

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 3798

18 August 2023

FILM AND PUBLICATION BOARD**FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED****DRAFT REGULATORY INSTRUMENTS OF THE FILM AND PUBLICATION BOARD**

1. I, Dr Mashilo Boloka, the Chief Executive Officer at the Film and Publication Board, hereby publishes for public comment the following draft regulatory instruments, namely:
 - 1.1. Draft Industry Code on Prevention of online harm;
 - 1.2. Draft Guidelines dealing with peer-to-peer video sharing; and
 - 1.3. Draft Guidelines to determine whether content is harmful.
2. Interested persons who wish to comment on any or all of the draft regulatory instruments listed above may submit their written representations **within 15 (fifteen) working days** of publication of this Notice.
3. All comments should be marked for the attention of **Mr Andrew Sebapu**, at the following contact details:


By hand: **The Film and Publication Board
Eco Glade 2
420 Witch Hazel Avenue
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By mail: **The Film and Publication Board
Private Bag X31
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By email: **clientsupport@fpb.org.za** (Kindly write *draft Regulatory Instruments of the Film and Publication Board* in the subject field of your email)

Enquiries: **012 003 1400**

4. A copy of the draft regulatory instruments listed above are also available at www.fpb.org.za.



Dr Mashilo Boloka
CEO
Film and Publication Board
Date: 14/07/2023

INDUSTRY CODE ON PREVENTION OF ONLINE HARM

Introduction

1. The Film and Publications Board (FPB) is an statutory body established in terms of the Films and Publications Act 65, (Act 65 of 1996) as amended (Act) to regulate the creation, production, possession and distribution of films, games, certain publications and the internet by way of classification of content.
2. The Act prohibits sharing of harmful and/or prohibited content such as child pornography, revenge porn, hate speech and 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.
3. Due to the proliferation of child sexual abuse material cases that the FPB is dealing with on a daily basis and the amount of harmful content distributed online as the Content Regulatory Authority of South Africa, the FPB is obligated to enhance the way it regulates such prohibited and or harmful content distributed online.

Scope of the Code

4. As part of its legislated mandate to protect the public and in particular, children from exposure to disturbing and harmful material distributed online, the FPB deemed it necessary to set some mechanism in place in order for the industry role players to prevent and mitigate the adverse impact of online harm. To this end, this code on prevention of online harm was developed in order to set minimum standards of measures to be put in place by all industry role players in ensuring that the public is protected from online harm acknowledging that some of the role players might already have some mechanism in place but at minimum,

the industry is expected so have the measures as outlined in the code. This code shall apply to industry role players such as commercial online distributors and social media platforms.

Content control

5. Industry role players such as commercial online distributors and social media must not use their services and or platforms to host or distribute prohibited content such as child pornography, revenge porn, hate speech and 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.
6. Where Industry role player becomes aware of prohibited content hosted or distributed using their services and or platforms, the Industry role player must immediately suspend access to that content. Where required to do so by law, report such prohibited content to the FPB and or to members of the South African Police Services.
7. Industry role players must not host or distribute any content that:
 - 7.1. explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
 - 7.2. bestiality, incest, rape, conduct or an act which is degrading of human beings;
 - 7.3. explicit infliction of domestic violence; or
 - 7.4. explicit visual presentations of extreme violence.

Consumer support

8. Consumer support must be easily available through any means of communication such as emails, telephone, WhatsApp etc. Should the industry role player be unable to provide immediate support, consumer should be provided with the ability to leave a message.
9. Industry role players shall have a procedure allowing consumers to lodge complaints regarding the prohibited content hosted or distributed using the services or platforms.
10. Industry role players shall acknowledge receipt of complaints expeditiously and must respond to any complaints within a reasonable period of time.

Provision of Information about prohibited content including content in clause 7 of the Code

11. Industry role players shall notify the FPB if they become aware of any prohibited content including content in clause 7 being hosted or distributed using the services or platforms and the steps that have been taken in response within seven (7) days of becoming aware.
12. Industry role players shall keep records of any take-down notices they have received in terms of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) for a period of three years. A copy of any content taken-down in response of a notice must also be kept for a three years, provided it is lawful to do so.

Annual statement of compliance

13. Industry role players shall confirm their compliance with the Industry Code on at least an annual basis.

Adult services

14. The industry role players shall ensure that children under the age of 18 would not be able to access such a film or game online classified as X18.
15. The industry role players shall ensure that the classification and age restriction are clearly displayed on the screen of the user throughout the screening.
16. The industry role players shall ensure that the user confirms that he or she is 18 years or older prior to commencing viewing of the film or playing a game.
17. The industry role players 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.

Child oriented services

18. The industry role players shall moderate their child-orientated services and taken 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;
19. The industry role players shall 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, chatroom safety messages for chatrooms or similar contact services;
20. The industry role players shall provide a mechanism to enable children to report suspicious behaviour by any person in a chatroom to the service or access provider;
21. The industry role players shall 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

22. Where technically feasible, provide children and their parents or primary caregivers 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 the FP Act or which may be considered unsuitable for children, as well as information concerning the use of such software or other tools.

