionale klassifikasiestelsel in verband met die klassifikasie van films, speletjies en publikasies;

(ii) die sluiting van 'n nakomings- en aanlyn verspreidingsooreenkoms met 'n kommersiële aanlyn verspreider in verband met aanlyn verspreiding in die Republiek van films, speletjies en publikasies geklassifiseer deur die geakkrediteerde vreemde- of internasionaleklassifikasiestelsel; en

(iii) die vrywaring van enige kommersiële aanlyn verspreider van die klassifikasie van films, speletjies en publikasies ingevolge die Wet.".

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Vervanging van artikel 11 van Wet 65 van 1996, soos vervang deur artikel 13 van Wet 3 van 2009

10. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

"Administratiewe steun aan Beheerraad [en], Appèltribunaal en Afdwingingskomitee

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11. Die administratiewe werk verbonde aan die verrigting van die werksaamhede, die uitoefening van die bevoegdhede en die uitvoering van die pligte van die Beheerraad [en], die Appèltribunaal en 'n Afdwingingskomitee word verrig deur die personeel van die Raad.".

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Substitution of section 12 of Act 65 of 1996, as substituted by section 14 of Act 3 of 2009

11. The following section is hereby substituted for section 12 of the principal Act:

"Remuneration

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

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Amendment of section 13 of Act 65 of 1996, as amended by section 15 of Act 3 of 2009

- 12. Section 13 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:
 - "(1) The expenditure in connection with the performance of the 15 functions, the exercise of the powers and the carrying out of the duties of the <u>Board</u>, Council, Appeal Tribunal, <u>Enforcement Committee</u> and an advisory panel shall be defrayed from money appropriated by Parliament for [the] that purpose."; and
 - (b) by the insertion after subsection (1) of the following subsection:

 "(1A) All monies lawfully acquired by the Board in the performance of its functions must be utilised to achieve the objects of this Act.".

Substitution of section 14 of Act 65 of 1996, as amended by section 4 of Act 18 and substituted by section 16 of Act 3 of 2009

13. The following section is hereby substituted for section 14 of the principal Act: 25

"Annual report

- 14. (1) The Council shall, as soon as practicable after the end of each financial year, prepare a report on all the activities of the <u>Board</u>, Council [and], Appeal Tribunal <u>and Enforcement Committee</u> during that financial year, and on the financial position of the <u>Board</u>, Council [and], Appeal 30 Tribunal <u>and an Enforcement Committee</u> 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 <u>Board</u>, Council [and], Appeal Tribunal and an Enforcement Committee shall be submitted to the Minister for tabling in Parliament.".

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

14. 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 40 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

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Vervanging van artikel 12 van Wet 65 van 1996, soos vervang deur artikel 14 van Wet 3 van 2009

11. Artikel 12 van die Hoofwet word hierby deur die volgende artikel vervang:

"Besoldiging

12. Die lede en personeel van die Beheerraad, Appèltribunaal, Afdwingingskomitee, 'n adviespaneel, en enigiemand wat as 'n deskundige aangestel word om die Beheerraad [of], Appèltribunaal of 'n Afdwingingskomitee by te staan of van advies te dien, ontvang die besoldiging, toelaes en ander voordele wat deur die Minister in oorleg met die Minister van Finansies bepaal word.".

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Wysiging van artikel 13 van Wet 65 van 1996, soos gewysig deur artikel 15 van Wet 3 van 2009

- 12. Artikel 13 van die Hoofwet word hierby gewysig-
 - (a) deur subartikel (1) deur die volgende subartikel te vervang:
 - "(1) Die uitgawes in verband met die verrigting van die 15 werksaamhede, die uitoefening van die bevoegdhede en die uitvoering van die pligte van die Raad, Beheerraad, Appèltribunaal, Afdwingingskomitee en 'n adviespaneel word bestry uit geld wat die Parlement vir [die] daardie doel bewillig."; en
 - (b) deur die volgende subartikel na subartikel (1) in te voeg:

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"(1A) Alle geld regmatig deur die Raad in die uitvoering van die Raad se werksaamhede verkry, moet gebruik word om die oogmerke van hierdie Wet te bereik.".

Vervanging van artikel 14 van Wet 65 van 1996, soos gewysig deur artikel 4 van Wet 18 and vervang deur artikel 16 van Wet 3 van 2009

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13. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

"Jaarverslag

- 14. (1) Die Beheerraad moet so gou moontlik na die einde van elke boekjaar 'n verslag saamstel oor alle aktiwiteite van die Raad, Beheerraad [en], die Appèltribunaal en Afdwingingskomitee gedurende daardie 30 boekjaar, en oor die finansiële stand van die Raad, Beheerraad [en die], Appèltribunaal en 'n Afdwingingskomitee soos aan die einde van daardie boekjaar.
- (2) Die verslag bedoel in subartikel (1), tesame met die geouditeerde balansstaat en rekeninge wat betrekking het op die geld van die Raad, Beheerraad [en], Appèltribunaal en 'n Afdwingingskomitee word aan die Minister voorgelê, vir tertafellegging in die Parlement.".

Vervanging van artikel 15A van Wet 65 van 1996, soos ingevoeg deur artikel 18 van Wet 3 van 2009

14. Artikel 15A van die Hoofwet word hierby deur die volgende artikel vervang: 40

"Werksaamhede en bevoegdhede van nakomingsbeamptes

- 15A. (1) 'n Nakomingsbeampte kan, met die doel om die oogmerke van hierdie Wet te verwesenlik [en om]-
- (a) verspreiders en vertoners van films en speletjies van raad [te] dien oor die vereistes van hierdie Wet met betrekking tot die verspreiding en 45 vertoning van films en speletjies; en

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(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

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;
- 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;
- 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
- 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.

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(b) [te] verseker dat alle films en speletjies wat deur 'n verspreider of 'n aanlyn verspreider te koop of te huur aangebied word, ingevolge hierdie Wet geklassifiseer en geëtiketteer is en dat al sulke films en speletjies die klassifikasieverwysingsnommer, die ouderdomsbeperking, verbruikersadvies en sodanige ander voorwaardes wat deur die Raad vir die verspreiding van sodanige films en speletjies opgelê is, op die voorgeskrewe wyse vertoon[,

'n perseel waarin of waarop die besigheid van die verkoop, verhuur of vertoon van films of speletjies bedryf word, met die toestemming van die persoon in beheer van sodanige perseel, betree].

(1A) By die toepassing van subartikel (1), kan die nakomingsbeampte-

(a) te alle redelike tye, met die toestemming van die persoon in beheer van sodanige perseel of met die bystand van 'n lid van die Suid-Afrikaanse Polisiediens, enige perseel betree op of waarin die besigheid van die verkoop, verhuur of vertoon van films of speletjies bedryf word;

(b) te alle redelike tye, met die toestemming van die persoon in beheer van die perseel of fasiliteit of met die bystand van die Suid-Afrikaanse Polisiediens, enige perseel of fasiliteite betree wat gebruik word om films of speletjies te stoor wat versprei word of vir verspreiding bestem is, en die inligting, verslae, dokumente en ander materiaal benodig vir die inspeksie van etikettering besigtig en kopieë daarvan maak met die toestemming van die persoon in beheer van die perseel of met die bystand van die Suid-Afrikaanse Polisiediens, die perseel van enige internet-toegangverskaffers betree ten einde nakoming van hierdie Wet na te gaan;

(c) 'n produklys hersien van alle films en speletjies te koop of te huur deur die internet waartoe enigiemand toegang kan kry;

(d) met die toestemming van die persoon in beheer van die bedryf van die aanlyn medium of met die bystand van die Suid-Afrikaanse Polisiediens, 'n produklys hersien van alle films en speletjies te koop of te huur aangebied deur 'n aanlyn medium waartoe 'n beperkte groep persone toegang kan kry;

(e) in die voorgeskrewe vorm, 'n nakomingskennisgewing en kennisgewing uitreik dat ongeklassifiseerde films of speletjies verwyder moet word, met inbegrip van vertoning op 'n aanlyn medium, en nie meer vertoon moet word nie;

(f) met die toestemming van die persoon in beheer van die perseel of met die bystand van die Suid-Afrikaanse Polisiediens, beslag lê op enige ongeklassifiseerde film of speletjie of enige film of speletjie wat nie aan die vereistes van hierdie Wet voldoen nie;

(g) opdrag gee dat die film, speletjie of publikasie in paragraaf (vii) beoog nie langer ten toon gestel, met inbegrip van tentoonstelling op 'n aanlyn medium, of te koop aangebied word nie totdat dit aan die vereistes van hierdie Wet of enige besluit van die Raad ten opsigte van die verspreiding daarvan, voldoen;

 (h) versoek dat 'n registrasiesertifikaat as 'n verspreider of vertoner van films of speletjies deur die Raad uitgereik, voorgelê word;

 (i) waar tersaaklik, versoek dat 'n lisensie om die besigheid van volwasse persele te verrig, uitgereik deur 'n lisensiëringsowerheid in artikel 24 beoog, voorgelê word; en

(j) met die toestemming van die persoon in beheer van die perseel of met die bystand van die Suid-Afrikaanse Polisiediens enige perseel wat gebruik word vir die doen van die besigheid van volwasse persele beoog in artikel 24(2), ondersoek of inspekteer.

