CAUSE FOR JUSTICE

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Our Reference: FPAB [B37B-2015]
Date: 4 September 2018

The Chairperson, Mrs Ellen Prins
Select Committee on Communications and Public Enterprises, National Council of Provinces
For Attention: Ms Phumelele Sibisi

By Email: psibisi@parliament.gov.za

Honourable Madam Chairperson,

RE: FILMS AND PUBLICATIONS AMENDMENT BILL [B37B-2015]: SUBMISSIONS

1 We refer to the abovementioned matter, specifically correspondence with the Committee secretary on 21 and 22 August 2018, confirming that all submissions received before the Committee sits down to meet on 5 September 2018, will be considered by the Committee for purposes of the public participation processes of the Committee.

2 Cause for Justice ("CFJ/We") hereby would like to thank the Committee for the opportunity to present you with these written submissions, as may be amplified by oral representations at a later stage, and in so doing to be able to participate in the law-making process.

3 We focus our submissions on matters affecting rights, values and interests protected and/or promoted in the Bill of Rights and related matters affecting the public interest in the context of presentations or expression of adult content / explicit sexual conduct.

BACKGROUND TO CAUSE FOR JUSTICE

4 CFJ is a non-profit human rights and public interest organisation founded in 2013 to advance constitutional justice in South Africa, primarily through participation in the legislative process and governmental decision-making structures, litigation and through creating public awareness on matters affecting the public interest and the interests of justice.

5 All five of CFJ's core values give it a particular interest in the Bill, namely (1) the responsible exercise of freedom, (2) protection and promotion of inherent human dignity / worth, (3) protecting the vulnerable in society (social justice), (4) ensuring accountable government action and (5) protecting the family against destructive outside (and inside) forces.

6 During the course of 2013, 2014 and up to March 2015, CFJ was one of three applicants in the "ICASA // StarSat (formerly TopTV)" judicial review case.[1] The matter was finally disposed of in CFJ and its co-applicants' favour at 'leave to appeal'-stage in the Supreme Court of Appeal in March 2015.

7 In addition, CFJ also made submissions to the Films and Publications Board (FPB) during July 2015 as part of the public participation process on the Draft Online Content Regulation Policy and is a participant in the SALRC's Project 107 - Sexual Offences: Pornography and Children (still on-going). CFJ also made submissions on the FPB's Classification Guidelines review process during 2018.

PARLIAMENTARY PROCESS AND PROCEDURAL IRREGULARITIES

8 CFJ has been a stakeholder and interested party in relation to the Bill since April 2016, when we delivered written submission to the Portfolio Committee on Communications (PCC) followed by oral submissions at the public hearings of the PCC and have kept abreast of the Bill's progress through the National Assembly and NCOP ever since, engaging with the political parties represented in Parliament.

9 We attach hereto:

9.1 A summary timeline of our interaction with Parliament, and the Department of Communications (DoC) and FPB in relation to the Bill ("Annexure B"). This timeline shows the level of our interaction and assistance to Parliament in relation to the Bill.

9.2 Memorandum on procedural irregularities in relation to the Bill, delivered to the Chair of the Committee (and others) on 5 and 17 April 2018, and again on 30 July 2018 ("Annexure C"). As we submit, if these irregularities are not adequately remedied, it is likely to result in the Bill's demise/invalidation after promulgation.

SUBMISSIONS ON THE SUBSTANCE OF THE BILL – INTRODUCTORY SUMMARY

10 We set out our main concerns, followed by only the most pertinent submissions under the clause-by-clause heading thereafter. Our submissions may be amplified by way of oral representations to the Committee at the time set out for it. We also set out a brief discussion of the constitutional

[1] Justice Alliance of South Africa v Mncube N.O and Others ; In Re: Cause for Justice and Another v Independent Communications Authority of South Africa and Others; In Re: Doctors for Life International WC v Independent Communications Authority of South Africa and Others (18519/2013) [2014] ZAWCHC 162; [2015] 1 All SA 181 (WCC); 2015 (4) BCLR 402 (WCC) (3 November 2014)

context and what the Bill of Rights demands in the context of expression of explicit sexual conduct in Annexure A (attached hereto). In addition, we include further Annexures, B to F.

MAIN CONCERNS

Introduction

11 Our main concerns relate to the Bill's proposals on –

11.1 Definitions applicable to depictions of explicit sexual conduct ('adult pornography'), and

11.2 Distribution of 'adult pornography'.

12 The Films and Publications Act, 1996 ("the Act") deals with ***adult* pornography** in two ways (for classification purposes):[2]

12.1 "XX" classification – ss 16(4)(b) and 18(3)(b) of the Act: Obscene material, which may not be distributed ***at all***, not even between/to adults;

12.2 "X18" classification – ss 16(4)(c) and 18(3)(c) of the Act: Explicit/hard-core adult pornography (falling short of obscenity).

13 Up to now, the Act has provided that "X18" material may only legally be distributed to and accessed by ***adults*** within the four walls of a building that has been licenced as an "adult premises" – i.e. ***adult*** pornography may only be distributed ***to adults*** in these limited circumstances. (*Refer the current section 24(1) and (2) of the Act*.) All pornography that is currently freely available on the internet, is therefore illegal.

14 The requirement for distribution to take place "in person" provides a control mechanism or preventative element, as anonymity is excluded from the process, which also ensures that adult content will not be distributed to children.