Protection of consumers against prohibited content

23. Industry role players shall identify, prevent and mitigate the adverse impact of online harm by taking the following actions:

23.1. Ensure that a specific individual and/or a team is designated with responsibility for this process and has access to the necessary internal and external stakeholders.

23.2. Develop and implement safeguarding policies such as privacy, marketing and relevant codes of conduct.

23.3. Have in place grievance and reporting mechanisms for any harmful and inappropriate content online such as child sexual abuse material, material that depicts sexual violence and violence against children, private sexual photographs distributed with the consent of the person who appears on the photograph or film with the intention to cause harm (revenge porn), 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 (hate speech).

24. Developing standard processes to handle child sexual abuse material (CSAM)

24.1. In collaboration with government, law enforcement, civil society and hotline organizations, industry has a key role to play in combating child sexual abuse material by taking the following actions:

24.1.1. Put in place internal procedures to ensure compliance with South African laws as well as international laws on combating child sexual abuse material. Where national regulations do not provide sufficient protection, industry should seek to go above and beyond the national regulations and use their leverage to lobby for legislative changes to enable industry to take steps to combat child sexual abuse material.

24.1.2. Use customer terms and conditions and policies to explicitly state the industry's position on the misuse of its services to store or share child sexual abuse material and harmful content online.

24.1.3. Develop take down notice (TDN) and reporting processes that allow users to report child sexual abuse material or harmful and inappropriate content distributed online.

24.1.4. Ensure a process is in place to act on those reports, and agree on procedures to capture evidence and remove harmful content and publish a quarterly report of the harmful content removed and cases acted on.

25. Creating a safer and age appropriate online environment

25.1. Industry role players must help create a safer, more enjoyable digital environment for the public and for children of diverse ages by taking the following actions:

- 25.1.1. Employ appropriate technical measures such as parental control tools, age-differentiated experiences with password-protected content, block/allow lists, purchase/time controls, opt-out functions, filtering and moderating to prevent underage access and exposure to inappropriate content or services.**
 - 25.1.2. Where possible, consider the use of age verification to limit access to content or material that, either by law or policy, is intended only for persons above a certain age.**
 - 25.1.3. In addition to the terms and conditions, communicate clear rules in easily understood language that emphasizes what behaviour is and is not acceptable on the service, and is particularly geared for young users and for their parents and caregivers. Be sure to state the consequences of breaking any of these rules.**
 - 25.1.4. Default privacy settings should be used. Offer clear reporting tools and develop a process to act on reports of inappropriate content and provide detailed feedback to service users on the reporting process.**
- 26. Educating children, parents, and teachers about children’s safety online by clearly describing available content and corresponding parental controls or family safety settings. Make language and terminology accessible, visible, clear and relevant for all users – including children, parents and caregivers especially in relation to terms and conditions, privacy policies, safety information and reporting mechanisms. Educate customers on how to manage concerns relating to Internet usage – including spam, data theft and inappropriate conduct such as bullying and grooming.**

GUIDELINE FOR PEER-TO-PEER VIDEO SHARING

1. INTRODUCTION

The Film and Publications Board (FPB) is an Online Content Regulatory Authority established in terms of the Film and Publication Act 65 of 1996 as amended (Act). The mandate of the FPB is to regulate the creation, production, possession and distribution of films, games, certain publications and the internet by way of classification of content. The Act prohibits sharing of harmful and/or prohibited content such as child pornography, revenge porn, hate speech and 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.

In terms of section 18F (1) (a) and (b) no person may expose, through any medium, including the internet and social media, a private sexual photograph or film if the disclosure is made:-

- without the consent of the individual or individuals who appear in the photograph or film; and
- with the intention of causing that individual harm.

The Act further stipulates that a photograph or film is “sexual” if such a film or photograph:-

- shows all or part of an individual’s exposed female breasts, anus, genitals or pubic area;
- shows something that a reasonable person would consider to be sexual because of its nature; or
- its content, taken as a whole, is such that a reasonable person would consider it to be sexual (Section 18F of the Act).

2. PURPOSE

The purpose of the guideline is to provide guidance on how to share videos among peers and various peer groups operating in various platforms.

3. CONSTITUTIONAL FRAMEWORK.

South Africa is a democratic state founded on the values of the Constitution. The Bill of Rights is a cornerstone of democracy. It affirms the democratic values of human dignity, equality and freedom. It is therefore critical to consider rights applicable to all when sharing content:

3.1 Right to human dignity

Everyone has an inherent dignity and the right to have their dignity respected and protected.