(2) 'n Betreding en inspeksie van 'n perseel of fasiliteit ingevolge subartikel (1) gedoen, kan ter enige redelike tyd geskied, maar moet met streng inagneming van betaamlikheid en orde, en met inagneming van elke persoon se reg op waardigheid, vryheid, sekuriteit en privaatheid geskied.

(3) 'n Rekord moet gehou word van enige materiaal waarop ingevolge subartikel (1) beslag gelê word, waarin die doel van die beslaglegging en die materiaal waarop beslag gelê is, aangedui word: Met dien verstande dat die persoon by wie die materiaal op beslag gelê word, indien identifiseerbaar, voorsien word van 'n afskrif van sodanige rekord.

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(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.".

Amendment of section 16 of Act 65 of 1996, as substituted by section 19 of Act 3 of

- 15. Section 16 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (1) of the following subsection:
 - "(1) Any person may request, in the prescribed manner, that a 10 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."
 - (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 20 contemplated in subsection (1), who, for distribution or exhibition in the Republic creates, produces, publishes or advertises any publication that-":
 - (c) by the deletion in subsection (2) of paragraph (a);
 - (d) by the substitution in subsection (2) for paragraph (b) of the following 25 paragraph:
 - "(b) [advocates] amounts to propaganda for war;";
 - (e) by the substitution in subsection (2) for paragraph (c) of the following
 - "(c) incites imminent violence; or";
 - (f) by the substitution in subsection (2) for paragraph (d) of the following
 - "(d) advocates hatred based on any identifiable group characteristic and that constitutes incitement to cause harm and imminent violence,";
- (g) by the substitution for subsection (3) of the following subsection:
 - "(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: Provided that the classification committee must render a decision as soon as is possible so as not to unreasonably delay the publication that has been referred to it for classification.";
- (h) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:
 - 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 in which event the publication shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;"; and
- (i) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs, respectively:
 - "(b) classify the publication as 'XX' if it contains
 - explicit sexual conduct which violates or shows disrespect (i) for the right to human dignity of any person;
 - bestiality, incest, rape or conduct or an act which is degrading of human beings;

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(4) Ten einde aan die oogmerke van die Wet gevolg te gee en ter verrigting van die werksaamhede van die nakomingsbeampte waarvoor in hierdie artikel voorsiening gemaak word, kan die Minister met die instemming van die Minister van Polisie, 'n lid van die Suid-Afrikaanse Polisiediens in die Raad ontplooi om enige nakomings- of 5 moniteringspligte uit te voer."

Wysiging van artikel 16 van Wet 65 van 1996, soos vervang deur artikel 19 van Wet 3 van 2009

15. Artikel 16 van die Hoofwet word hierby gewysig-

(a) deur subartikel (1) deur die volgende subartikel te vervang:

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- "(1) Enigiemand kan op die voorgeskrewe wyse versoek dat 'n publikasie wat in die Republiek [versprei gaan word of] versprei word, behalwe 'n [bona fide-nuusblad] publikasie wat deur 'n lid van die Persraad van Suid-Afrika gepubliseer word [van 'n liggaam wat deur die persombudsman erken word, wat 'n gedragskode wat deur daardie liggaam toegepas word, onderskryf, en daaraan voldoen,] of 'n advertensie wat onder die jurisdiksie van die Suid-Afrikaanse Owerheid vir Advertensiestandaarde val, ingevolge hierdie artikel geklassifiseer word.";
- (b) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die 20 volgende woorde te vervang:

"Enigiemand, behalwe die uitgewer van 'n [nuusblad] <u>publikasie</u> bedoel in subartikel (1), wat 'n publikasie vir verspreiding of uitstalling of tentoonstelling in die Republiek skep, produseer, publiseer of adverteer wat—";

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- (c) deur in subartikel (2) paragraaf (a) te skrap;
- (d) deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:"(b) op oorlogspropaganda [verkondig] neerkom;";
- (e) deur in subartikel (2) paragraaf (c) deur die volgende paragraaf te vervang:"(c) dreigende geweld aanhits; of";

deur in subartikel (2) paragraaf (d) deur die volgende paragraaf te vervang:

"(d) haat verkondig wat op enige identifiseerbare groepseienskap gebaseer is en wat aanhitsing om skade <u>en dreigende geweld</u> te berokken uitmaak,";

(g) deur subartikel (3) deur die volgende subartikel te vervang:

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- "(3) Die Raad moet 'n publikasie wat ingevolge subartikel (1) of (2) aan die Raad voorgelê is, na 'n klassifikasiekomitee verwys vir ondersoek en klassifikasie van sodanige publikasie: Met dien verstande dat die klassifikasiekomitee so gou moontlik 'n besluit moet neem sodat die publikasie wat vir klassifikasie daarheen verwys is, nie onredelik vertraag word nie.";
- (h) deur in subartikel (4)(a) subparagraaf (ii) deur die volgende subparagraaf te vervang:
 - "(ii) die verkondiging van haat bevat wat op 'n identifiseerbare groepseienskap gebaseer is en wat aanhitsing om skade te 45 berokken, uitmaak, tensy die publikasie, binne verband beoordeel[, behalwe wat kinderpornografie betref,] 'n bona fide-dokumentêr is of 'n publikasie van wetenskaplike, letterkundige of artistieke verdienste of oor 'n aangeleentheid van openbare belang is, in welke geval die publikasie 50 geklassifiseer moet word met verwysing na die riglyne rakende die beskerming van kinders teen blootstelling aan ontstellende, skadelike of ouderdomsongeskikte materiale;"; en
- (i) deur paragrawe (b) en (c) in subartikel (4) onderskeidelik deur die volgende paragrawe te vervang:

"(b) die publikasie as 'XX' klassifiseer indien dit-

- (i) eksplisiete seksuele gedrag bevat wat die reg van enige persoon op menswaardigheid skend of minag;
- (ii) bestialiteit, bloedskande, verkragting of gedrag of 'n daad bevat wat vernederend is vir mense;

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- [(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 10 age-inappropriate materials;
- 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 15 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".

Substitution of heading of Chapter 4 of Act 65 of 1996

16. 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".

Amendment of section 18 of Act 65 of 1996, as amended by section 7 of Act 18 of 25 2004 and substituted by section 21 of Act 3 of 2009

- 17. Section 18 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (3)(a) for the words following subparagraph (ii) of the following words:
 - "unless, judged within context, the film or game is [, except with 30 respect to child pornography,] a bona fide documentary, is of scientific, dramatic or artistic merit or is on a matter of public interest, in which event the film or game shall be classified with reference to the guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;'
 - (b) by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs, respectively:
 - "(b) classify the film or game as 'XX' if it [depicts] contains-
 - (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;]
 - explicit infliction of [sexual or] domestic violence; or 45
 - (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] 50 classified with reference to the relevant guidelines relating to the protection of children from exposure to disturbing, harmful or age-inappropriate materials;

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- [(iii) gedrag of 'n daad bevat wat aanhitsing tot skadelike gedrag uitmaak of sodanige gedrag aanmoedig of bevorder; of];
- (iv) eksplisiete toediening van [seksuele of] gesinsgeweld bevat: of
- (v) eksplisiete visuele voorstellings van uiterste geweld bevat, tensy die publikasie, binne verband beoordeel[, behalwe wat kinderpornografie betref,] 'n bona fide-dokumentêr is of 'n publikasie van wetenskaplike, letterkundige of artistieke verdienste of oor 'n aangeleentheid van openbare belang is, in welke geval die publikasie geklassifiseer moet word [as 'X18' of geklassifiseer moet word] met verwysing na die riglyne rakende die beskerming van kinders teen blootstelling aan ontstellende, skadelike en ouderdomsongeskikte materiaal;
- (c) die publikasie as 'X18' klassifiseer indien dit eksplisiete seksuele gedrag bevat, tensy die publikasie, binne verband beoordeel[, behalwe wat kinderpornografie betref,] 'n bona fide-dokumentêr is of 'n publikasie van wetenskaplike, letterkundige of artistieke verdienste of oor 'n aangeleentheid van openbare belang is, in welke geval die publikasie geklassifiseer moet word met verwysing na die riglyne rakende die beskerming van kinders teen blootstelling aan ontstellende, skadelike en ouderdomsongeskikte materiaal; of".