15 **The Bill now proposes:**

15.1 **<u>Clauses 15(i) and 17(b):</u>** Watering down / narrowing the definition of "XX" material by ***only prohibiting*** the distribution of ***adult pornography that contains explicit violence***, which will

[2] The creation, production, possession and distribution of "***child*** pornography" is already illegal in South Africa.

result in more vile types of pornography and other degrading material becoming legally distributable between/to adults in South Africa.

15.2 **<u>Clause 23:</u>** Legalising the ***online*** distribution of "X18" pornography to adults in South Africa.

Concerns in relation to watering down of "XX" definition: Clauses 15(i) and 17(b)

16 The Act at present outlaws the distribution of material containing –

16.1 Explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person,[3]

16.2 Conduct or an act which is degrading of human beings,[4] and

16.3 Conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour.[5]

17 The proposal in the Bill is to replace these three prohibited materials with a single definition prohibiting only ***adult pornography that is "accompanied by explicit violence"***. The unintended consequences are that the following materials will become legally distributable in South Africa:

17.1 ***non-violent*** sexual material that ***violates human dignity***,

17.2 ALL ***degrading material*** that does not contain an element of explicit violence; and

17.3 material that incites or promotes ***harm being done to human beings***.

18 **<u>Examples of the unintended consequences include:</u>** (It will become legally permissible to distribute the following material -)

18.1 Content showing an adult male person in a non-violent manner urinating or defecating on an adult female person as part of explicit sexual conduct (violation of human dignity ***AND*** degrading a human being);

18.2 An instructive film (or even documentary) without explicit visual references about how to poison an unwanted family member in such a way that death by poisoning would be untraceable, i.e. the perpetrator would never be suspected of murder;

18.3 An instructive film (or even documentary) without explicit visual references about how to cut yourself so that no-one will know you are someone who cuts him/herself.

[3] Ss 16(4)(b)(i) and 18(3)(b)(i) of the Act.
[4] Ss 16(4)(b)(ii) and 18(3)(b)(ii) of the Act.
[5] Ss 16(4)(b)(iii) and 18(3)(b)(iii) of the Act.

19 The proposal (in clauses 15(i) and 17(b) of the Bill) cannot be supported, as it constitutes a clear violation of human dignity and will create public health and safety risks in relation to people inciting others in society to harm themselves and/or others. This is not in the interest of justice or in the public interest and cannot be justified on constitutional grounds.

20 **The counter-proposal** therefore is to:

20.1 Either leave the provisions of the Act untouched (i.e. reject the proposed amendments), which would be in line with the majority judgment in the *Print Media* case,[6] or

20.2 Redraft it to bring it in line with constitutional norms and values, as was proposed by the minority judgment in the *Print Media* case.

We submit herewith, as Annexure D, proposed wording for the "XX" classification (a working definition for further consideration), which takes account of the unintended consequences of the proposal in the Bill and addresses same to bring the wording in line with the Bill of Rights and South African constitutional norms and values.

This proposal is a starting point and would also need to be vetted against the definitions and crimes contained in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, to ensure that these pieces of legislation are brought into sync with each other.

[NOTE: We provide a more detailed discussion of the *Print Media* case and its implications for this proposal, under point 2 of our Memorandum on procedural irregularities (Annexure C).**]**

21 The distribution of materials that violate human dignity, are degrading of human beings or promotes harmful behaviour, should continue to be unlawful, ***even if it does not contain violence or sexual violence***.

Concerns regarding legalising of online distribution of "X18" adult pornography: Clause 23

22 There exists well documented scientific research evidence of the extensive individual (physical and psychological), relational and public (health, safety and other social) harms of adult pornography, which should first be given proper consideration, before a decision is taken about wide-spread dissemination of hard-core pornography to adults in South Africa through the internet.

[6] Print Media South Africa and Another v Minister of Home Affairs and Another (CCT 113/11) [2012] ZACC 22; 2012 (6) SA 443 (CC); 2012 (12) BCLR 1346 (CC) (28 September 2012)

23 We attach a recent research summary hereto as Annexure E.[7] These harms have recently led 10 (ten) state legislatures in the USA already to declare pornography a ***public health crisis***.[8]

24 Although one of the objects of the Bill is to ***"decriminalise the online distribution of adult content on all platforms including digital platforms"***, subject to, amongst others, the condition that children must be protected from exposure, the SEIAS (Socio-economic Impact Assessment) on the Bill did not address the social and economic costs and benefits to South African individuals (especially children), families, communities and society at large when adults are exposed to adult pornography.

25 Without such an assessment/investigation it is impossible to come to a decision as to whether South Africa can afford ***at all*** to sanction the mass online distribution of adult pornography to adult internet users within our borders.

One of the harms – Impact on Sexual violence/violation/exploitation/abuse

26 Among many other harms and social costs associated with adult pornography exposure/use, one of the most concerning is the perpetration of sexual violence/abuse on children and women by

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[7] Harms include, amongst others:

- Harms to viewers, both adult and children,
- Harms specific to viewers who are children;
- Harms to intimate partners and intimate partner relationships;
- Harms to vulnerable groups in society (e.g. victims of sexual violence and crimes).