3.2 Right to privacy

Everyone has the right to privacy, which includes the right not to have-

- (a) their person or home searched*
- (b) their property searched;*
- (c) their possession seized; or*
- (d) their privacy of their communications infringed.*

4, CONSEQUENCES

The following are the negative consequences for video sharing:

- 4.1 You will be committing an offence which will lead to arrest; on successful prosecution, imprisonment or payment of a fine.
- 4.2 Defaming another person and therefore exposing yourself to delictual liability on successful claim; it will lead to payment of damages

3. RULES TO CONSIDER

When determining how content can be shared on peer-to-peer platforms, it is important to consider guidelines that promote responsible and legal sharing while respecting the rights and well-being of others.

The general guidelines would be as follows:

- a) **Respect Copyright and Intellectual Property;**
- b) **Privacy Considerations;**
- c) **Lawful Content;**
- d) **User Guidelines and Terms of Service;**
- e) **Consent and Permissions;**
- f) **Context and Appropriateness;**
- g) **Attribution and Crediting; and**
- h) **User Safety and Well-being.**

Remember that these guidelines provide general principles, and specific platforms may have their own unique policies and guidelines. It is essential to familiarize yourself with the rules and regulations of the particular peer-to-peer platform you are using and abide by them to ensure responsible and ethical content sharing.

3. RESPECT COPYRIGHT AND INTELLECTUAL PROPERTY

Respecting copyright and intellectual property involves acknowledging and honouring the rights of creators and owners of original works.

To assist in determining how to respect copyright and intellectual property the following should be considered:

a) Obtain Proper Permissions

Seek permission from the copyright owner before using or sharing their copyrighted material. This includes written works, images, music, videos, software, and other creative works protected by copyright. If you are unsure about the copyright status or how to obtain permission, reach out to the copyright owner for clarification.

b) Use Public Domain or Creative Commons Works

Utilize works that are in the public domain or are licensed under Creative Commons licenses. These works may be freely available for use with specific conditions outlined by the copyright holder. Ensure that you comply with the terms of the particular license when using such works.

c) Fair Use and Fair Dealing

Understand the concept of fair use or fair dealing for certain limited purposes, such as criticism, commentary, news reporting, research, or educational purposes. Familiarise yourself with the specific criteria and limitations set by copyright laws in your jurisdiction.

d) Attribute and Credit the Source

When using or sharing copyrighted material, provide appropriate attribution and credit to the original creator or source. Clearly acknowledge their contribution by including the name, title, and source of the work. Follow any guidelines provided by the copyright owner regarding attribution.

e) Avoid Plagiarism

Do not present someone else's work as your own. When incorporating or referencing copyrighted material, properly cite and attribute the original source. Plagiarism is not only an ethical violation but can also infringe on copyright laws.

f) Be Aware of Licensing Agreements

Pay attention to licensing agreements, terms of use, or terms and conditions associated with content, software, or other intellectual property. Abide by the terms and restrictions specified in these agreements to respect the rights of the copyright owner.

- g) Seek Legal Advice:** If you have any doubts or concerns regarding copyright or intellectual property, seek legal advice from professionals specializing in copyright law. They can provide guidance specific to your situation and ensure compliance with the applicable laws and regulations.

Remember that copyright laws can vary between countries, and it is essential to be aware of the legal framework in your jurisdiction. Respecting copyright and intellectual property helps protect the rights of creators, encourages creativity, and promotes a fair and ethical use of intellectual works.

4. PRIVACY CONSIDERATION

When sharing content on peer-to-peer platforms, it's important to consider privacy considerations to protect the personal information and privacy rights of individuals.

The key privacy considerations are as follows:

a) Personal Information

Be mindful of sharing personal information that can identify individuals, such as names, addresses, contact details, or any other sensitive data. Avoid sharing such information without the explicit consent of the individuals involved.

b) Consent

Obtain the appropriate consent from individuals before sharing content that includes their personal information. Ensure that individuals are aware of how their information will be used and shared on the peer-to-peer platform.

c) Data Protection Laws

Familiarize yourself with the data protection laws and regulations applicable in your jurisdiction. Understand your obligations as a content sharer and ensure compliance with these laws, including obtaining necessary consent, implementing security measures, and respecting individuals' rights regarding their personal information.

d) Anonymisation and Pseudonymisation

Consider anonymising or pseudonymising personal information before sharing content. Removing or modifying personally identifiable information helps protect individuals' privacy and reduces the risk of unauthorised access or misuse.

e) Security Measures

Take appropriate security measures to safeguard the content and personal information you share on peer-to-peer platforms. Use strong passwords, enable encryption where possible, and follow recommended security practices to minimize the risk of data breaches or unauthorised access.

f) Platform Settings and Privacy Options

Understand and configure the privacy settings and options provided by the peer-to-peer platform. Familiarise yourself with the platform's privacy policies and features that allow you to control who can access and share your content.

g) **Third-Party Access**

Be cautious about sharing content on peer-to-peer platforms that may provide access to third parties or other users. Understand the platform's policies regarding data sharing with third parties and ensure that you are comfortable with the level of privacy and control provided.

h) **Content Moderation**

Consider the content moderation practices of the peer-to-peer platform. Ensure that the platform has mechanisms in place to address privacy concerns, handle user complaints, and remove inappropriate or unauthorised content.

i) **Education and Awareness**

Stay informed about privacy best practices, emerging threats, and changes in privacy regulations. Educate yourself and others about the importance of privacy protection when sharing content on peer-to-peer platforms.