Vervanging van opskrif van Hoofstuk 4 van Wet 65 van 1996

16. Die opskrif van Hoofstuk 4 van die Hoofwet word hierby deur die volgende 25 opskrif vervang:

"Klassifikasie van films en speletjies, self-klassifikasie, akkreditasie, klagtes en verbode inhoud".

Wysiging van artikel 18 van Wet 65 van 1996, soos gewysig deur artikel 7 van Wet 18 van 2004 en vervang deur artikel 21 van Wet 3 van 2009

- 17. Artikel 18 van die Hoofwet word hierby gewysig-
 - (a) deur in subartikel (3)(a) die woorde wat op subparagraaf (ii) volg deur die volgende woorde te vervang:
 - "tensy die film of speletjie, binne verband beoordeel[, behalwe wat kinderpornografie betref,] 'n bona fide-dokumentêr is of wetenskaplike, dramatiese of artistieke verdienste het of oor 'n aangeleentheid van openbare belang is, in welke geval die film of speletjie geklassifiseer moet word met verwysing na die riglyne rakende die beskerming van kinders teen blootstelling aan ontstellende, skadelike of ouderdomsongeskikte materiaal;";
 - (b) deur in subartikel (3) paragrawe (b) en (c) onderskeidelik deur die volgende paragrawe te vervang:
 - "(b) die film of speletjie as 'XX' klassifiseer indien dit—
 - (i) eksplisiete seksuele gedrag [uitbeeld] bevat wat die reg van enige persoon op menswaardigheid skend of minag;
 - (ii) bestialiteit, bloedskande, verkragting of 'n gedrag of 'n daad wat vir mense vernederend is, [uitbeeld] bevat;
 - [(iii) gedrag of 'n daad uitbeeld wat aanhitsing tot skadelike gedrag uitmaak of sodanige gedrag aanmoedig of bevorder:]
 - (iv) die eksplisiete toediening van [seksuele of] gesinsgeweld [uitbeeld] bevat; of
 - (v) eksplisiete visuele voorstellings van uiterste geweld [uitbeeld] bevat.
 - tensy die film of speletjie, binne verband beoordeel[, behalwe wat 55 kinderpornografie betref,] 'n bona fide-dokumentêr is of wetenskaplike, dramatiese of artistieke verdienste het, in welke geval die film of speletjie [as 'X18' geklassifiseer moet word of] geklassifiseer moet word met verwysing na die toepaslike riglyne rakende die beskerming van kinders teen blootstelling aan 60 ontstellende, skadelike en ouderdomsongeskikte materiaal;

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- (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"; and
- (c) by the substitution for subsection (6) of the following subsection:
 - "(6) A broadcaster who is subject to regulation by the Independent Communications Authority of South Africa shall, for the purposes of 10 broadcasting and online streaming, 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."

Repeal of sections 18A and 18B

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18. Sections 18A and 18B of the principal Act are hereby repealed.

Insertion of sections 18C, 18D, 18E, 18F, 18G, 18H, 18I and 18J 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—

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- (c) die film of speletjie as 'XI8' klassifiseer indien dit eksplisiete seksuele gedrag bevat, tensy die film of speletjie, binne verband beoordeel[, behalwe wat kinderpornografie betref,] 'n bona fide-dokumentêr is of wetenskaplike, dramatiese of artistieke verdienste het, in welke geval die film of speletjie geklassifiseer moet word met verwysing na die toepaslike riglyne rakende die beskerming van kinders teen blootstelling aan ontstellende, skadelike en ouderdomsongeskikte materiaal; of"; en
- (c) deur subartikel (6) deur die volgende subartikel te vervang:
- '(6) 'n Uitsaaier wat onderhewig is aan regulering deur die 10 Onafhanklike Kommunikasie-owerheid van Suid-Afrika, is, vir die doeleindes van uitsaai en aanlyn stroming, vrygestel van die verpligting om aansoek te doen om die klassifikasie van 'n film of speletjie en is[, behoudens artikel 24A (2) en (3)], met betrekking tot 'n film of speletjie, nie onderhewig nie aan 'n klassifikasie of voorwaarde gestel 15 deur die Raad met betrekking tot daardie film of speletjie.".

Herroeping van artikels 18A en 18B

18. Artikels 18A en 18B van die Hoofwet word hierby herroep.

Invoeging van artikels 18C, 18D, 18E, 18F, 18G, 18H, 18I en 18J in Wet 65 van 1996

19. Die volgende artikels word hierby na artikel 18 in die Hoofwet ingevoeg:

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"Self-klassifikasie

- 18C. (1) Die Raad kan, by aansoek en by betaling van die voorgeskrewe gelde, deur 'n kommersiële aanlyn verspreider daardie kommersiële aanlyn verspreider goedkeur en akkrediteer om klassifikasies van films, speletjies en publikasies te doen.
- (2) 'n Kommersiële aanlyn verspreider van films, speletjies of publikasies in subartikel (1) beoog, is nie onderhewig aan artikel 18(1)(b) nie, met dien verstande dat-
- (a) die kommersiële aanlyn verspreider in subartikel (1) beoog deur die Raad geakkrediteer is om die liggaam se eie films, speletjies of publikasies te akkrediteer;
- (b) die kommersiële aanlyn verspreider die klassifikasieriglyne toepas soos deur die Raad in oorleg met die Minister, bepaal;
- (c) die besluite van die kommersiële aanlyn verspreider voldoen aan die vereistes in artikel 10 uiteengesit soos van tyd tot tyd deur die Raad vasgestel:
- (d) die geregistreerde verspreiders onderhewig bly aan klassifikasies wat uitgereik is voordat sodanige kommersiële aanlyn verspreider goedgekeur is en kan slegs na twee jaar vanaf 'n klassifikasiebeslissing deur die Raad, by die Raad aansoek doen om herklassifikasie;
- (e) die kommersiële aanlyn verspreider lig die Raad in van al die klassifikasies van 'XX' en 'X18' van films, speletjies en publikasies en enige ander klassifikasie van films, speletjies en publikasies sodat die Raad hierdie klassifikasies in die Staatskoerant kan publiseer, waarna sodanige klassifikasies geag word deur die Raad gemaak te wees; en
- (f) indien 'n film, speletjie of publikasie reeds deur die Raad geklassifiseer is, of daarna geklassifiseer word, mag die kommersiële aanlyn verspreider nie die genoemde film, speletjie of publikasie anders klassifiseer of herklassifiseer as die Raad se klassifikasie van die film, speletjie of publikasie nie.
- (3) Die Raad kan opleiding ingevolge hierdie Wet aan kommersiële aanlyn verspreiders in subartikel (1) beoog, verskaf.
- (4) Die kommersiële aanlyn verspreider moet, op aandrang van die Raad, al die liggaam se klassifikasiebeslissings in verband met films, speletjies en publikasies vir ouditdoeleindes beskikbaar stel.
- (5) Die akkreditasie van 'n kommersiële aanlyn verspreider kan, na behoorlike ondersoek, deur die Raad opgeskort word-

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- (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 No. 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 No. 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.

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- (a) indien die kommersiële aanlyn verspreider in stryd met die bepalings van hierdie artikel optree;
- totdat die Raad tevrede is dat die kommersiële aanlyn verspreider in die toekoms aan die bepalings van hierdie artikel sal voldoen, en 'n kommersiële aanlyn verspreider kan ook vervolg word vir 'n misdryf ingevolge hierdie Wet.

(6) Geen film, speletjie of publikasie kan in die Republiek versprei word tensy dit ingevolge artikel 16, artikel 18, hierdie artikel of artikel 18D geklassifiseer is nie, en tensy 'n duidelik sigbare etiket wat die ouderdomsbeperking en die aard van die inhoud vermeld, op of in verband met die film, speletjie of publikasie ten toon gestel word en langs die logo van die Raad verskyn nie.