Specific forms of harm consist in the following, amongst others:

- loss of interest in sexual encounters with real people (as opposed to online representations), loss of libido;
- erectile dysfunction;
- sexual addiction/compulsivity;
- unhealthy expectations about sex and self-inflicted pressure to live up to imagery in pornography;
- devaluing of the opposite sex by viewing the opposite sex as objects to be used for sexual pleasure;
- acceptance of aggression as being part of a normal sexual experience;
- causing people with a predisposition to violence to act out in sexual violence against intimate partners;
- desensitisation towards and/or acceptance of rape and other sexual crimes;
- greater propensity to divorce and to commit infidelity;
- physiological brain changes which fuel addiction behaviour;
- reduction in individuals' ability to critically assess harm (at the very least in attitude) towards others, while focusing on the impulsive benefit to themselves.

Refer to Annexure E for references to the research evidence.

[8] http://nationaldecencycoalition.org/updates/

adult men who use mainstream hard-core adult pornography. We include a snapshot overview of some of the most compelling research evidence in the footnote below.[9]

27 **Our observations accordingly are as follows:**

27.1 Pornography use is rife in South Africa. [We are in the top 20 of all countries in the world. We are number 1 in the world for accessing pornography via smart phones. [https://carteblanche.dstv.com/stats-south-africas-porn-habits/]

27.2 Gender-based and domestic sexual violence is rife in South Africa. Mostly adult males exploiting, abusing and violating women and children. [This is a matter of public record.]

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[9] https://endsexualexploitation.org/violence/
Research by Dr Walter Dekeseredy has shown that **pornography teaches men to think of women as objects, not as people**. A similar study found that **the more men view pornography, the more they think that women are lesser creatures who they can dominate**. (Foubert, 48.)

In a study with over 20,000 men Dr. Paul Wright conducted with Dr. Robert Tokunaga, they found that **the more men view media where women are treated as objects rather than as people, the more they thought that women really were merely *things* that existed to sexually please men**. In addition, **the more men thought of women as objects, the more they also supported violence against women**. (Foubert, 65.)

Dr. Paul Wright and his research team … analyzed recent data on pornography use and sexual violence from 22 studies and 7 different nations. They found that in correlational, cross-sectional, and longitudinal studies, **pornography use and acts of sexual aggression were directly connected**. This connection held true for both men and women, and for verbal and physical aggression. **Violent pornography was even more strongly linked to sexual violence.** Moreover, after viewing over 500 studies to determine whether consumption of pornography caused gender based violence, Dr. Max Waltman of Stockholm University concluded that the weight of the evidence shows the direction of the connection clearly. He noted that **the available research shows that pornography causes gender based violence through most every methodology imaginable, using experimental and nonexperimental studies, quantitative and qualitative studies, and samples of specific groups and samples of the general population**. Dr. Waltman describes the effects as not only statistically significant but robust. (Foubert, 57.)

Porn use increases the viewer's feelings of contempt for women, decreases empathy for people who have survived sexual violence, lessens the user's ability to show emotion in situations where one usually would, increases dominance behaviors, increases sexually aggressive behaviors, and can be addictive. (Foubert, 60.)

A recent longitudinal study just found that when men use more pornography during college, they are also more likely to commit sexually violent acts. (Foubert, 50.)
The researchers found that men who believed more strongly in impersonal, promiscuous sex and were hostile toward women were more likely to sexually assault a woman if they frequently used pornography. … In short, frequent pornography use by itself is not a singular, direct cause for sexual assault. However, if a man has other risk factors for commiting sexual violence, for example hostile masculinity or a preference for impersonal sex, adding frequent pornography use makes is significantly more likely that he will commit sexual violence". (Foubert, 53.)

There are over a hundred (100+) studies showing that pornography use is both correlated with and is the cause of a wide range of violent behaviors; about 50 studies show a strong connection between pornography and sexual violence. (Foubert, 44.)

Researchers have also found that pornography use increases the likelihood that a man will commit sexual violence against a woman, particularly if the man has other risk factors for committing sexual violence like being impulsive, and if his use of pornography is frequent." (Foubert, 45.)

27.3 Research / scientific evidence shows that pornography use is a cause of gender-based / sexual violence. [Referred to in the footnote above.]

28 The above observations are cause for serious concern and for proper investigation – preferably by way of official commission of enquiry – to critically consider the consequences for the whole of society when adults are exposed to explicit/hard-core adult pornography.

29 Seeing as the SEIAS on the Bill did not consider this, there has been ***NO*** assessment of / investigation into the social and economic costs for South Africa of this legislative proposal as yet.

30 In light hereof, the policy decision by the DoC and the National Assembly to legalise the ***online*** distribution of pornography to ALL adults ***without conducting or commissioning/requiring an official and credible investigation into the effects this will have on South African society***, is unfathomable and reckless.

31 **The counter-proposal** therefore is:

31.1 In the interim – until such time as an official investigation has been conducted – as far as the distribution of hard-core ("X18") adult pornography to adults is concerned, the current "licensed adult premises" regime (sections 24(1), (2) and 24A(3) of the Act) strikes a constitutionally justifiable balance between protection from harm and protection of human dignity (on the one hand) and freedom of expression (on the other).

Conclusion to Main Concerns - Context

32 The regulation of pornography should always be considered in its proper constitutional context.

32.1 In *De Reuck v Director of Public Prosecutions (WLD)* 2004 (1) SA 406 (CC) ("*De Reuck*") the Constitutional Court, after identifying the core values of freedom of expression, held that the limitation of pornography (The court specifically had to consider child pornography in the particular matter.) "does not implicate the core values of the right" and that pornography is, "for the most part, expression of little value which is found on the periphery of the right". The Court also acknowledged that child pornography is not afforded constitutional protection in many democratic societies (De Reuck at para [59]).