It is important to note that privacy considerations can vary depending on the specific platform, jurisdiction, and nature of the content being shared. Always review and adhere to the platform's privacy policies and terms of service, as well as applicable privacy laws, to ensure that you are respecting individuals' privacy rights when sharing content on peer-to-peer platforms.

5. WHETHER CONTENT IS LAWFUL ON PEER-TO-PEER PLATFORMS

Assessing whether content is lawful on peer-to-peer platforms involves evaluating its compliance with applicable laws and regulations.

While specific laws may vary depending on the jurisdiction, here are some general steps to consider:

a) **Understand Applicable Laws**

Familiarise yourself with the relevant laws and regulations that govern content on peer-to-peer platforms. These may include laws related to copyright, intellectual property, defamation, hate speech, obscenity, child exploitation, privacy, and any other relevant legal provisions.

b) **Review Platform Guidelines**

Consult the guidelines and terms of service provided by the peer-to-peer platform. Platforms often have their own rules and policies regarding the type of content that is allowed or prohibited. Ensure that the content aligns with these guidelines.

c) **Copyright Compliance**

Verify that the content does not infringe upon copyright or intellectual property rights. Ensure that you have the necessary permissions or licenses to use and share copyrighted material. Respect the rights of content creators and owners by avoiding unauthorised sharing of their work.

d) **Avoid Illegal or Harmful Content**

Assess whether the content violates any laws or regulations, including those related to hate speech, incitement to violence, harassment, discrimination, child exploitation, or any other prohibited activities. Content that promotes illegal activities or causes harm should not be shared.

e) **Consider Context and Intended Purpose**

Evaluate the context in which the content is shared and its intended purpose. Certain content may be lawful in specific contexts or for specific purposes, such as educational, journalistic, or artistic uses. Assess whether the content falls within acceptable legal boundaries given its context and purpose.

f) Consult Legal Experts

If you are unsure about the legality of certain content, seek legal advice from professionals specialising in relevant areas of law. They can provide guidance based on the specific jurisdiction and legal framework.

g) Reporting and Compliance

If you come across content that you believe is illegal or violates the platform's guidelines, report it to the appropriate authorities or the platform's moderation team. Cooperate with any requests or investigations related to content compliance and take necessary action to ensure compliance with the law.

Remember that legal assessments of content on peer-to-peer platforms can be complex and may require expert legal advice. Laws can vary between jurisdictions, and it is essential to understand and comply with the specific legal framework applicable to your situation.

6. USER GUIDELINES AND TERMS OF SERVICE ON PEER-TO-PEER PLATFORMS

To determine the user guidelines and terms of service on peer-to-peer platforms, follow these steps:

a) Locate the Platform's Website

Visit the official website of the peer-to-peer platform you are using or interested in. The website typically provides information about the platform's terms of service and user guidelines.

b) Look for Legal and Policy Sections

Navigate to the legal or policy sections of the platform's website. These sections often contain important documents such as terms of service, user guidelines, acceptable use policies, community standards, or similar documents.

c) Read Terms of Service

Review the platform's terms of service thoroughly. Terms of service outline the contractual agreement between the platform and its users. Pay attention to the sections that address user obligations, content sharing policies, intellectual property, privacy, liability, and dispute resolution.

d) Explore User Guidelines or Community Standards

Check for user guidelines or community standards provided by the platform. These documents offer specific guidance on the types of content that are allowed or prohibited on the platform. They may cover topics such as hate speech, harassment, illegal activities, spam, or other content-related policies.

e) Understand Acceptable Use Policies

Some platforms have acceptable use policies that provide further details on the expected behaviour and use of the platform. These policies may cover issues such as spam prevention, user conduct, prohibited activities, and the consequences for violating the policies.

f) Note Specific Requirements or Restrictions

Take note of any specific requirements or restrictions mentioned in the user guidelines or terms of service. This could include limitations on file sizes, content formats, age restrictions, or geographical restrictions.

g) Clarify Ambiguities or Seek Clarification

If you encounter any ambiguities or have questions about the user guidelines or terms of service, contact the platform's support team or customer service. They can provide clarification and guidance regarding specific policies or rules.

h) Stay Updated

Keep in mind that user guidelines and terms of service may change over time. Periodically revisit the platform's website to stay updated on any revisions or amendments to the policies.