Goedkeuring van geakkrediteerde vreemde- of internasionaleklassifikasiestelsels deur Beheerraad

- 18D. (1) Die Beheerraad kan, by aansoek deur 'n aanlyn verspreider wat 15 films, speletjies of publikasies in die Republiek wil versprei met klassifikasiewaarderings uitgereik deur 'n vreemde- of internasionaleklassifkasieowerheid of -liggaam, die gebruik van klassifikasiewaarderings uitgereik deur die vreemde- of internasionaleklassifikasieowerheid of -liggaam, goedkeur.
- (2) Die Beheerraad kan die aansoek in subartikel (1) beoog, goedkeur behoudens die voorwaardes wat die Raad nodig ag rakende die aanlyn verspreiding van films of speletjies.
- (3) Die Beheerraad moet, by oorweging van die aansoek in subartikel (1) beoog, in ag neem-
- (a) die toeganklikheid vir die Raad van die verspreider se aanlyn diens vir nakomings-, moniterings- en ouditdoeleindes; en
- die inlynstelling van die vreemde of internasionale waardering met die toepaslike waarderings ingevolge die Wet en die Beheerraad se klassifikasieriglyne.
- (4) 'n Aansoek ingevolge subartikel (1) moet vergesel gaan van die betaling van die voorgeskrewe gelde, deur die Minister vasgestel.

Klagtes teen verbode inhoud

- 18E. (1) Enigiemand kan by die Raad kla oor ongeklassifiseerde, verbode inhoud, of potensieel verbode inhoud, in verband met dienste wat aanlyn deur enigiemand, met inbegrip van kommersiële aanlyn verspreiders en niekommersiële aanlyn verspreiders, aangebied word.
- (2) Indien die Raad of die voldoeningsbeamptes ingevolge artikel 15 by ondersoek vasstel dat daar meriete in die klagte is en dat die verbode inhoud of inhoud wat deur die gebruik van die internet gehou of versprei word nie soos in artikels 16, 18, 18C of 18D vereis vir ondersoek en klassifikasie voorgelê is nie, moet die aangeleentheid na die Raad verwys word wat, behoudens behoorlike regsproses-
- (a) in die geval van 'n niekommersiële aanlyn verspreider, 'n afhaalkennisgewing kan uitreik ingevolge die prosedure in artikel 77 van die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet No. 25 van 2002); of
- (b) in die geval van internetdiensverskaffers, 'n afhaalkennisgewing ingevolge artikel 77 van die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet No. 25 van 2002), kan uitreik.
- (3) By die toepassing van hierdie artikel en artikels 24E, 24F en 24G, is die internetdiensverskaffer verplig om die Raad of 'n lid van die Suid-Afrikaanse Polisiediens te voorsien van inligting oor die identiteit van die persoon wat die verbode inhoud gepubliseer het.
- (4) In die geval van inhoud wat buite die Republiek gehou word wat gevind word kinderpornografie te bevat, moet die Raad die aangeleentheid na die Suid-Afrikaanse Polisiediens of na die blitslyn van die betrokke land, vir die aandag van die wetstoepassingsbeamptes in daardie land, verwys.

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(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 35 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.

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

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(5) By die toepassing van hierdie artikel, beteken internetdiensverskaffer die diensverskaffer in artikel 70 en artikel 77 van die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet No. 5 van 2002), beoog.

Verbod teen verspreiding van private seksuele foto's en films

18F. (1) Niemand mag, deur enige medium, met inbegrip van die internet en sosiale media, 'n private seksuele foto of film blootstel nie indien die openbaarmaking gedoen word-(a) sonder die toestemming van 'n individu of individue wat in die foto of film verskyn nie; en (b) met die voorneme om daardie individu skade te berokken nie. 10 (2) Dit is 'n verweer vir 'n persoon aangekla van 'n misdryf kragtens hierdie artikel om te bewys dat hy of sy redelikerwys van mening was dat die openbaarmaking nodig was vir die voorkoming, bespeuring of ondersoek van misdaad. (3) Die verbod in subartikel (1) bedoel is van toepassing ongeag of die individu wat in die foto of film verskyn tot die oorspronklike skepping van daardie foto of film toegestem het. (4) By die toepassing van hierdie artikel en artikel 24E is 'n foto of film 'privaat' as dit, na aanleiding van die konteks waarin die foto of film geneem of gemaak is, deur enige individu in die foto of film nie bedoel is om deur ander gesien te word nie. (5) By die toepassing van hierdie artikel is 'n foto of film 'seksueel' indien sodanige foto of film-'n individu se hele ontblote vroulike borste, anus, genitalieë of skaamdele of 'n gedeelte daarvan wys; 25 (b) iets wys wat 'n redelike persoon weens die aard daarvan as seksueel sou beskou: of die inhoud daarvan, as 'n geheel geneem, sodanig is dat 'n redelike persoon dit as seksueel sal beskou. (6) By die toepassing van hierdie artikel en artikels 24E, 24F en 24G, is die internetdiensverskaffer verplig om inligting aan die Raad of 'n lid van die Suid-Afrikaanse Polisiediens te gee oor die identiteit van die persoon

Verbod op verfilming en verspreiding van films en foto's wat seksuele geweld en geweld teen kinders uitbeeld

wat die private seksuele foto of film gepubliseer het.

18G. (1) Niemand mag, in enige medium met inbegrip van die internet en sosiale media, enige films of foto's skep, vervaardig of versprei wat seksuele geweld en geweld teen kinders uitbeeld nie.

(2) By die toepassing van hierdie artikel, beteken 'foto of film' 'n stil of bewegende beeld in enige vorm wat—

(a) uit een of meer afgeneemde of verfilmde beelde bestaan of dit insluit;

(b) voorkom asof dit uit een of meer afgeneemde of verfilmde beelde bestaan.

Die verbod in subartikels (1) en (2) is van toepassing ten spyte daarvan dat die individu wat in die foto of film verskyn tot die oorspronklike skepping van daardie foto of film ingestem het.

(3) Die verwysing in subartikel (2)(b) na afgeneemde of verfilmde beelde sluit afgeneemde of verfilmde beelde in wat op enige wyse verander is.

(4) By die toepassing van hierdie artikel beteken 'afgeneemde of verfilmde beeld' 'n stil of bewegende beeld wat—

(a) oorspronklik deur fotografie of verfilming vasgevang is; of

(b) deel is van 'n beeld wat oorspronklik deur fotografie of verfilming vasgevang is.

(5) By die toepassing van hierdie artikel, beteken 'verfilm' die maak van 'n opname, op enige medium, waarvan 'n rolprent op enige wyse vervaardig kan word.

(6) Verwysings na 'n foto of film sluit in—

(a) 'n negatief van 'n beeld in subartikel (2) beskryf: en

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- (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 one year 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.".

Substitution for the heading of Chapter 5 of Act 65 of 1996

- 20. The following heading is hereby substituted for the heading of Chapter 5 of the principal Act:
 - "Right to [Appear,] <u>appear</u> and to [Appeal] <u>appeal</u> to Appeal Tribunal [and Supreme Court]".

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- (b) data gestoor deur enige middele wat in 'n beeld in subartikel (2) beskryf, omgeskakel kan word.
- (7) By die toepassing van hierdie artikel en artikels 24E, 24F en 24G, is die internetdiensverskaffer verplig om die Raad of 'n lid van die Suid-Afrikaanse Polisiediens te voorsien van inligting oor die identiteit van die persoon wat 'n film of foto gepubliseer het wat seksuele aanranding en geweld teen kinders uitbeeld.

Verbod op oorlogspropaganda, aanhitsing van dreigende geweld en voorspraak van haat gebaseer op identifiseerbare groepseienskappe, en wat aanhitsing om skade te berokken daarstel

18H. Niemand kan deur enige medium, met inbegrip van die internet en sosiale media, enige film, speletjie of publikasie versprei wat neerkom op oorlogspropaganda, aanhitsing van geweld of verkondiging van haatspraak

Tentoonstelling van klassifikasiebeslissings

- 18I. (1) Waar 'n film, speletjie of publikasie ingevolge hierdie Wet geklassifiseer is of van klassifikasie vrygestel is, of daardie film of speletjie deur 'n kommersiële aanlyn verspreider in artikel 18C bedoel, geklassifiseer is, moet die film of speletjie-
- (a) indien dit 'n film of speletjie is wat vir verkoop of verhuring goedgekeur is, 'n etiket op die voorgeskrewe wyse ten toon stel:
- (b) indien dit 'n film of speletjie is wat vir verkoop of verhuring aanlyn goedgekeur is, die Raad se klassifikasiebeslissing en logo op die landingsblad van die aanlyn medium en by die verkoopspunt van die kommersiële aanlyn verspreidersdienste ten toon stel.
- (2) Die formaat, met inbegrip van die grootte en ontwerp, asook die wyse van tentoonstelling van klassifikasiesertifikate op films of speletjies goedgekeur vir verspreiding of vertoning, moet voorgeskryf word.
- (3) Geen film of speletjie kan in die Republiek versprei word nie tensy dit ingevolge artikel 18, 18C of 18D geklassifiseer is en 'n duidelik sigbare 30 etiket wat die ouderdomsbeperking en die aard van inhoud op of in verband met die film of speletjie, ten toon gestel word.