32.2 Retired Constitutional Court judge Laurie Ackermann has expressed the view that Germany probably has the richest and most deeply philosophically grounded scholarship and jurisprudence on human worth (human dignity) and equality in the world (See *Human Dignity: Lodestar for*

equality in South Africa (Laurie Ackermann, JUTA, 2012) at p 13). The approach of the German courts regarding the protection of human dignity in this context, can be summed up as follows: (**Kommers, Donald P.; Miller, Russell A. (2012-11-01).** ***The Constitutional Jurisprudence of the Federal Republic of Germany***: Third edition, Revised and Expanded (Kindle Locations 13428-13480, 13758-13767). Duke University Press. Kindle Edition.)

*"…in the course of statutory interpretation, German judges have developed a concept of pornography that views it in the light of the Basic Law's primary injunction to protect human dignity. In a case that centered on the infamous Fanny Hill, the Federal Court of Justice declined to pronounce the book pornographic since it presented sexuality in the broader context of human life. Rather than deploying a subjective standard that attempts to determine the extent to which a particular work offends the viewer or reader (*This was the approach of the U.S. Supreme Court in Memoirs v. Massachusetts, 383 U.S. 413 (1966).*), the German court analyzed the presentation of sexuality in its human context.* ***Mathias Reimann summarized the characteristically Kantian German approach: The court essentially asks whether the material presents the characters truly as human beings with a value in and of themselves. If the material does, the court will find the sexual explicitness acceptable because sex forms a natural part of life. If, on the other hand, the material basically employs its characters only as objects for other purposes, notably sexual stimulation, the court will find the depiction of sex unacceptable because the work treats the characters not as humans, but only as objects. Such a work denies the characters their human individuality and personhood. The approach of the German court thus concerns itself not with the viewer's prurient interest but—ultimately— with human dignity (***Mathias Reimann, "Prurient Interest and Human Dignity: Pornography Regulation in West Germany and the U.S.," University of Michigan Journal of Law Reform 21 (1987– 88): 201– 53, at 229.***). The regulation of pornography, then— whether done under the limited provisions of the criminal law or the somewhat broader provisions of the youth protection statute— is, like so much else in German constitutional law, centered on the protection of dignity under Article 1."*

The foundational value of human dignity

33 There is a type of expression of explicit sexual conduct which does not present its characters truly as human beings with value in and of themselves. This type of expression solely or mainly employs its characters as objects for other purposes, such as sexual stimulation. The characters' sexuality is not presented in the context of human individuality and personhood. We submit that the distribution of such material (as well as its creation, production and possession, except if self-

created by the person depicted) constitutes a violation of human dignity and that limitation of freedom of expression on these grounds would therefore be reasonable and justifiable.[10]

34 The Act includes in the definition of "XX" classification, depictions of:

"explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person" (sections 16(4)(b)(i) and 18(3)(b)(i))

35 CFJ respectfully submits that rather than deleting this definition, it should either remain intact/untouched or be developed to ensure the protection of human dignity and the promotion of respect for human dignity.[11]

Policy considerations – harms of pornography

36 In addition to the aforementioned foundational argument (the protection of human dignity), certain other policy considerations militate in favour of limitation of expression containing or depicting explicit sexual conduct, such as the *harms* of pornography.[12] Children and adolescents are not only harmed directly through exposure to pornography, but also indirectly through suffering at the hands of adults (in many instances adult men) who are exposed to pornography. Other groups vulnerable to sexual violation, such as women, are at risk of suffering a similar fate. Although causality between pornography and certain harms, in many instances, has not yet been established, correlation has been established, substantiated by a voluminous body of research evidence and importantly, the absence of causality has not been proven by the 'pro-pornography lobby'.

37 We respectfully submit that the Committee should not approve the proposed legalisation of online pornography in South Africa, unless it has satisfied itself that what has been proposed will pass constitutional muster both on foundational grounds, as well as not being at odds with the public interest (i.e. what will best serve the common good).[13]

[10] Refer to Annexure A for an exposition of the constitutional context and what CFJ believes the Bill of Rights demands in this context.
[11] In accordance with section 10 of the Constitution and the objective normative value system contained in the Bill of Rights.
[12] Refer to our discussion above and in particular the research cited in Annexure E attached hereto.
[13] We note that the United States has already had two commissions of enquiry on the effects of pornography – the **President's Commission on Obscenity and Pornography** (1969/70) and **Attorney General's Commission on Pornography** (1985/86) – and in the United Kingdom several studies have also been undertaken to consider the scientific/empirical case for or against pornography.

38 In South Africa, being a country with exceptionally high levels of domestic abuse and sexually violent crimes, the state should take special care not to fail people most at risk of harm – women and children.[14]

39 We accordingly respectfully propose that a thorough investigation be undertaken, whether by commission of inquiry, ad-hoc committee or otherwise, into the effects and harms of adult pornography in and for the current South African society. No less of a debt is owed to those who already are victims of sexual abuse/violent crime and those who are at risk of becoming part of our damning statistics.