It is crucial to familiarise yourself with the user guidelines and terms of service to understand the platform's expectations, rules, and policies. Adhering to these guidelines helps ensure a positive and compliant user experience on peer-to-peer platforms.

7. CONSENT AND PERMISSIONS TO SHARE CONTENT ON PEER-TO-PEER PLATFORMS

Securing consent and permissions to share content on peer-to-peer platforms is an important step to respect the rights of content creators and individuals involved.

The general process to secure consent and permissions is as follows:

a) Identify the Content and Rights Holder

Determine who owns the rights to the content you wish to share. It could be the original creator, author, photographer, or any other person or entity with legal ownership or control over the content.

b) Determine the Purpose and Scope of Use

Clearly define the purpose for which you want to share the content and the specific ways in which it will be used. This helps you communicate your intentions to the rights holder and obtain appropriate permissions.

c) Contact the Rights Holder

Reach out to the rights holder and request their permission to share the content on the peer-to-peer platform. Provide detailed information about the content, your intended use, and any other relevant details. Use a clear and concise message to explain why you want to share the content and how it aligns with the rights holder's interests.

d) Consent Forms or Agreements

In some cases, especially for commercial or more formal uses, it may be necessary to use written consent forms or agreements. These documents outline the terms and conditions of the permissions granted by the rights holder. Consult legal professionals or use standard templates to create consent forms or agreements if needed.

e) Respect the Rights Holder's Decision

Once you receive a response from the rights holder, respect their decision. If they grant permission, ensure that you adhere to any conditions or limitations specified. If they decline or do not respond, refrain from sharing the content without explicit authorisation.

f) Document and Maintain Records

Keep a record of the permissions received and any supporting documentation, such as consent forms or email correspondence. This helps demonstrate your compliance with legal and ethical obligations.

g) Attribution and Credit

If the rights holder grants permission to share the content, ensure that you attribute it appropriately. Credit the rights holder by including their name, title, or any other information specified by them. Follow any guidelines or requirements they provide for proper attribution.

h) Review and Comply with Platform Policies

Familiarise yourself with the specific policies and guidelines of the peer-to-peer platform you are using. Ensure that your sharing of content aligns with their terms of service and any content-sharing rules they have in place.

Remember that the process of securing consent and permissions may vary depending on the nature of the content and the specific circumstances. It is important to communicate openly and transparently with the rights holders and to seek legal advice if you have any uncertainties regarding copyright or intellectual property laws. Respecting the rights of content creators and obtaining proper permissions helps ensure a responsible and ethical approach to content sharing on peer-to-peer platforms.

8. CONTEXT AND APPROPRIATENESS

Assessing the context and appropriateness of content before sharing it on peer-to-peer platforms is crucial to ensure responsible and respectful sharing.

The following steps should be considered:

a) Understand the Platform's Audience

Familiarise yourself with the platform's user base and the audience who will potentially view the content. Different platforms cater to various demographics, interests, or purposes. Assess whether the content aligns with the platform's overall tone and user expectations.

b) Evaluate the Content's Relevance

Determine if the content is relevant and appropriate for the intended audience and the purpose of the platform. Consider the platform's focus, theme, or topic and assess whether the content adds value, contributes to discussions, or aligns with the platform's goals.

c) Analyse the Content's Quality

Assess the quality of the content in terms of its accuracy, reliability, credibility, and overall value. Verify the information presented, fact-check if necessary, and ensure that the content is well-crafted and provides meaningful or useful insights.

d) Consider the Cultural and Social Context

Take into account the cultural, social, and historical context surrounding the content. Evaluate whether the content may be offensive, insensitive, or inappropriate given the context. Be aware of cultural sensitivities, political climate, or ongoing discussions that may impact how the content is perceived.

e) Assess Potential Impact

Consider the potential impact the content may have on individuals or groups. Evaluate whether the content could cause harm, perpetuate stereotypes, incite

violence, or spread misinformation. Strive to share content that is respectful, inclusive, and promotes positive engagement.

f) Seek Diverse Perspectives

Encourage diversity and inclusivity by seeking perspectives from different backgrounds, cultures, or communities. Ensure that the content represents a balanced view and respects the voices and experiences of marginalized or underrepresented groups.

g) Conduct Pre-Sharing Review

Before sharing the content, conduct a thorough review. Read or view the content in its entirety to understand its message, tone, and implications. Consider seeking feedback from trusted individuals or colleagues to gain alternative viewpoints.

h) Reflect on Personal Bias and Intentions

Take a moment to reflect on your own biases, motivations, and intentions behind sharing the content. Ensure that you are not promoting harmful ideologies, spreading misinformation, or using the content for inappropriate purposes.

i) Comply with Legal and Ethical Guidelines

Ensure that the content complies with legal requirements, such as copyright laws, privacy rights, and other applicable regulations. Adhere to ethical guidelines and respect the rights of content creators and individuals involved in the content.