Herklassifikasie

- 18J. (1) Enigiemand kan, een jaar vanaf die datum waarop 'n film, speletjie of publikasie die eerste keer ingevolge hierdie Wet geklassifiseer is, by die Raad aansoek doen om 'n minder beperkende klassifikasie van daardie film, speletjie of publikasie.
- (2) 'n Lid van die publiek wat verontreg of te na gekom voel deur 'n klassifikasiebeslissing ten opsigte van 'n film, speletjie of publikasie, kan op die voorgeskrewe wyse en by betaling van voorgeskrewe gelde, by die Raad aansoek doen om herklassifikasie van daardie film, speletjie of publikasie.
- (3) Die Raad moet, by ontvangs van die aansoek in subartikels (2) en (3) beoog, die verspreider skriftelik verwittig van die aansoek om herklassifikasie en versoek dat die verspreider vertoë rig voordat 'n beslissing gemaak word oor hetsy die film, speletjie of publikasie geherklassifiseer moet word, al dan nie.".

Vervanging van die opskrif van Hoofstuk 5 van Wet 65 van 1996

- 20. Die opskrif van Hoofstuk 5 van die Hoofwet word hierby deur die volgende opskrif vervang:
 - 'Reg om te verskyn[,] en om na [die] Appèltribunaal [en Hooggeregshof] te appelleer".

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Amendment of section 19 of Act 65 of 1996, as amended by section 5 of Act 34 of 1999 and substituted by section 23 of Act 3 of 2009

21. Section 19 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"[The Minister or any] Any person who has [lodged a complaint with] made a request to the Board [that any] for a publication to be referred to a classification committee for classification in terms of section 16(1) or submitted a publication for classification in terms of section 16(2), or the person who has applied for the classification 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 10 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-".

Amendment of section 20 of Act 65 of 1996, as amended by section 6 of Act 34 of 1999, section 8 of Act 18 of 2004 and section 24 of Act 3 of 2009

22. Section 20 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) [The Minister or any] Any person who has lodged a complaint 20 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] a submission 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 of the Board, in the prescribed manner, appeal to the Appeal Tribunal."; and

(b) by the addition of the following subsection:

"(6) Where a commercial online distributor of a film or game is a 30 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 | 35 case that commercial online distributor may appeal to the Appeal Tribunal against such a classification.".

Amendment of section 24 of Act 65 of 1996, as amended by section 28 of Act 3 of

23. Section 24 of the principal Act is hereby amended by the addition of the following 40 subsection:

"(3) Any person who is registered as a film or game distributor in terms of section $18(\overline{1})(a)$ may, subject to an exemption being granted by the Board, distribute a film or game classified as 'X18' online, subject to the following conditions:

- (a) The distributor shall ensure to the satisfaction of the Board that children under the age of 18 would not be able to access such a film or game on-line;
- (b) the distributor shall ensure that the classification and age restriction are clearly displayed on the screen of the user throughout the screening;
- (c) the user must confirm that he or she is 18 years or older prior to commencing viewing of the film or playing the game;
- (d) the distributor shall not distribute any promotion of the film or game to be accessed without it being paid for by way of a credit card or another child secure method agreed to by the Board and, for the purposes of this subsection, the promotion of the film shall be subject to the same conditions regarding distribution as the main feature of the film or game;

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Wysiging van artikel 19 van Wet 65 van 1996, soos gewysig deur artikel 5 van Wet 34 van 1999 en vervang deur artikel 23 van Wet 3 van 2009

21. Artikel 19 van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

"[Die Minister of enigiemand] Enigiemand wat 'n [klagte by] versoek aan die Raad [aanhangig gemaak] gerig het dat 'n publikasie na 'n klassifikasiekomitee verwys moet word vir klassifikasie ingevolge artikel 16(1) of 'n publikasie vir klassifikasie ingevolge artikel 16(2) voorgelê het, of die persoon wat om die klassifikasie of herklassifikasie van 'n film, speletjie of publikasie, of om 'n permit, vrystelling of lisensie aansoek doen of wat die uitgewer is van 'n publikasie wat die 10 onderwerp is van 'n aansoek om klassifikasie, of wie se geldelike belange nadelig geraak kan word deur 'n beslissing van die Raad oor so 'n aansoek, of met betrekking tot 'n vrystelling of permit waarvan die intrekking onder oorweging is, of wat na die Appèltribunaal appelleer teen 'n beslissing met betrekking tot so 'n aansoek, het die reg-".

Wysiging van artikel 20 van Wet 65 van 1996, soos gewysig deur artikel 6 van Wet 34 van 1999, artikel 8 van Wet 18 van 2004 en artikel 24 van Wet 3 van 2009

22. Artikel 20 van die Hoofwet word hierby gewysig-

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) [Die Minister of enigiemand] Enigiemand wat 'n klagte by die 20 Raad aanhangig gemaak het dat 'n publikasie na 'n klassifikasiekomitee verwys moet word vir 'n beslissing en klassifikasie ingevolge artikel 16, en enigiemand wat aansoek gedoen het om die klassifikasie van 'n film of speletjie, of die uitgewer of verspreider van 'n publikasie wat die onderwerp was van 'n beswaar of [aansoek] 'n voorlegging ingevolge 25 artikel 16, kan binne 'n tydperk van 30 dae vanaf die datum waarop hy of sy van die beslissing van die Raad verwittig is, op die voorgeskrewe wyse na die Appèltribunaal appelleer."; en

(b) deur die volgende subartikel by te voeg:

"(6) Waar 'n kommersiële aanlyn verspreider van 'n film of speletjie 30 'n lid van 'n industrieklassifikasieliggaam bedoel in artikel 18C is, het sodanige kommersiële aanlyn verspreider nie die reg om by die Appèltribunaal teen 'n klassifikasie deur daardie kommersiële aanlyn verspreider in ooreenstemming met 'n Raadsklassifikasie te appelleer nie, tensy die Raad, op grond van 'n klagte ingevolge artikel 18G, 'n strenger klassifikasie oplê, in welke geval daardie aanlyn kommersiële verspreider by die Appèltribunaal teen so 'n klassifikasie kan appelleer.".

Wysiging van artikel 24 van Wet 65 van 1996, soos gewysig deur artikel 28 van Wet 3 van 2009

23. Artikel 24 van die Hoofwet word hierby gewysig deur die volgende subartikel by 40

te voeg:

"(3) Enigiemand wat ingevolge artikel 18(1)(a) as 'n verspreider van films of speletjies geregistreer is kan, behoudens die toestaan van 'n vrystelling deur die Raad, 'n film of speletjie geklassifiseer as 'X18' aanlyn versprei, behoudens die volgende voorwaardes:

(a) Die verspreider moet tot bevrediging van die Raad verseker dat kinders onder die ouderdom van 18 nie aanlyn toegang tot sodanige film of speletjie sal kan kry nie;

die verspreider moet verseker dat die klassifikasie en ouderdomsbeperking tydens die vertoning duidelik op die skerm van die gebruiker ten toon gestel

(c) die gebruiker moet bevestig dat hy of sy 18 jaar of ouer is voordat hy of sy begin om die film te kyk of die speletjie te speel;

(d) die verspreider moet geen promosie van die film of speletjie versprei nie om gesien te word sonder dat daarvoor betaal word by wyse van 'n kredietkaart of 'n ander wyse wat teen kinders beveilig is waarop die Raad toegestem het en, by die toepassing van hierdie subartikel, is die promosie van die film onderhewig aan dieselfde voorwaardes aangaande verspreiding as die hoofitem van die film of speletjie;

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- (e) the distributor shall keep, solely for his or her private records, a register of all instances where access was granted to a user, whose name, address and verifiable age must be noted in the register kept for that purpose;
- the register referred to in paragraph (e) must be kept for one year from the date when distribution took place;
- (g) the chief executive officer may approach a court ex parte for the production of the register referred to in paragraph (e) if he or she has reasonable cause to believe that the online distributor is supplying material to children under the
- (h) if the film or game is exhibited online in a public place, that place must be a | 10 licensed premises in terms of subsection (1);
- the Board may, after due inquiry, suspend an exemption for a maximum period of 12 months if any of the conditions specified in this subsection have not been met by the distributor;
- a distributor who knowingly or negligently grants access to a film or game classified as 'X18' to a child under the age of 18 shall be guilty of an offence as contemplated in section 24A(4); and
- (k) the inquiry instituted by the Board in terms of paragraph (i) must continue even if criminal proceedings have been instituted against the distributor.".

