

Films and Publications Act, 1996 (Act no 65 of 1996)
Amendments: Child Pornography Offences

1. Definitions

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

- (a) engaged in sexual conduct;
 - (b) participating in, or assisting another person to participate in, sexual conduct; or
 - (c) showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purposes of sexual exploitation;
- [Definition of “child pornography” inserted by s. 1 (a) of Act No. 34 of 1999, amended by s. 1 (a) of Act No. 18 of 2004 and substituted by s. 1 (c) of Act No. 3 of 2009.]

“distribute”, in relation to a film or a publication, without derogating from the ordinary meaning of that word, includes to sell, hire out or offer or keep for sale or hire and, for purposes of sections 24A and 24B, includes to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereto by such a person; [Definition of “distribute” substituted by s. 1 (c) of Act No. 18 of 2004 and by s. 1 (e) of Act No. 3 of 2009.]

“domestic violence” means depictions or descriptions of—

- (a) physical abuse;
 - (b) sexual abuse; or
 - (c) emotional, verbal and psychological abuse,
- and includes any other abusive behaviour involving persons who are or have been in an intimate relationship or who are family members, regardless of gender or sexual orientation; [Definition of “domestic violence” inserted by s. 1 (f) of Act No. 3 of 2009.]

“explicit sexual conduct” means graphic and detailed visual presentations or descriptions of any conduct contemplated in the definition of “sexual conduct” in this Act; [Definition of “explicit sexual conduct” inserted by s. 1 (h) of Act No. 3 of 2009.]

“film” means any sequence of visual images recorded in such a manner that by using such recording such images will be capable of being seen as a moving picture, and includes any picture intended for exhibition through any medium or device: [Definition of “film” substituted by s. 1 (i) of Act No. 3 of 2009.]

“game” means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players; [Definition of “game” inserted by s. 1 (j) of Act No. 3 of 2009.]

“in public” includes any place to which admission is obtained for any consideration, direct or indirect, or by virtue of membership of any association of persons or contribution towards any fund; [Definition of “in public” substituted by s. 1 (k) of Act No. 3 of 2009.]

“possession”, in relation to a film or publication, without derogating from its ordinary meaning, includes keeping or storing in or on a computer or computer system or computer data storage medium and also having custody, control or supervision on behalf of another person; [Definition of “possession” inserted by s. 1 (e) of Act No. 18 of 2004.]

“publication” means—

- (a) any newspaper, book, periodical, pamphlet, poster or other printed matter;
- (b) any writing or typescript which has in any manner been duplicated;
- (c) any drawing, picture, illustration or painting;
- (d) any print, photograph, engraving or lithograph;
- (e) any record, magnetic tape, soundtrack, or any other object in or on which sound has been recorded for reproduction; [Para. (e) substituted by s. 1 (o) of Act No. 3 of 2009.]
- (f) computer software which is not a film;
- (g) the cover or packaging of a film;
- (h) any figure, carving, statue or model; and
- (i) any message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet;

“sexual conduct” includes—

- (i) male genitals in a state of arousal or stimulation;
- (ii) the undue display of genitals or of the anal region;
- (iii) masturbation;
- (iv) bestiality;
- (v) sexual intercourse, whether real or simulated, including anal sexual intercourse;
- (vi) sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object;
- (vii) the penetration of a vagina or anus with any object;
- (viii) oral genital contact; or
- (ix) oral anal contact; [Definition of “sexual conduct” inserted by s. 1 (f) of Act No. 18 of 2004.]

“sexual violence” means conduct or acts contemplated in the definitions of “sexual conduct” and “explicit sexual conduct” that are accompanied either by force or coercion, actual or threatened, or that induces fear or psychological trauma in a victim; [Definition of “sexual violence” inserted by s. 1 (q) of Act No. 3 of 2009.]

“visual presentation” means—

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

Substitution of Section 27

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

- (1) Any person may exhibit in public or distribute any film, game or publication classified as “X18” in terms of this Act if such person is the holder of a licence to conduct the business of adult premises, issued by a licensing authority in terms of relevant national, provincial or local government laws: Provided that such exhibition or distribution takes place on or from within premises forming part of a building.
Sub-s. (1) substituted by s. 28 (a) of Act No. 3 of 2009.]
Wording of Sections
- (2) Any exemption granted in terms of subsection (1) may be suspended by the Board for a period not exceeding one year, if the Board, after the holding of an inquiry, is satisfied that—
- (a) notices stating that no person under the age of 18 years may enter or be within such premises were not displayed, in the manner prescribed by the Board, at all entrances to the premises concerned;
 - (b) a film, game or publication was displayed or exhibited within such premises, or in a display window or door forming part thereof, in such a manner or in such a position that the film, game or publication could be seen from any point outside the premises concerned;
 - (c) any person under the age of 18 years was allowed to enter or be within the premises concerned; or
 - (d) any film, game or publication classified as “X18” in terms of a decision of the Board, published in the *Gazette*, was delivered by the person licensed in terms of subsection (1) to conduct such premises—
 - (i) to a person who is not the holder of a similar licence; or
 - (ii) in a manner which was not in accordance with regulations made under this Act with the aim of preventing the delivery of such films, games or publications to persons under the age of 18 years.
- [Sub-s. (2) substituted by s. 28 (a) of Act No. 3 of 2009.] Wording of Sections