Voice of the public

40 We provided the Committee secretary with a list of 6,528 petitioners/signatories who share our main concerns and support our proposals in respect thereof, via e-mail on 17 August 2018. Accordingly, kindly consider the contents of our e-mail of 17 August 2018 as if reproduced and annexed hereto as Annexure F.

SUBMISSIONS – CLAUSE BY CLAUSE

41 Clause 1 *in re* Section 1 definitions:

41.1 **'commercial online distributor' / 'distributor' / 'non-commercial online distributor'**:

41.1.1 **Submission:** The PCC has inserted the first and last definitions and amended the second. The PCC should provide clarity whether it envisages a closed system, i.e. that all online distributors must necessarily fall into either of the two definitions or whether it is possible for certain online distributors to not satisfy either definition. Depending on the answer, the definitions may need to be revisited and revised to achieve the intended objective(s) for its inclusion/amendment.

41.1.2 **Reason:** It is important to determine whether certain distributors might fall through the cracks, and whether there ***are*** any cracks in the legislative scheme the PCC has designed. If there are cracks and/or there is scope for abuse, the legislative text should be amended/corrected to address shortcomings.

41.2 **'domestic violence'** – insertion of *'explicit'*:

[14] Consider the dreadful examples of Mrs Engelbrecht and her daughter in *S v Engelbrecht* 2005 2 SACR 41 (W).

41.2.1 **Submission**: Do not insert “explicit”.

41.2.2 **Reason**: It is not only graphic and detailed visual presentations or descriptions which constitute domestic violence. The explicitness of the depictions or descriptions will play a role for purposes of classification, but is not relevant for purposes of defining what ‘domestic violence’ is.

41.3 **‘hate speech’** –

41.3.1 **Submission:** We propose that the definition be amended as follows:

‘hate speech’ includes any speech, gesture, conduct, writing, display or publication, made using the internet, which does not constitute protected expression as contemplated in section 16(2)(c) of the Constitution of the Republic of South Africa, 1996;

41.3.2 **Reason:** The proposed definition goes beyond the wording in section 16(2)(c) of the Constitution. This proposed broadening of the definition creates a risk of the proposed definition failing a constitutionality test on the basis of overbroadness.

41.4 **‘prohibited content’**

41.4.1 **Submission:** Amend the definition to correct mistakes.

1. Bring the reference to hate speech in line with the definition in section 16(2)(c) in the Constitution.

2. Replace the references to **‘prohibit’** (in relation to sections 16(2), 16(4) and 18(3)) with **‘contemplated’**.

3. Replace the references to sections **‘16(2), 16(4) and 18(3)’** with **‘16(4)(a), (b) and (c) and 18(3)(a), (b) and (c), subject to section 24, section 18F and 18G’**.

41.4.2 **Reason:**

1. The phrase “advocacy of hatred that is based on an identifiable group characteristic” is overbroad as it goes beyond the four grounds for hate speech contained in section 16(2)(c) of the Constitution.

2. The reference to 'prohibit' in relation to sections 16(2), 16(4) and 18(3) is incorrect, as sections 16(2), 16(4) and 18(3) do not prohibit any content, but places obligations and describes the content of specific classification classes.

3. The reference to section 16(2) is also superfluous, as it is already covered by the preceding text.

4. New sections 18F and 18G, proposed to be inserted into the Act, contain further prohibitions.

41.5 **'sexual conduct'** – deletion of *'whether real or simulated'*:

41.5.1 **Submission:** We oppose the proposed deletion.

41.5.2 **Reason:** The realness or simulation of sexual intercourse is not determinative of whether what is depicted is a depiction of sexual intercourse or not. What is determinative is what the reasonable viewer perceives. In other words, if from the reasonable viewer's perspective the perceived depiction is of sexual intercourse, the fact that it may have been simulated is irrelevant. For purposes of classification, the explicitness of the depiction will be determinative. There is accordingly no need to narrow the scope of the net in the definition.

In fact, in order to protect children, simulated sex acts should fall into this definition, so as to be classified "X18".

42 **Clause 5 *in re* Section 4A:**

42.1 Clause 5(a): Replace the word **"regarding"** with **"and"**. The use of the word "regarding" makes no sense, as there is no relationship between "classification guidelines" and "the accreditation contemplated in section 18D". These are two separate and unrelated matters.

43 **Clause 14 *in re* Section 15A:**

43.1 Proposed sub-section (1A)(g): There is a reference to paragraph **"(vii)"** which makes no sense and should be corrected.

44 **Clause 15 *in re* Section 16:**

44.1 <u>Proposed amendment to section 16(1) –</u>

44.1.1 **Submission 1:** Before exempting advertisements falling within the jurisdiction of the ASASA, Parliament has to be certain, and would therefore first have to obtain assurance, that the ASASA has similar/equivalent classification (e.g. code of conduct) and protection measures in place to protect the public against illegal, prohibited and inappropriate content and to provide consumer advice enabling informed consumer choices regarding exposure to content.

44.1.2 **Reason:** Exempting advertisements without having put in place comparable measures, will create a lacuna in the law and amount to irrational and arbitrary action by Parliament, which will be reviewable/unconstitutional.

44.1.3 **Submission 2:** The ideal would be to have a single classification system/standard in South Africa, dealing with the regulation of *content* of all forms of expression, irrespective of platform or medium. This would bring legal certainty to the landscape of content regulation.