Substitution of section 24A of Act 65 of 1996, as inserted by section 29 of Act 3 of 20

24. The following section is hereby substituted for section 24A of the principal Act:

"Prohibitions, offences and penalties on [distribution and exhibition] possession of films, games and publications

- 24A. (1) Any person who knowingly distributes or exhibits in public a 25 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 not exceeding R150 000 or to imprisonment for a period not exceeding [six] eight 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)](2) [of this Act] which has, except with respect to broadcasters that are subject to regulation by the Independent Communication Authority of South Africa and except with regard to a publication contemplated in section 16(1)-
- (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' or would have been so classified had it been submitted for classification,
- shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R500 000 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, 50 sale or hire or advertises for sale or hire any film, game or a publication which has been classified 'X18', or would have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment. 55

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- (e) die verspreider moet, alleenlik vir die verspreider se private rekords, 'n register hou van alle gevalle waar toegang aan 'n gebruiker toegestaan is, wie se naam, adres en bevestigbare ouderdom in die register aangeteken moet word wat vir daardie doel gehou word;
- (f) die register in paragraaf (e) bedoel moet vir een jaar vanaf die datum waarop die verspreiding plaasgevind het, gehou word;
- (g) die hoof- uitvoerende beampte kan 'n hof ex parte nader vir die voorlegging van 'n register in paragraaf (e) bedoel indien hy of sy redelike gronde het om te glo dat die aanlyn verspreider materiaal aan kinders onder die ouderdom van 18 voorsien;
- (h) indien die film of die speletjie aanlyn in 'n openbare plek vertoon word, moet daardie plek 'n gelisensieerde perseel ingevolge subartikel (1) wees;
- (i) die Raad kan, na behoorlike ondersoek, 'n vrystelling vir 'n maksimum tydperk van 12 maande opskort indien enige van die voorwaardes in hierdie subartikel vermeld, nie deur die verspreider nagekom is nie;
- (j) 'n verspreider wat wetens of nalatig toegang tot 'n film of speletjie geklassifiseer as 'X18' aan 'n kind onder die ouderdom van 18 toestaan, is skuldig aan 'n misdryf in artikel 24A(4) beoog; en
- (k) die ondersoek ingevolge paragraaf (i) deur die Raad ingestel, moet voortgaan selfs indien strafregtelike verrigtinge teen die verspreider ingestel is.".

Vervanging van artikel 24A van Wet 65 van 1996, soos ingevoeg deur artikel 29 van Wet 3 van 2009

24. Artikel 24A van die Hoofwet word hierby deur die volgende artikel vervang:

"Verbiedinge, misdrywe en strawwe vir [verspreiding en vertoning] besit van films, speletjies en publikasies

- **24A.** (1) Enigiemand wat 'n film of speletjie wetens in die openbaar versprei of vertoon sonder dat hy of sy eers by die Raad as 'n verspreider of vertoner van films of speletjies geregistreer is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete <u>van hoogstens R150 000</u> of gevangenisstraf vir 'n tydperk van hoogstens [ses] <u>agt</u> maande of met sowel 30 'n boete as daardie gevangenisstraf.
- (2) Enigiemand wat wetens 'n film, speletjie of 'n publikasie in artikel 16[(1)](2) [van hierdie Wet] bedoel, wat, behalwe wat betref uitsaaiers wat onderhewig is aan regulering deur die Onafhanklike Kommunikasieowerheid van Suid-Afrika en 'n publikasie in artikel 16(1) beoog—
- (a) nie deur die Raad geklassifiseer is nie[, behalwe wat betref uitsaaiers wat onderhewig is aan regulering deur die Onafhanklike Kommunikasie-owerheid van Suid-Afrika en 'n nuusblad in artikel 16(1) bedoel];
- (b) as 'n 'geweierde klassifikasie' geklassifiseer is; of
- (c) geklassifiseer is as 'XX' of aldus geklassifiseer sou gewees het indien dit vir klassifikasie voorgelê is,
- uitsaai, versprei, in die openbaar vertoon, te koop of te huur aanbied of adverteer vir vertoning, verkoop of verhuring, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete <u>van hoogstens R500 000</u> of 45 gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf.
- (3) Enigiemand wat nie die houer van 'n lisensie is om die besigheid van volwasse persele te bedryf nie en, met betrekking tot films en speletjies, nie by die Raad as 'n verspreider of vertoner van films of speletjies geregistreer is nie en wat 'n film, speletjie of 'n publikasie wat as 'X18' geklassifiseer is, of wat aldus geklassifiseer sou gewees het indien dit vir klassifikasie voorgelê is, wetens uitsaai, versprei, in die openbaar vertoon, vir vertoning, verkoop of verhuring aanbied of vir verkoop of verhuring adverteer, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R750 000 of gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf.

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- (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] which would have justified an 'X18' classification,

to a person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or imprisonment for a 10 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 not exceeding R50 000 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 not exceeding R50 000 or to imprisonment for a period not exceeding [six] eight months or to both a fine 25 and such imprisonment.
- (7) Any person who knowingly, or who ought to have reasonably known 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 not exceeding R100 000 or to imprisonment for a period not exceeding [six] eight months or to both a fine and such imprisonment."

Amendment of section 24B of Act 65 of 1996, as inserted by section 29 of Act 3 of 35 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 45 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 <u>child pornography</u>; or"; and
- (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

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- (4) Enigiemand wat 'n film, speletjie of publikasie wetens aan 'n persoon onder die ouderdom van 18 jaar versprei of ten toon stel—
- (a) wat as 'X18' geklassifiseer is; of
- (b) wat uitbeeldings, beskrywings of tonele van eksplisiete seksuele gedrag bevat, [tensy sodanige film, speletjie of publikasie 'n bona fide-dokumentêr is of van wetenskaplike, literêre of artistiese waarde is of oor 'n saak van openbare belang handel,] wat 'n klassifikasie as 'X18' sou regverdig,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R750 000 of gevangenisstraf vir 'n tydperk van hoogstens vyf 10 jaar of met sowel 'n boete as daardie gevangenisstraf.

(5) Enigiemand wat 'n film, speletjie of publikasie wat deur die Raad geklassifiseer is, wetens versprei sonder om die klassifikasieverwysingsnommer, die ouderdomsbeperking, verbruikersadvies en enige ander voorwaarde wat vir die verspreiding van daardie film, speletjie of 15 publikasie opgelê is, duidelik en opvallend en op die voorgeskrewe wyse te vertoon, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R50 000 of gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel 'n boete as daardie gevangenisstraf.

(6) Enigiemand wat 'n film of speletjie in enige medium wetens 20 adverteer sonder om die ouderdomsbeperking, verbruikersadvies en enige ander voorwaarde opgelê vir die film of speletjie wat geadverteer word, duidelik en opvallend en op die voorgeskrewe wyse aan te dui sodat dit duidelik sigbaar is vir die publiek, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R50 000 of 25 gevangenisstraf vir 'n tydperk van hoogstens [ses] agt maande of met sowel 'n boete as daardie gevangenisstraf.

(7) [Enige persoon] Enigiemand wat wetens, of wat redelikerwys moes geweet het en sonder die skriftelike voorafgoedkeuring van die Raad 'n lokprent, wat 'n film of 'n speletjie adverteer met 'n beperkender 30 klassifikasie as dié van die hooffilm of hoofspeletjie, in die openbaar tydens dieselfde vertoonsessie vertoon, of op dieselfde kasset of skyf van die hooffilm of -speletjie versprei, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 000 of gevangenisstraf vir 'n tydperk van hoogstens [ses] agt maande of met sowel 35 'n boete as daardie gevangenisstraf."

