

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 4526

22 March 2024

FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED**NOTICE IN TERMS OF SECTION 18H AND SECTION 27A OF THE FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED**

I, Dr Mashilo Boloka, the Chief Executive Officer of the Film and Publication Board, hereby prescribe, in the Schedules hereto, the notice issued in terms of section 18H and section 27A of the Films and Publications Act, (Act No. 65 of 1996), as amended.



DR MASHILO BOLOKA
CHIEF EXECUTIVE OFFICER
FILM AND PUBLICATION BOARD

Date: 1 March 2024

NOTICE

SCHEDULE 1

1. Introduction

- 1.1 The Films and Publication Board (FPB) is a regulator established in terms of the **THE FILMS AND PUBLICATIONS ACT, 1996, (ACT NO. 65 OF 1996) AS AMENDED by Act NO.11 of 2019**, to protect the public against what is defined in the act as harmful and prohibited content.

Definitions:

- 1.1.1 **“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;
- 1.1.2 **“disinformation”** whereas it is not defined in terms of this Act, **“disinformation”** means information that is false, but the person who disseminates it knows it is false;
- 1.1.3 **“misinformation”** whereas it is not defined in terms of this Act, **misinformation** means information that is false, but the person who disseminates it believes it to be true;”
- 1.1.4 **“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);
- 1.1.5 **“Republic”** means the republic of South Africa;

2. Background on disinformation and misinformation through social media during elections

2.1. In its *Global Risk Report 2024*, the World Economic Forum (WEF), has identified Misinformation and disinformation as the most emerging severe global risk anticipated over the next two years, to further widen societal and political divides. Not only does this underline the severity of misinformation and disinformation as a risk to the election process, the timeframes predicted confirms its imminence, and therefore it is an existential threat.

2.2. As South Africa join other 70 odd countries conducting their national elections in 2024, it is important that regulatory measures are put in place to ensure that the democratic will of the people is not undermined by acts of misinformation and disinformation.

2.3. During elections, misinformation, disinformation and fake news can be weaponized to:

- Propagate for war;
- incite imminent violence;
- Spread hatred that is based on an identifiable group characteristic;
- Cause harm.

2.4. Pursuant to section 31 (3) (a), the FPB has, taking into account the provisions of section 18H of the FP Act, identified misinformation/disinformation and fake news, as harmful or disturbing, due to its potential to propagate for war, incite violence, or advocate hate speech. Such material is therefore prohibited in terms of the Act.

SCHEDULE 2**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 IN TERMS OF SECTION 18H OF THE FILMS AND PUBLICATIONS ACT, 2019**

- 3. 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** – (1) 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.
- 4. Offence and liability for non-compliance.** – (1) Any person who knowingly 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 shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150,000.00 or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.
- 5. Powers and duties of the Enforcement Committee** – (1) The Enforcement Committee shall adjudicate all cases and make appropriate findings, after the Board and the responded have been heard or granted a reasonable opportunity to be heard;
- (2) Where appropriate –
- (a) impose a fine;
 - (b) as prescribed, suspend a registration certificate; or
 - (c) through the Board, refer the matter to the National Director of Public Prosecutions for prosecuting and, in such a case, the Enforcement Committee shall not make a finding.

SCHEDULE 3

OBLIGATIONS OF INTERNET SERVICE PROVIDERS.

6. Knowledge of the use of services of an internet service provider. – Where an internet access provider has knowledge that its services have been used for the hosting or distribution of content that amount to 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 service provider shall report to the FPB in writing , within 30 (thirty) days from publication of this Notice -

- (a) All reasonable measures available on their platforms to prevent prohibited content ahead of and during the 2024 National and Provincial Elections, in particular misinformation, disinformation and fake news.
- (b) All reasonable steps taken to prevent access to 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 such as misinformation and disinformation ahead of and during the 2024 National and Provincial Elections.

7. Offence and liability for non-compliance. – (1) Any person who —

- (a) fails to comply with section 27A (1) and (2) of the Act shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150,000.00 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment; or
- (b) fails to comply with section 27A (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750,000.00 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

8. OBLIGATION TO REPORT ON AVAILABLE REASONABLE MEASURES TO PREVENT PROHIBITED CONTENT AHEAD OF AND DURING THE 2024 NATIONAL AND PROVINCIAL ELECTIONS IN THE REPUBLIC

- (a) Internet Service Providers, user-to-user services including Social Media and Video Sharing platforms and search engines have a responsibility ahead of and during the 2024 National and Provincial Elections to ensure that their platforms are not used for 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 in terms of section 18H of the Act. It is therefore expected that sufficient measures should be made available to ensure compliance with the provisions of section 18H of the Act.
- (b) Platforms outlined in paragraph 8(a) above are required to report to the FPB in writing, within 30 (thirty) days from publication of this Notice –
- (1) What reasonable measures have they put in place to prevent prohibited content ahead of and during 2024 National Elections in the Republic; and
 - (2) All reasonable steps taken to prevent access and/or distribution of 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 such as misinformation and disinformation during election.

SCHEDULE 4

9. Details of where responses should be communicated. – (1) All responses should be marked for the attention of the FPB, at the following contact details

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(a) By hand –

Film and Publication Board
Eco Glade 2
420 Witch Hazel Avenue
Centurion
1609

(b) By mail –

Film and Publication Board
Private Bag X31
Highveld Park
0169

(c) By email –

clientsupport@fpb.org.za