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

- (1) Any person who knowingly distributes or exhibits in public a film or game without first having been registered with the Board as a distributor or exhibitor of films or games shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
- (2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16 (1) of this Act which has—
- (a) except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16 (1), not been classified by the Board;
 - (b) been classified as a “refused classification”; or
 - (c) been classified as “XX”,
- shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of films or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified “X18”, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (4) Any person who knowingly distributes or exhibits any film, game or publication—
- (a) classified as “X18”; or
 - (b) which contains depictions, descriptions or scenes of explicit sexual conduct, unless such film, game or publication is a *bona fide* documentary or is of scientific, literary or artistic merit or is on a matter of public interest,
- to a person under the age of 18 years, shall be guilty of an offence and liable, upon conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (5) Any person who knowingly distributes a film, game or publication which has been classified by the Board without displaying, clearly and conspicuously and in the prescribed manner, the classification reference number, the age restriction, consumer advice and any other condition imposed on the distribution of that film, game or publication shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
- (6) Any person who knowingly advertises a film or game in any medium without indicating, clearly and conspicuously so as to be plainly visible to the public, the age restriction, consumer advice and any other condition imposed on the film or game being advertised, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
- (7) Any person who knowingly and without the prior written approval of the Board exhibits in public during the same screening session, or distributes on the same cassette or disc of a film or game, a trailer advertising a film or a game with a more restrictive classification than the featured film or game, shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment.
[S. 24A inserted by s. 29 of Act No. 3 of 2009.]

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

- (1) Any person who—
- (a) unlawfully possesses;
 - (b) creates, produces or in any way contributes to, or assists in the creation or production of;
 - (c) imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of; or
 - (d) knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children,
- shall be guilty of an offence.
- (2) Any person who, having knowledge of the commission of any offence under subsection (1) or having reason to suspect that such an offence has been or is being committed and fails to—
- (a) report such knowledge or suspicion as soon as possible to a police official of the South African Police Service; and
 - (b) furnish, at the request of the South African Police Service, all particulars of such knowledge or suspicion,
- shall be guilty of an offence.
- (3) Any person who processes, facilitates or attempts to process or facilitate a financial transaction, knowing that such transaction will facilitate access to, or the distribution or possession of, child pornography, shall be guilty of an offence. [S. 24B inserted by s. 29 of Act No. 3 of 2009.]

24C. Obligations of internet access and service providers.—

- (1) For the purposes of this section, unless the context otherwise indicates—
- (a) **“child-oriented service”** means a contact service and includes a content service which is specifically targeted at children;
 - (b) **“contact service”** means any service intended to enable people previously unacquainted with each other to make initial contact and to communicate with each other;
 - (c) **“content”** means any sound, text, still picture, moving picture, other audio visual representation or sensory representation and includes any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated but excludes content contained in private communications between consumers;
 - (d) **“content service”** means—
 - (i) the provision of content; or
 - (ii) the exercise of editorial control over the content conveyed via a communications network, as defined in the Electronic Communications Act, 2005 (Act No. 35 of 2005), to the public or sections of the public; and
 - (e) **“operator”** means any person who provides a child-oriented contact service or content service, including Internet chat-rooms.
- (2) Any person who provides child-oriented services, including chat-rooms, on or through mobile cellular telephones or the internet, shall—
- (a) moderate such services and take such reasonable steps as are necessary to ensure that such services are not being used by any person for the purpose of the commission of any offence against children;
 - (b) prominently display reasonable safety messages in a language that will be clearly understood by children, on all advertisements for a child-oriented service, as well as in the medium used to access such child-oriented service including, where appropriate, chat-room safety messages for chat-rooms or similar contact services;
 - (c) provide a mechanism to enable children to report suspicious behaviour by any person in a chat-room to the service or access provider;
 - (d) report details of any information regarding behaviour which is indicative of the commission of any offence by any person against any child to a police official of the South African Police Service; and
 - (e) where technically feasible, provide children and their parents or primary care-givers with information concerning software or other tools which can be used to filter or block access to content services and contact services, where allowing a child to access such content service or contact service would constitute an offence under this Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.
- (3) Any person who fails to comply with subsection (2) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment. [S. 24C inserted by s. 29 of Act No. 3 of 2009.]