Wysiging van artikel 24B van Wet 65 van 1996, soos ingevoeg deur artikel 29 van Wet 3 van 2009

25. Artikel 24B van die Hoofwet word hierby gewysig-

(a) deur die opskrif deur die volgende opskrif te vervang:

"[Verbiedinge, misdrywe] Misdrywe en strawwe [vir besit van films, speletjies en publikasies] ten opsigte van kinderpornografie en seksuele uitbuiting van kinders";

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- (b) deur in die Engelse teks, in subartikel (1) paragrawe (a), (b) en (c) onderskeidelik deur die volgende paragrawe te vervang:
 - "(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"; en
- (c) deur die volgende subartikels by te voeg:
 - "(4) 'n Hof wat 'n persoon skuldig bevind aan 'n misdryf ingevolge subartikel (1)(b) kan, waar 'n straf nie deur enige ander Parlementswet vir daardie misdryf voorgeskryf word nie, 'n vonnis soos bedoel in artikel 276 van die Strafproseswet, 1977 (Wet No. 51 van 1977), oplê wat daardie hof gepas ag en wat binne daardie hof se strafjurisdiksie val.
 - (5) Enigiemand wat subartikel (1)(d) oortree, is strafbaar—
 - (a) in die geval van 'n eerste skuldigbevinding, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar of met sowel 'n boete as daardie gevangenisstraf; of

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- (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 five years or to both such fine and imprison-
- (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 five years, or to both such 20 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.".

Amendment of section 24C of Act 65 of 1996, as inserted by section 29 of Act 3 of 25

26. Section 24C of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"Any person who fails to comply with subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R50 000 or to imprisonment for 30 a period not exceeding six months or to both a fine and such imprisonment.".

Insertion of sections 24D, 24E, 24F and 24G in Act 65 of 1996

27. The following sections are hereby inserted in the principal Act after section 24C:

"Prohibition, offences and penalties for submission of false and misleading information to online submission system of Board

- 24D. Any person who furnishes the Board with false or misleading information on the Board's online submission system with respect to registration online to-
- (a) classify a film or game;
- (b) renew registration; or
- 40 (c) apply for the submission of a game for classification, shall be guilty of an offence and liable, upon conviction to a fine not exceeding R15 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.

Prohibitions, offences and penalties on distribution of private sexual 45 photographs and films

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 50 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.

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- (b) in die geval van 'n tweede en daaropvolgende skuldigbevinding, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 15 jaar of met sowel 'n boete as daardie gevangenisstraf.
- (6) Enigiemand wat subartikel (1)(a) of (c) oortree, is strafbaar—
- (a) in die geval van 'n eerste skuldigbevinding, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf;
- (b) in die geval van 'n tweede skuldigbevinding, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar of met sowel 'n boete as daardie gevangenisstraf; of
- (c) in die geval van 'n derde of daaropvolgende skuldigbevinding, met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 15 jaar of met sowel 'n boete as daardie gevangenisstraf.
- (7) Enigiemand wat die bepalings van subartikel (2) oortree, is by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf.
- (8) Enigiemand wat die bepalings van subartikel (3) oortree is strafbaar-
- (a) in the geval van 'n eerste skuldigbevinding, met 'n boete van R1 000 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf; of
- (b) in die geval van 'n tweede of daaropvolgende skuldigbevinding, met 'n boete van R2 000 000 of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar of met sowel 'n boete as daardie gevangenisstraf.". 25

Wysiging van artikel 24C van Wet 65 van 1996, soos ingevoeg deur artikel 29 van Wet 3 van 2009

- **26.** Artikel 24C van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:
 - "Enigiemand wat versuim om aan die bepalings van subartikel (2) te voldoen, is 30 aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete <u>van hoogstens R50 000</u> of gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel 'n boete as daardie gevangenisstraf.".

Invoeging van artikels 24D, 24E, 24F en 24G in Wet 65 van 1996

- **27.** Die volgende artikels word hierby na artikel 24C in die Hoofwet ingevoeg:
 - "Verbod, misdrywe en strawwe vir voorlegging van vals of misleidende inligting op aanlyn voorleggingstelsel van Raad
 - **24D.** Enigiemand wat die Raad van vals of misleidende inligting voorsien op die Raad se aanlyn voorleggingstelsel ten opsigte van aanlyn registrasie om—
 - (a) 'n film of speletjie te klassifiseer;
 - (b) registrasie te hernieu; of
 - (c) aansoek te doen om die voorlegging van 'n speletjie vir klassifikasie, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R15 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel 'n boete as daardie gevangenisstraf.

Verbiedinge, misdrywe en strawwe op verspreiding van private seksuele foto's en films

24E. (1) Enigiemand wat wetens private seksuele foto's en films oor enige medium, met inbegrip van die internet en sosiale media versprei, sonder vooraf toestemming van die individu of individue in die genoemde seksuele foto's en films met die voorneme om die genoemde individue skade te berokken, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R150 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sowel 'n boete as daardie gevangenisstraf.

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(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.

Prohibitions, offences and penalties on filming and distribution of films and photographs depicting sexual assault and violence against children

24F. Any person who knowingly creates, produces or in any way 10 contributes to or assists in any film or photograph which contains depictions, descriptions or scenes of sexual assault and violence against children, 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. 15

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.".

Amendment of section 27A of Act 65 of 1996, as amended by section 31 of Act 3 of 25

- 28. Section 27A of the principal Act is hereby amended—
 - (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - "(2) If an [Internet] internet [service] access provider has knowledge 30 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—";
 - (b) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - "(a) fails to comply with [subsection 1] subsections (1) and (2) 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 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 not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.".

Repeal of section 30 of Act 65 of 1996

29. Section 30 of the principal Act is hereby repealed.

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(2) Enigiemand wat wetens private seksuele foto's en films in enige medium, ook oor die internet, versprei sonder vooraf toestemming van die individu of individue en waar die individu of individue in die genoemde foto's of films geïdentifiseer word of kan word, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R300 000 of met gevangenisstraf vir 'n tydperk van hoogstens vier jaar of met sowel 'n boete as daardie gevangenisstraf.

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Verbiedinge, misdrywe en strawwe vir verfilming en verspreiding van films en foto's wat seksuele aanranding en geweld teen kinders uitbeeld

24F. Enigiemand wat wetens 'n film of foto skep, vervaardig of op enige 10 wyse daartoe bydra of bystand verleen daarmee wat uitbeeldings, beskrywings of tonele van seksuele aanranding en geweld teen kinders bevat, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R150 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sowel 'n boete as daardie gevangenisstraf.

Verbiedinge, misdrywe en strawwe vir oorlogspropaganda, aanhitsing van dreigende geweld en verkondiging van haat op grond van identifiseerbare groepseienskap en wat aanhitsing om skade te berokken daarstel

24G. Enigiemand wat wetend oor enige medium, met inbegrip van die 20 internet en sosiale media, enige film, speletjie of publikasie versprei wat op oorlogspropaganda neerkom, dreigende geweld aanhits of haatspraak verkondig, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R150 000 of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sowel 'n boete as daardie gevangenisstraf.".

Wysiging van artikel 27A van Wet 65 van 1996, soos gewysig deur artikel 31 van Wet 3 van 2009

- 28. Artikel 27A van die Hoofwet word hierby gewysig-
 - (a) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

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- "(2) Indien 'n [Internetdiensverskaffer] internet-toegangverskaffer kennis dra dat sy dienste gebruik word om vir kinderpornografie, oorlogspropaganda, aanhitsing van dreigende geweld of vir die verkondiging van haat gegrond op 'n identifiseerbare groepeienskap en wat aanhitsing om skade te berokken, daarstel, as gasheer op te tree of 35 om dit te versprei, moet sodanige Internetdiensverskaffer-";
- (b) deur paragrawe (a) en (b) in subartikel (4) onderskeidelik deur die volgende paragrawe te vervang:
 - "(a) versuim om aan [subartikel] subartikels (1) en (2) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n 40 boete van hoogstens R150 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met sowel 'n boete as daardie gevangenisstraf; of
 - versuim om aan subartikel (2) of (3) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van 45 hoogstens R750 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel 'n boete as daardie gevangenisstraf.".

Herroeping van artikel 30 van Wet 65 van 1996

29. Artikel 30 van die Hoofwet word hierby herroep.

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Amendment of section 31 of Act 65 of 1996, as amended by section 35 of Act 3 of 2009

- 30. Section 31 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) make regulations relating to the procedure with regard to the nomination of persons as candidates for the Council [or], Appeal Tribunal and Enforcement Committee, 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 10 referred to in section 6[(1)](2);"; and

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) As soon as possible after the lapse of every consecutive period of 12 months after the publication of the guidelines referred to in 15 paragraph (a), the [Board] Council, in consultation with the Minister, shall publish the [said] guidelines in the Gazette and, where necessary, amend them.".

Insertion of section 31A in Act 65 of 1996

31. The following section is hereby inserted in the principal Act after section 31: 20

"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 | 35 regulations as a result of the process referred to in paragraph (a).".