44.1.4 We accordingly propose that steps be taken by government and/or the appropriate Parliamentary portfolio or select committees to either make the FPB classification standards/definitions in respect of illegal, prohibited and inappropriate content applicable across the board to all types of media or to.

44.1.5 **Reason:** In respect of the above, the ICT Policy Review Report of March 2015 already made a recommendation to this effect. (See 7.11 and Recommendation 172 in this regard.)

To remove the reach of the Act over some of the industry regulatory bodies prior to putting in place a single content classification system/standard would put children at risk and open the door to abuse to the extent that there are differences between the classification scheme in the Act and the codes of conduct of ICASA, BCCSA, ASASA and the Press Council.

For example, if a pornographic magazine such as Playboy wanted to distribute online hardcore pornographic films falling within the "XX" or "X18" classification of the Act, it could merely register as a member of the Press Council and be exempted from the application of various provisions of the Act relating to "XX" or "X18" material. To the extent that the Press Council's code of conduct does not have measures in place similar to those in the Act to protect children and to protect human dignity, these *de facto* illegal materials will be distributed online legally in South Africa.

The proposed amendment of section 16(1) will accordingly be unconstitutional by reason of it being irrational and in violation of section 28(2) and other provisions of the Bill of Rights.

We reiterate the recommendation contained in the ICT Policy Review Report of March 2015, which is the logical pre-step to the proposed amendment of section 16(1):

- *"In view of convergence there are challenges in relation to* ***ensuring common approaches to protection of children and setting of content standards across all platforms***
- *There is a* ***need for organisations such as the FPB, the BCCSA and ICASA to review the way they work collaboratively.***
- ***Concurrent jurisdiction issues need to be resolved.***
- ***The DTPS together with the DOC must facilitate cooperation between regulatory authorities (such as ICASA, the ASA, FPB, BCCSA and the press ombudsman) to ensure coordination and to address protection issues in an era of convergence.***
- *Consideration be given to the development and formalisation of co-regulation mechanisms to encourage such practices while protecting the public interest. As stated previously, government should consider developing common criteria for approval of co-regulatory structures across all spheres.*
- *Policy should recognise that co-regulation has worked relatedly well to date in relation to broadcasting and consider how this model could be extended."*

It is accordingly our view that the proposed amendment to section 16(1) of the Act is premature and irrational, will cause harm to children and others and will accordingly be unconstitutional.

44.2 Section 16(4)(b) – Proposed deletion of:

(i) Explicit sexual conduct ***which violates or shows disrespect for the right to human dignity of any person***; and
(ii) ***Conduct or an act which is degrading of human beings***; and
(iii) ***Conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour***.

44.2.1 We have made our proposals and given our reasons hereinabove in the section dealing with our main concerns, including proposed wording – see Annexure D.

44.2.2 The provisions that are proposed to be deleted serve important and legitimate purposes and implements the demands of the Bill of Rights in this context. They should not be deleted without addressing **unintended consequences** which would not be in the public interest and would result

in putting people at risk. Also refer to our discussion in 45.2.3 hereinbelow with reference to the Constitutional Court judgment in *Print Media*.[15]

45 **Clause 17 *in re* section 18:**

45.1 Section 18(3)(a):

45.1.1 **Submission:** Do not delete the phrase 'except with respect to child pornography'.

45.1.2 **Reason:** The proposed deletion will cause the Act to become inoperable as it will create a clash with section 24B(1) which, rightly makes it a criminal offence to distribute child pornography. Note, in this regard, the difference in the structure of section 16(4)(a) and section 18(3)(a).

The proposed deletion would also go against the Constitutional Court's decision in *De Reuck* at paras [72] – [88], where the court ruled that the section 22 exemption procedure provides the mechanism whereby parties who want to distribute content for bona fide purposes may do so on approval from the FPB.

45.2 Section 18(3)(b) – Proposed deletion of:

(i) Explicit sexual conduct ***which violates or shows disrespect for the right to human dignity of any person***; and
(ii) ***Conduct or an act which is degrading of human beings***; and
(iii) ***Conduct or an act which constitutes incitement of, encourages or promotes harmful behaviour***.

45.2.1 In addition to our submissions in hereinabove, we respond as follows to paragraph 3.12.1 of the Explanatory Memorandum published with the Bill, which reads:

> *Section 18(3)(b) has been revised to remedy* ***the vagueness thereof which resulted in the provision being deemed to be unconstitutional****, as a result it only makes reference to "explicit violent sexual conduct" in order to distinguish the "XX" category from the "X18" voluntary sex category.*

[15] *Print Media South Africa and another v Minister of Home Affairs and others* (CCT 113/11) [2012] ZACC 22 ("*Print Media*")

45.2.2 The bold and italicised wording above seems to be a reference to the Constitutional Court's decision in *Print Media*.

45.2.3 We provide a discussion of the *Print Media* case and its implications for this proposal, under point 2 of our Memorandum on procedural irregularities (Annexure C).

45.2.4 What the Bill of Rights demands is not the deletion of provisions that may be difficult to interpret and define. Where those provisions serve important and legitimate purposes, as we have shown, the task of the state (in discharging its constitutional obligations to the public and in the public interest) is to do the drafting work necessary to provide clear meaning to these provisions. Mere capitulation cannot be the answer. This would amount to letting the people of South Africa down and result in an injustice.

45.2.5 We have made our proposals and given our reasons hereinabove in the section dealing with our main concerns. If the Committee is of the opinion that the definition in the Act should not remain untouched, we have attached proposed wording – a working definition for further consideration – in Annexure D hereto.