By following these steps, you can assess the context and appropriateness of content before sharing it on peer-to-peer platforms. Remember that responsible content sharing contributes to a positive and constructive online environment.

9. ENSURE ATTRIBUTION AND CREDITING WHEN SHARING CONTENT ON PEER-TO-PEER PLATFORMS

Ensuring proper attribution and crediting when sharing content on peer-to-peer platforms is important to respect the rights of content creators and maintain ethical practices.

Guidelines to consider are as follows:

a) Identify the Content's Source

Determine the original source of the content you intend to share. This could be the creator's name, username, website, social media profile, or any other identifiable information associated with the content.

b) Provide Clear and Visible Attribution

Clearly attribute the content to its rightful owner or creator. Include their name, username, or any other relevant information that identifies them. Ensure that the attribution is prominently visible and easily identifiable in connection with the shared content.

c) Include Link or Reference

Whenever possible, provide a link or reference to the original source of the content. This could be a direct link to the creator's website, social media post, or any other platform where the content was originally published. Linking back to the source allows others to access the original content and supports the creator's work.

d) Follow the Creator's Preferred Attribution Format

Some content creators may specify a preferred format or style for attribution. Respect their preferences and follow their guidelines if provided. This could include specific wording, formatting, or placement of the attribution.

e) Verify Copyright and Licensing

Ensure that you have the necessary rights or permissions to share the content. Check for any copyright restrictions, licenses, or creative commons requirements associated with the content. Adhere to the terms and conditions set by the creator or copyright holder.

f) Credit Collaborators or Contributors

If the content involves multiple creators or contributors, make sure to attribute their contributions as well. Acknowledge their role in the creation of the content and give credit where it is due.

g) Attribute Quotes or Excerpts

When sharing a specific quote, excerpt, or portion of a larger work, attribute it to the original author or speaker. Clearly indicate that it is a quote and provide the necessary attribution in accordance with the creator's preferences.

h) Maintain Integrity of the Attribution

Ensure that the attribution remains intact even when the content is shared or reposted by others. Encourage others to provide proper attribution when they share the content as well.

i) Seek Permission for Modifications

If you plan to modify or adapt the content in any way, seek permission from the original creator. Respect their rights and creative integrity by obtaining explicit consent for any alterations.

Remember, attribution is not only a legal requirement in many cases but also an ethical practice that recognizes and honours the work of content creators. By properly attributing and crediting content on peer-to-peer platforms, you contribute to a culture of respect, fairness, and collaboration.

10. PRIORITISE USER SAFETY AND WELL-BEING WHEN SHARING CONTENT

Prioritising user safety and well-being when sharing content on peer-to-peer platforms is essential to create a positive and secure online environment.

Ways in which to prioritise user safety are as follows:

a) **Verify the Accuracy and Credibility**

Before sharing any content, ensure that it is accurate, reliable, and trustworthy. Misinformation or false information can harm users and contribute to the spread of misinformation. Fact-check the content from reputable sources before sharing.

b) **Consider the Impact**

Assess the potential impact of the content on users. Avoid sharing content that may be offensive, discriminatory, or harmful to individuals or communities. Be mindful of the potential emotional or psychological effects that the content may have on vulnerable users.

c) **Respect Privacy and Consent**

Always respect user privacy and obtain consent before sharing any personal information or sensitive content related to individuals. Be aware of privacy settings and permissions associated with the content you share.

d) Avoid Cyberbullying and Harassment

Do not engage in or promote cyberbullying, harassment, or any form of online abuse. Refrain from sharing content that targets or maligns individuals or encourages others to engage in harmful behaviour.

e) Use Trigger Warnings

If the content contains sensitive or triggering material, consider using trigger warnings. This allows users to make an informed decision about engaging with the content and helps prevent any negative emotional or psychological impact.

f) Report and Address Violations

If you come across content that violates platform guidelines, user safety, or well-being, report it to the appropriate authorities or platform moderators. Take necessary steps to protect users from harmful content, including blocking or unfollowing individuals who engage in harmful behaviour.

g) Foster Positive Engagement

Encourage respectful and constructive discussions among users. Promote inclusivity, diversity, and empathy in your interactions and content sharing. Actively participate in creating a supportive online community.

h) Educate and Inform

Share resources, tips, and information that promote digital literacy, online safety, and responsible content sharing. Help users understand the potential risks and empower them to make informed decisions about their online activities.

i) Be Mindful of Online Etiquette

Follow basic online etiquette and treat others with respect and kindness. Avoid engaging in online arguments, spreading hate, or participating in harmful behaviour. Be a positive role model for others.

By prioritising user safety and well-being when sharing content, you contribute to a healthier online ecosystem that fosters positive interactions, promotes safety, and respects the rights and dignity of all users.

11. CONCLUSIONS

When determining how content can be shared on peer-to-peer platforms, it is important to consider guidelines that promote responsible and legal sharing while respecting the rights and well-being of others.