Substitution of expression in Act 65 of 1996

32. The principal Act is hereby amended by the substitution for the expression "Internet" of the expression "internet" wherever it occurs.

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 50 Tribunal [to be appointed] by Minister";
 - (d) by the insertion after item 6 of the following items:
 - "6A. Composition of Enforcement Committee
 - **6B.** Powers and duties of Enforcement Committee":

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Wysiging van artikel 31 van Wet 65 van 1996, soos gewysig deur artikel 35 van Wet 3 van 2009

- 30. Artikel 31 van die Hoofwet word hierby gewysig-
 - (a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:
 - "(b) regulasies uitvaardig betreffende die prosedure met betrekking tot die benoeming van persone as kandidate vir die Beheerraad [en], Appèltribunaal en Afdwingingskomitee, verdere relevante ervaring ingevolge artikel 6(4)(a) [van hierdie Wet] en die ervaring van persone wat as lede van die adviespaneel in artikel 6[(1)](2) vermeld, aangestel kan word;"; en
 - (b) deur in subartikel (3) paragraaf (b) deur die volgende paragraaf te vervang:"(b) So gou doenlik na die verloop van elke daaropvolgende periode
 - van 12 maande na die publikasie van die riglyne bedoel in paragraaf (a), moet die [Raad] Beheerraad, in oorleg met die Minister, die [vermelde] riglyne in die Staatskoerant publiseer en, 15 wanneer nodig, dit wysig.".

Invoeging van artikel 31A in Wet 65 van 1996

31. Die volgende artikel word hierby na artikel 31 in die Hoofwet ingevoeg:

"Prosedure vir uitvaardiging van regulasies

- **31A.** (1) Die Minister moet, voordat enige regulasies in artikel 31 bedoel, 20 uitgereik of gewysig word, 'n kennisgewing in die *Staatskoerant* publiseer—
- (a) wat vermeld dat konsepregulasies ontwikkel is;
- (b) wat spesifiseer waar 'n afskrif van die konsepregulasies verkry kan word; en
- (c) waarin 'n beroep gedoen word dat skriftelike kommentaar oor die voorgestelde regulasies binne 'n bepaalde tydperk ingedien word.
- (2) Na voldoening aan subartikel (1), kan die Minister-
- (a) die regulasies wysig; en
- (b) behoudens subartikel (3), die regulasies of voorskrifte in finale vorm in die *Staatskoerant* publiseer.
- (3) (a) Die Minister moet, binne 30 dae voor publikasie van die regulasies in die *Staatskoerant*, soos in subartikel (2)(b) bedoel, daardie regulasies in die Parlement ter tafel lê.
- (b) Subartikel (1) is nie van toepassing ten opsigte van enige wysiging van die regulasies na aanleiding van die proses in paragraaf (a) bedoel nie.".

Vervanging van uitdrukking in Wet 65 van 1996

32. Die Hoofwet word hierby gewysig deur die uitdrukking "Internet", waar dit ook al voorkom, te vervang deur die uitdrukking "internet".

Wysiging van indeling van artikels in Wet 65 van 1996

- 33. Die indeling van artikels na die lang titel van die Hoofwet word hierby gewysig-
 - (a) deur die opskrif van Hoofstuk 2 deur die volgende opskrif te vervang:

"Film- en Publikasieraad[: Film- en Appèltribunaal], Raad, Appèltribunaal en Afdwingingskomitee";

- (b) deur item 3 deur die volgende item te vervang:
 - "3. Instelling van Film- en Publikasieraad, Beheerraad [en], Appèltribunaal en Afdwingingskomitee";
- (c) deur item 6 deur die volgende item te vervang:
 - "6. [Lede] Aanstelling van lede van Beheerraad en Appeltribunaal 50 deur Minister [aangestel te word]";
- (d) deur die volgende items na item 6 in te voeg:
 - "6A. Samestelling van Afdwingingskomitee
 - **6B.** Bevoegdhede en pligte van Afdwingingskomitee";

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(e)		titution for item 7 of the following item:	
	"7.	Disqualifications with regard to membership of Council [or],	
		Appeal Tribunal or Enforcement Committee";	
(f)	•	titution for item 8 of the following item:	_
	"8.	Period of office of members of Council [and], Appeal Tribunal	5
		and Enforcement Committee";	
(g)		titution for item 11 of the following item:	
	"11.	Administrative support for Council [and], Appeal Tribunal and	
		Enforcement Committee";	4.0
(h)		titution for item 15A of the following item:	10
	"15A.	Functions and powers of compliance officers";	
(i)	by the subs	titution for the heading of Chapter 4 of the following heading:	
	"Clas	sification of Films and Games, Self-classification, Accredita-	
		Complaints and Prohibited Content";	
(j)		tion of items 18A and 18B;	15
(k)		rtion after item 18 of the following items:	
	"18C.	Self-classification Self-classification	,
	18D.		
		systems by the Board	
	18E.		20
	18F.	Prohibition against distribution of private sexual photographs	
		and films	
	18G.	Prohibition against filming and distribution of films and photo-	
		graphs depicting sexual assault and violence against children";	
(l)	by the subs	titution for the heading of Chapter 5 of the following heading:	25
		t to [Appear,] appear and to [Appeal] appeal to Appeal Tribunal	
		Supreme Court]";	
(m)	by the inser	rtion after item 24C of the following items:	
	"24D.	Prohibition, offences and penalties for submission of false and	
		misleading information to online submission system of Board	30
	24E.	Prohibitions, offences and penalties on distribution of private	
		sexual photographs and films	
	24F.	Prohibitions, offences and penalties on filming and distribution of	
		films and photographs depicting sexual assault and violence	
		against children	35
	24G.	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"; and	
(n)	by the inser	rtion of the following item after item 31:	40
	"31A.	Procedure for making regulations".	

Short title and commencement

34. This Act is called the Films and Publications Amendment Act, 2019, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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(e)	eur item 7 deur die volgende item te vervang:	
	"7. Onbevoegdhede met betrekking tot lidmaatskap van Beheerraad	
	[of], Appèltribunaal of Afdwingingskomitee";	
<i>(f)</i>	eur item 8 deur die volgende item te vervang:	
	"8. Ampsduur van lede van Beheerraad [en], Appèltribunaal en	5
	Afdwingingskomitee";	
(g)	eur item 11 deur die volgende item te vervang:	
(8)	"11. Administratiewe steun aan Beheerraad [en], Appèltribunaal en	
	Afdwingingskomitee";	
(h)	eur item 15A deur die volgende item te vervang:	10
1	"15A. Werksaamhede en bevoegdhede van nakomingsbeamptes";	
(i)	eur die opskrif van Hoofstuk 4 deur die volgende opskrif te vervang:	
(-)	"Klassifikasie van films en speletjies, self-klassifikasie, akkreditasie,	
	klagtes en verbode inhoud";	
(j)	eur items 18A en 18B te skrap;	15
(k)	eur die volgende items na item 18 in te voeg:	
()	"18C. Self-klassifikasie	
	18D. Goedkeuring van geakkrediteerde vreemde- of internasionale-	
	klassifikasiestelsels deur Raad	
	18E. Klagtes teen digitale inhouddienste wat aanlyn versprei word	20
	18F. Verbod op verspreiding van private seksuele foto's en films	
	18G. Verbod op verfilming en verspreiding van films en foto's wat	
	seksuele aanranding en geweld teen kinders uitbeeld";	
(l)	eur die opskrif van Hoofstuk 5 deur die volgende opskrif te vervang:	
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	hof] te appelleer";	
(m)	eur die volgende items na item 24C in te voeg:	
(1112)	"24D. Verbod, misdrywe en strawwe vir voorlegging van vals of	
	misleidende inligting op aanlyn voorleggingstelsel van Raad	
	24E. Verbiedinge, misdrywe en strawwe op verspreiding van private	30
	seksuele foto's en films	
	24F. Verbiedinge, misdrywe en strawwe vir verfilming en	
	verspreiding van films en foto's wat seksuele aanranding en	
	geweld teen kinders uitbeeld	
		35
	aanhitsing van dreigende geweld en verkondiging van haat op	
	grond van identifiseerbare groepseienskap en wat aanhitsing om	
	skade te berokken daarstel"; en	
(n)	eur die volgende item na item 31 in te voeg:	
(,,,)		40
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Kort titel en inwerkingtreding

34. Hierdie Wet heet die Wysigingswet op Films en Publikasies, 2019, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant*, vasgestel.