

## Online content regulation: consultation needed, says ISPA

The Internet Service Providers' Association (ISPA) has called for the introduction of new regulations relating to Internet content regulation to be delayed until proper public consultation to create a legal and practical framework has taken place.

“ISPA accepts the need for a raft of measures to be introduced to tackle the exposure of children to undesirable content such as pornography. While many of these measures are required in the offline world, those that are to apply to content carried through electronic communications – whether through a service provider or peer-to-peer – need to be very carefully considered. This is due to the complexity of the online environment and the pace of technological change and modes of communication,” says Graham Beneke, ISPA co-Chair.

One of the main challenges is that the current Film and Publications Act – finalised in 1996 - dates from the pre-Internet era. Amendments in 2004 and 2009 have attempted to bring the Act into the Internet age with limited success. ISPs, for example, have been required to register with the FPB since 2004 but it is not clear what the purpose of this registration is other than to pay an annual fee. No substantive obligations have been imposed on those who register and – despite failure to register being declared an offence in 2009 – compliance levels are low.

The Film and Publications Board (FPB) has indicated in Parliament that a “legislative amendment process is underway to allow for better regulation of online content distribution” and stated its intention to establish an efficient and effective online and new media content regulatory strategy for the country by 2017/8.

“This is a laudable if ambitious goal, but it will not be achieved without understanding the context in which this strategy is to be applied,” said Beneke.

In the interim, however, new regulations published in March 2014 have attempted to widen the categories of businesses that must register with the FPB to include “online cellular content providers”, “online content providers”, hosting providers and “online content distributors”. A fee of up to R750 000 – determined at the discretion of the FPB - is payable by the last category.

Beneke argues that it is not clear who exactly should be registering with the FPB because no definitions of the various categories are provided. “Furthermore what is the purpose of this registration if there is as yet no strategy or framework in place for online content classification?”

ISPA also believes that the impact of compliance and registration fees on the industry needs to be assessed.

“Surely it makes much more sense to engage with all stakeholders now, before the new amendments are drafted, to make sure they provide the best possible framework for regulation and that it has broad buy-in,” Beneke concludes.

“Once the legislative framework is in place, the Board will be in a much better position to implement the new regulations in a way that will achieve its strategic goals.”