



RIGHT2KNOW

1st Floor, Community House, 41 Salt River Rd, Salt River, Cape Town
Tel: 021 447 1000 admin@r2k.org.za www.r2k.org.za

22 May 2016

Attn: Mr Thembinkosi Ngoma

Portfolio Committee on Communications

WS3/106, 3rd Floor, 90 Plein Street

Cape Town, 8001

Right2Know Submission on the Films and Publications Amendment Bill [B37-2015]

- 1) Parliament has issued a call for written submissions on the Films and Publications Amendment Bill [B37-2015].
- 2) The Right2Know Campaign (R2K), launched in August 2010, is a coalition of organisations and activists across South Africa focusing on issues of information access, secrecy, surveillance, media and communication rights and freedom of expression. We, as R2K, seek a country and a world where we all have the right to know – that is to be free to access and to share information.
- 3) This submission, in line with our core principles, draws on the outcomes of a multi-stakeholder workshop on Regulating Content in Digital Age, held at the University of the Witwatersrand on 19-20 April, 2016. We as Right2Know have consistently engaged government on matters of digital content regulation and we take this opportunity to affirm the need for a free and open internet. This, we believe, is crucial to a fuller realisation of our constitutionally enshrined right to freedom of expression, which includes, but is not limited to, the freedom to impart or receive information or ideas, freedom of the press, freedom of artistic creativity, academic freedom, and freedom of scientific research.
- 4) The internet revolution has the potential to democratise knowledge in unprecedented ways. In South Africa, where we are witnessing the blossoming of the internet on a variety of ever improving platforms, the rapid development of internet technology and increasing internet access offer great

potential for fostering a more informed public, in tune with global conversations in an increasingly interconnected world.

5) It is for this reason that the work of R2K's focuses increasingly on internet freedom, all the more so because of the growing threats to online freedoms in SA and world. Some of the major threats to internet freedom that we are witnessing globally include: violations of individual privacy and the expansion of corporate and state surveillance online; and censorship of content, often on the pretext of security or 'moral' issues.

6) We further believe that universal internet access is inextricably bound to issues of internet freedom. We cannot accept the status quo, where meaningful internet access and the benefits that follow from that are enjoyed by a privileged minority. Our lives are increasingly moving online, and to be excluded from the internet is to be left out of the digital economy and to be denied participation in public discourse online which plays such a crucial role in the country's political life. Yet a huge proportion of South Africans are deprived of an important means of exercising their freedom of expression and their right to receive and impart information because the internet is priced out of their reach.

7) At stake here are basic civil liberties and the wellbeing of democracy, underscoring the need for robust responses to legislation and regulation that would result in greater state and corporate control over the internet. In a country with the kind of economic disparities we see in South Africa there is a particularly strong need for promoting internet access and literacy. To that end, we need enabling legislation. We reject legislation that is overly restrictive and which frames the internet primarily as a threat. Onerous legislation will stifle the empowering, democratising potential of the internet.

8) This is not to deny the very real online threats (cybercrime, child abuse material, et cetera) and the need to protect vulnerable users, especially children, from harmful content. This is a driving force behind the FPB draft regulations and the Bill. However, regulation of digital content that amounts to censorship in any form must not be allowed and we should be wary of overregulation being pushed forward by conservative agendas in the name of "protecting children". Legislation to address the abovementioned threats should be mindful of infringing fundamental rights to free expression and information access and weighed up against the need for a free and open internet. Attempts to regulate online content must therefore be clearly defined and delineated and as light-touch as possible. In this regard, it is the view of Right2Know that the Film and Publications Amendment Bill fails in several aspects.

9) The Bill contains a number of problematic areas concerning vague or overbroad definitions: of 'online distribution' and 'distribution', 'publications', 'child pornography' as well as the overlapping definitions of 'film' and 'digital film'. The definition for 'digital film' for example is so broad that it would include any video uploaded, including vines, gifs, and snippets of personal videos.

10) As with the FPB's draft online regulations, vague and ill-defined phrasing plagues the Bill and this could create space for misinterpretation and overreach. To begin with, the Bill does not have a circumscribed definition of those to whom it applies. The Bill aims to update the Films and Publications Act, 1996, to include online distributors of content, defined as: "...a person who conducts business in the selling, hiring out or exhibition of films including the streaming of content through the

internet, social media and other electronic mediums’. But this definition leaves too many ambiguities. Registration is required by all online distributors, but the Bill has no territorial limit with the Board empowered to ‘regulate’ content in South Africa and elsewhere. This is simply impossible to implement. Furthermore, there is no income threshold or other means of distinguishing between ‘distributors’ (ie. an individual blogger operating from home who earns small amounts through advertising should not be subject to the same requirements, especially with regard to fees for registering and classification of content, as a major international company that is in the business of online content distribution).

11) The press (print media and broadcast) are governed by the Press Council and ICASA. Broadcasting and newspapers must be exempt from regulation under the Bill. The Bill’s attempt to class internet protocol TV service providers as online distributors - meaning that content streamed by a broadcaster regulated by ICASA falls within the Bill’s jurisdiction - will blur boundaries of regulation, extend the Board’s authority beyond its mandate and into that of ICASA, and create further regulatory confusion. Furthermore, the attempt to compel ICASA to refuse to issue or renew licenses for non-compliance is plainly unconstitutional.

12) Other proposed legislation governing the internet (eg. Cybercrimes and cybersecurity bill) is currently in the pipeline and the Bill will create confusing overlap and duplication of offences in legislations and proposed legislations such as the Cybercrimes Bill which deal with, among others, issues of hate speech, racism and child abuse material on the internet (note: as participants at the workshop referred to in para.3 pointed out, the Bill’s definition of ‘hate speech’ is overly broad and therefore out of step with the definition contained in the constitution).

13) It is also important to bear in mind that legislation designed to protect children from harmful content, while indeed necessary, should not see them merely as passive victims and must take into account their rights and freedoms to participate online and in decisions that affect them. A progressive approach to protecting children and other vulnerable groups online would prioritise education and internet literacy as a means of empowerment. Moreover, legislation to protect children online must not be allowed to inadvertently ensnare them when the law is supposed to protect them from adult offenders. Nuanced legislation is needed so that children are not criminalised alongside adult offenders. Lastly, cases involving child abuse material are serious criminal matters and should be handled by the police.

Micah Reddy

Organiser for Media Freedom and Diversity, the Right2Know Campaign