GUIDELINES TO DETERMINE WHETHER CONTENT IS HARMFUL

1. INTRODUCTION

The Film and Publications Board (FPB) is an Online Content Regulatory Authority established in terms of the Film and Publication Act 65 of 1996 as amended (Act). The mandate of the FPB is to regulate the creation, production, possession and distribution of films, games, certain publications and the internet by way of classification of content. The Act prohibits sharing of harmful and/or prohibited content such as child pornography, revenge porn, hate speech and 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.

In terms of the Act, "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

2. PURPOSE

The purpose of the guideline is to assist the Appeal Tribunal to determine what constitute harmful and prohibited content.

3. CONSTITUTIONAL FRAMEWORK.

When determining whether speech is harmful, it is essential to consider the legal framework and principles that guide freedom of expression. In South Africa the Constitution of the Republic of South Africa, 1996 (Constitution) protects freedom of speech, subject to certain limitations outlined in the law.

2. GENERAL STEPS

The general steps to follow when assessing whether speech is harmful is as follows:

- a) Understand the constitutional framework;
- b) Identify potentially harmful speech;
- c) Analyse the context;
- d) Refer to legislation;
- e) Assess for hate speech; and
- f) Consider limitations on freedom of expression.

It is important to note that the above steps provide a general framework, and legal advice from experts should always be sought in specific cases to ensure compliance with South African law and judicial interpretations.

2.1. UNDERSTAND THE CONSTITUTIONAL FRAMEWORK

The constitutional framework in South Africa to assess whether speech is harmful is primarily based on the provisions of the Constitution.

In addition to the constitutional framework, specific legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (PEPUDA), provide further guidance on identifying and addressing harmful speech, particularly hate speech and discrimination.

When assessing whether speech is harmful, these constitutional provisions and related legislation are considered, and courts interpret and apply them in specific cases.

The interpretation and application of these provisions by the courts contribute to the evolving understanding of harmful speech and its limitations within the South African legal framework.

2.2. IDENTIFY POTENTIALLY HARMFUL SPEECH

To determine the nature of the speech in question and assess whether it falls within the scope of speech that may cause harm, you can consider the following factors:

a) Content and Language

Analyse the content of the speech and the language used. Look for elements that may indicate hate speech, incitement to violence, defamation, discriminatory remarks, or speech that infringes on the rights of others. Evaluate whether the speech targets individuals or specific groups based on race, ethnicity, religion, gender, or other protected characteristics.

b) Intent and Context

Consider the intent behind the speech. Assess whether there is an intention to harm, demean, or incite violence against individuals or groups. Examine the context in which the speech was made, including the platform, audience, and historical or social backdrop. Context can help determine the potential impact and harm caused by the speech.

c) Effects and Consequences

Evaluate the potential effects and consequences of the speech. Consider whether it has the potential to cause real harm, such as physical violence, discrimination, or damage to the reputation and well-being of individuals or communities. Assess whether the speech could lead to an escalation of tensions, conflict, or harm to public order.

d) **Legal Standards and Precedents**

Refer to legal standards and precedents established by courts in South Africa. Judicial decisions and interpretations of the law provide guidance on what constitutes harmful speech, including hate speech and incitement to violence. Consider relevant legal definitions and principles to assess whether the speech aligns with these standards.

e) **Social Impact and Community Perception**

Take into account the broader social impact and community perception of the speech. Consider whether it contributes to fostering an environment of tolerance, respect, and inclusivity or if it has the potential to fuel division, hostility, or discrimination. Assess whether the speech undermines social cohesion or threatens the rights and dignity of individuals or groups.

2.3. ANALYSE THE CONTEXT

Considering the context in which the speech was made is crucial when assessing whether it may cause harm.

To effectively evaluate the context, you can take the following factors into account:

a) Platform or Setting

Consider the platform or setting where the speech occurred. Different contexts, such as public rallies, social media, academic discussions, or private conversations, may influence the impact and potential harm caused by the speech.

b) Audience

Analyze the intended audience of the speech. Assess whether the speech was directed towards a specific group or a wider audience. Understanding the characteristics, beliefs, and vulnerabilities of the audience can help determine the potential impact and harm caused by the speech.

c) Historical and Social Background

Consider the historical and social backdrop against which the speech was made. Historical tensions, conflicts, or inequalities may heighten the potential harm caused by certain types of speech. Assess whether the speech exacerbates existing divisions or conflicts in society.

d) Speaker's Position and Influence

Evaluate the position and influence of the speaker. Assess whether the speaker holds a position of authority or has a significant following that could amplify the impact of their speech. Consider the potential consequences of the speech in light of the speaker's influence on public opinion and behaviour.

e) Tone and Rhetoric

Examine the tone and rhetoric used in the speech. Assess whether it is inflammatory, derogatory, or dehumanizing. Evaluate whether the speech promotes understanding, dialogue, and respect, or if it fosters hostility, discrimination, or violence.

f) **Immediate Context**

Consider the immediate circumstances surrounding the speech. Analyse whether there were any specific events, incidents, or controversies that may have influenced the speech. Evaluate whether the speech was a response to a particular situation or if it was spontaneous.

