

| Proposal for text | Comments / Explanation |
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| <p>Definition of “XX” classification (disallowed content – may not be distributed): SS 16(4)(b) and 18(3)(b) of the Films and Publications Act, 1996</p> | |
| <p>(b) classify the film or game as "XX" if it contains—</p> | <p>The proposed amendments, found in clauses 15(i) and 17(b) of the B-version of the Bill [B37B-2015; ISBN 978-1-4850-0419-6], deletes most of the definition items, leading to unconstitutional unintended consequences.</p> |
| <p>(i) explicit sexual conduct <u>which violates or disrespects human dignity by –</u></p> <p><u>(a) presenting a human being as an object for sexual gratification or stimulation; or</u></p> <p><u>(b) exploiting the human body by reducing a human being to the sum of his or her body parts for purposes of sexual conduct;</u></p> <p><u>including, without limiting the scope of this paragraph, -</u></p> <p><u>(i) multiple simultaneous penetrations of the orifices of the human body;</u></p> <p><u>(ii) sexual conduct involving more than two persons,</u></p> <p><u>(iii) prostitution; or</u></p> <p><u>(iv) sexual conduct for financial or other reward, favour or compensation;</u></p> | <p><u>The items in ss 16(4)(b) and 18(3)(b) of the Act should not be deleted</u>, as -</p> <ol style="list-style-type: none"> 1. They serve important and legitimate government purposes. [We provided examples of the unintended consequences the proposed deletions will have in paragraph 20.2 of our written submissions and in our oral submissions.] 2. There is no legal obligation to delete these provisions, as the Constitutional Court in the Print Media case did not declare them to be vague or overbroad. [We addressed the impact of the Print Media judgments (both majority and minority) in our submissions.] <p>The “XX” classification should not be watered down, as this would result in unlawful content being re-characterised as allowable adult content (“X18” classification). Materials that violate human dignity, are degrading of human beings or promotes harming others, should continue to be unlawful, even if it does not contain violence or sexual violence.</p> |
| <p>(ii) bestiality, incest, rape <u>or a depiction wherein a human being is subjected to degrading, inhuman or cruel treatment, including, without limiting the scope of this paragraph, -</u></p> <p><u>(a) sexual violence;</u></p> <p><u>(b) explicit sexual conduct accompanied by explicit violence;</u></p> <p><u>(c) torture;</u></p> <p><u>(d) sexual intercourse with a human corpse; or</u></p> <p><u>(e) non-violent spitting, vomiting, urinating, ejaculating or defecating on a human being;</u></p> | <p><u>Alternatively</u>, if the view is taken that the wording of “XX” classification, as currently contained in the Act, is vague or overbroad, then these provisions should be “substantially redrafted” – as proposed by the minority in the Print Media case.</p> <p>We offer the proposed wording (adjacent) for consideration.</p> <p>The Bill of Rights does not demand the deletion of provisions that may be difficult to interpret or define. Where those provisions serve important and legitimate government purposes, our task (in discharging constitutional obligations in the public interest) is to do the drafting work necessary to provide clear meaning to these provisions. Mere deletion cannot be the answer. This would amount to letting the people of South Africa down and result in an injustice.</p> |
| <p>(iii) <u>descriptions or instructions on how to cause harm to human beings</u></p> | |