45.3 Section 18(6) – Proposed exemption of broadcasters from section 24A(2) and (3):

45.3.1 Before exempting broadcasters falling within the jurisdiction of ICASA, the DoC first has to assure the Committee that the BCCSA Code of Conduct (section 54(3) of the Electronic Communications Act, 2005 (ECA)) and ICASA Code of Conduct (section 54(1) ECA) have been amended and updated to provide for classification and protection measures similar to section 24 of the Act and criminal prohibitions similar to section 24A(2) and (3) to protect the public against illegal, prohibited content, protect children and to provide consumer advice enabling informed consumer choices regarding exposure to inappropriate content.

45.3.2 Exempting broadcasters without having put in place comparable measures will create a lacuna in the law and amount to irrational and arbitrary action by Parliament, which will be open to constitutional review. See our more detailed discussion in this regard under paragraph 44.1 above.

45.3.3 To the extent that there is a disconnect between the classification scheme in section 18(3) of the Act (on the one hand) and the ICASA and BCCSA Codes of Conduct (on the other), children will be placed at risk and it will open the door to abuse. An example would be instances where content that is outlawed as "XX" or limited to licenced adult premises in the case of "X18" material may be legally broadcast by broadcasters due to the absence of comparable and equivalent provisions in the ICASA and BCCSA codes of conduct.

45.3.4 In the case of broadcasters, ICASA and the FPB through their Memorandum of Understanding have already agreed in principle to uniform classification/content regulation. Also, on page 112 under 5.14 of the ICT Policy Review Report of March 2015 it is noted that, "The BCCSA in interactions with the ICT Policy Review Panel said that it is guided by the FPB and ICASA codes in place."

45.3.5 Based on the aforementioned there should be acceptance and agreement from ICASA and the BCCSA to not remove the reference to section 24A(2) from section 18(6). And to not amend section 24A(2) as proposed in the Bill. If this is not the case, the Electronic Communications Act, 2005 and/or the ICASA Act, 2000 would have to be amended to provide for prohibitions and sanctions comparable and equivalent to section 24A(2) and 24A(3).

46 **Clause 19 *in re* Section 18E** – This section will be rendered ineffective if it does not provide an express and short turn-around time within which the FPB must act. If the time element is not regulated in the Act, it has to be done in Regulations. At the very least a provision similar to the proposed proviso to section 16(3) must be included.

47 **Clause 19 *in re* Section 18F** – We respectfully submit that this section is defective – a rework of the definition of *"sexual"* is necessary, as well as the deletion of the proposed subsection (b) to section 18F(1). We submit that:

47.1 A reference to nude or exposed genitals, breasts and buttocks should be included in the definition of *"sexual"*, as well as a cross-reference to the definition of "sexual conduct" in section 1.

47.2 Irrespective of the intent of the person making the disclosure, it should be illegal to post photographs showing the nudity of any person without his/her consent. We accordingly propose the deletion of subsection (b) to section 18F(1).

48 **Clause 19 *in re* Section 18J** - This section will be rendered ineffective if it does not provide an express and short turn-around time within which the FPB must act. If the time element is not regulated in the Act, it has to be done in Regulations. At the very least a provision similar to the proposed proviso to section 16(3) must be included.

49 **Clause 23 *in re* the insertion of Section 24(3) –**

Main proposal

49.1 Given the existing research evidence regarding the harmful effects of adults' use of adult pornography on individuals, intimate partner and domestic relationships, vulnerable groups such

as women and children and society as a whole, we do not support the decriminalisation of online distribution of adult content at this stage.

49.2 South Africa should not take a drastic step such as legalising the mass distribution (through the internet) of material that carry known risks of harms, including social and economic costs for individuals and society, before having counted the costs of such legislative amendment by way of a proper investigation.

49.3 We accordingly propose the deletion of clause 23 of the Bill. In the interim – until such time as an official investigation has been conducted – as far as the distribution of hard-core ("X18") adult pornography to adults is concerned, the current "licensed adult premises" regime (sections 24(1), (2) and 24A(3) of the Act) strikes a constitutionally justifiable balance between protection from harm and protection of human dignity (on the one hand) and freedom of expression (on the other).

Secondary proposal – In the event that clause 23 (proposed section 24(3)) is not deleted

49.4 The proposed section 24(3) should not only apply to films and games. It should also apply to publications. The proposed section therefore should be amended accordingly throughout.

49.5 The Committee must ensure that the conditions contained in the proposed subsection offers at least the same levels of protection (in the online sphere) as does section 24(1) and (2) in respect of adult premises.

49.6 *In re* measures that will satisfy the Board (**proposed section 24(3)(a)**),whatever measure are chosen, should be effective in achieving the aim of ensuring that children will not be able to access material containing explicit sexual conduct online.

49.6.1 These measures should include (at least) a measure to ensure that children do not gain access to the content by way of identity fraud, e.g. by providing details of an adult parent, sibling or acquaintance.

49.6.2 It should also include a measure similar to the current section 24(2)(a) in respect of notice(s) on the online platform/interface.

49.7 Subsection (d): It is unclear why the requirement in respect of secure payment methods should only apply in respect of ***promotions*** of films, games or publications and not also to the distribution of all films, games and publications (including the main feature). If it is not the DoC's intention that all "X18" content may only be distributed to the extent that it is paid for by the user, it should

explain why the payment requirement should only apply in respect of promotions and also confirm to what extent distributors will be allowed to distribute "X18" content free of charge.