By considering these contextual factors, you can gain a better understanding of the potential impact and harm caused by the speech. It is important to note that context alone cannot determine whether speech is harmful, but it plays a significant role in assessing the overall effect and implications of the speech in question.

2.4. ASSESS FOR HATE SPEECH

Determining whether speech qualifies as hate speech requires an assessment based on legal definitions and principles. In the South African context, hate speech is defined and regulated by various laws and legal precedents. Here are some steps to consider when determining whether speech qualifies as hate speech:

a) **Review Legal Definitions**

Familiarise yourself with the legal definitions of hate speech as outlined in legislation and court rulings. In South Africa, hate speech is typically defined as speech that propagates, incites, or justifies violence or discrimination based on race, ethnicity, gender, religion, or other protected grounds.

b) Assess Intent

Examine the intent behind the speech. Hate speech often involves the intentional promotion of hatred, animosity, or prejudice against a specific group. Consider whether the speech seeks to demean, dehumanize, or marginalize individuals or communities based on their protected characteristics.

c) Evaluate Targeted Group

Identify the group targeted by the speech. Determine whether the speech is directed at a specific racial, ethnic, religious, or other protected group. Consider whether the speech seeks to foster hostility, prejudice, or discrimination against that group.

d) Analyse Content and Language

Scrutinize the content and language used in the speech. Look for derogatory, offensive, or degrading statements targeting the protected group. Evaluate whether the speech employs stereotypes, slurs, or inflammatory rhetoric that promotes hatred or discrimination.

e) Consider Context

Assess the context in which the speech was made. Contextual factors, such as the platform, audience, historical background, and social impact, can contribute to determining the harm caused by hate speech. Consider whether the speech is likely to incite violence, discrimination, or hatred within the specific context.

f) Consult Legal Precedents

Examine relevant legal precedents established by courts in hate speech cases. Courts' interpretations and decisions can provide guidance on the threshold for hate speech and the factors considered in determining its presence.

g) Seek Legal Advice

If you are uncertain about whether the speech qualifies as hate speech, it is advisable to consult legal experts or organizations specialising in freedom of expression and discrimination law. They can provide specific guidance based on the legal framework and precedents.

Remember that the assessment of hate speech is a nuanced and complex task, and legal experts should be consulted for precise interpretations and guidance based on the specific circumstances and legal framework in South Africa.

2.5. CONSIDER LIMITATIONS ON FREEDOM OF EXPRESSION

Evaluating whether speech falls within the boundaries of constitutionally permissible limitations on freedom of expression requires a careful analysis of the specific circumstances and legal framework.

Steps to consider are as follows:

a) Understand Constitutional Provisions

Familiarize yourself with the relevant constitutional provisions that outline the limitations on freedom of expression. In South Africa, section 16(2) of the Constitution sets out the permissible limitations on freedom of expression, including restrictions on hate speech, incitement to violence, and advocacy of hatred based on protected characteristics.

b) Assess Legitimate Purposes

Determine whether the limitation on freedom of expression serves a legitimate purpose recognised by the Constitution. Legitimate purposes may include protecting the rights and reputation of others, maintaining public order, safeguarding national security, or preventing incitement to violence or harm.

c) Proportionality

Consider whether the limitation on freedom of expression is proportional to the importance of the purpose it seeks to achieve. Assess whether the restriction is necessary and reasonable in achieving the legitimate purpose and whether it goes no further than what is required to achieve that purpose.

d) Judicial Precedents

Examine relevant judicial precedents and court decisions related to the limitations on freedom of expression. Courts' interpretations and rulings provide guidance on the scope and boundaries of permissible limitations. Consider how courts have applied the constitutional provisions in similar cases.

e) Balancing of Rights

Evaluate the balancing of competing rights and interests. Freedom of expression must be balanced with other constitutional rights, such as the right to dignity, equality, and non-discrimination. Assess whether the limitation on freedom of expression strikes an appropriate balance between these rights.

f) International Human Rights Standards

Consider international human rights standards and treaties to which South Africa is a party. These standards may provide additional guidance on permissible limitations on freedom of expression.

g) Consult Legal Experts

If you are uncertain about the evaluation or application of the constitutional limitations, seek legal advice from experts in constitutional law or human rights. They can provide specific guidance based on their expertise and knowledge of the legal framework.

Remember that the evaluation of permissible limitations on freedom of expression requires careful consideration of the specific circumstances and legal context. Legal experts should be consulted for precise interpretations and guidance based on the particular case and the evolving legal framework.

3. CONCLUSION

This guideline assists to determine whether speech is harmful, and in doing so it is essential to consider the legal framework and principles that guide freedom of expression.