49.8 The word *"verifiable"* in the proposed subsection (e) should be replaced with *"verified"*. We also propose that the phrase, *"solely for his or her private records"*, be deleted, as it is superfluous.

49.9 The one-year period in the proposed subsection (f) is too short and should be replaced with at least 3 (three) years. Refer to our submissions in 49.10 below in this regard.

49.10 Subsection (g) –

49.10.1 The term *"material"* is too vague. It should be replaced with references to films, games and publications.

49.10.2 Reasonable suspicion of supplying of "X18" material to children should not be the only basis upon which the CEO should be able to obtain a copy of a register. Due to the current academic research regarding the harmful effects of exposure to pornography on persons with a proclivity to violence and secondary effects (real risk of harm) for people with whom they come into contact,[16] the CEO should be entitled to obtain a copy of registers annually (and going back up to three years) to cross-reference these registers to –

- The National Register for Sex Offenders; and
- The criminal records in respect of persons convicted of violent crimes.

49.11 Subsection (j) should be amended to refer not only to material "classified as "X18"", but also to *"any film, game or publication 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"*, so as to bring it in line with section 24A(4).

50 **Clause 24 *in re* Section 24A –**

50.1 <u>Section 24A(2):</u>

50.1.1 Before exempting broadcasters falling within the jurisdiction of ICASA, the DoC first has to assure the Committee, that the BCCSA Code of Conduct (section 54(3) of the Electronic Communications Act, 2005 (ECA)) and ICASA Code of Conduct (section 54(1) ECA) have been

[16] Refer paragraph 18 of Annexure A and footnotes.

amended and updated to provide for classification and protection measures similar to section 24 of the Act and criminal prohibitions similar to section 24A(2) and (3) to protect the public against illegal content, protect children and to provide consumer advice enabling informed consumer choices regarding exposure to content.

50.1.2 Exempting broadcasters without having put in place comparable measures, will create a lacuna in the law and amount to irrational and arbitrary action by Parliament, which will be open to constitutional review. See our more detailed discussion in this regard under paragraph 45.3 above.

50.1.3 The wording in subsection (c) *"or would have been so classified had it been submitted for classification"* should be deleted. Refer in this regard to the process around the Films and Publications Bill, 2006, which was rejected as unconstitutional by the President and in respect of which internal and third party legal opinion was obtained.

50.2 Section 24A(3):

50.2.1 The wording in subsection (c) *"or would have been so classified had it been submitted for classification"* should be deleted. Refer in this regard to the process around the Films and Publications Bill, 2006, which was rejected as unconstitutional by the President and in respect of which internal and third party legal opinion was obtained.

50.2.2 We respectfully propose that to cure unconstitutionality the abovementioned wording should be replaced with the following wording: *"or 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 in a matter of public interest"*.

50.3 Section 24A(4):

50.3.1 Do not amend subsection (4)(b). Refer in this regard to the process around the Films and Publications Bill, 2006, which was rejected as unconstitutional by the President and in respect of which internal and third party legal opinion was obtained.

50.3.2 As section 24A(4) does not refer to "negligently", it should be amended by inserting the words *"or negligently"* after the word *"knowingly"*, to bring the section in line with the proposed section 24(3)(j).

51 **Clause 27 *in re* Section 24E –** refer to our comments above *in re* Section 18F.

CONCLUSION

52 We trust that the above submissions are of assistance to the Committee and look forward to your response thereto (if any) in due course. CFJ remains at the Committee's disposal to assist in the further development and/or amendment of the Bill to effectively achieve its intended purposes.

53 We accordingly hereby respectfully request the Committee to give us an opportunity to make oral submissions (representations) to the Committee at the appointed time to augment these written submissions.

Yours faithfully,

CAUSE FOR JUSTICE: MANAGEMENT COMMITTEE

ANNEXURE A

EXPRESSION OF EXPLICIT SEXUAL CONDUCT: CONSTITUTIONAL CONTEXT AND WHAT THE BILL OF RIGHTS DEMANDS

CONTEXT – HUMAN DIGNITY, FREEDOM AND SECURITY OF THE PERSON, FREEDOM OF EXPRESSION, CHILDREN

The Bill of Rights – Fundamental rights and values

1 In the context of pornography and also in respect of expression containing other forms of adult content / explicit sexual conduct, there is an intersection of fundamental rights, which requires in depth and proper consideration in order to chart a course within constitutional waters.

2 Section 10 of the Constitution, 1996 provides that "[e]veryone has inherent dignity and [has] the right to have their dignity respected and protected."

3 Section 12 of the Constitution provides that "[e]veryone has the right to freedom and security of the person, which includes the right – (c) to be free from all forms of violence from either public or private sources and (e) not to be treated or punished in a cruel, inhuman or degrading way."

4 Section 16(1) of the Constitution provides that "[e]veryone has the right to freedom of expression, which includes – (a) freedom of the […] media, (b) freedom to receive and impart information and ideas and (c) freedom of artistic creativity." Excluded from this freedom right is propaganda for war, incitement of imminent violence and hate speech based on race, ethnicity, gender or religion that constitutes incitement to cause harm.[17]

5 Section 28(2) of the Constitution provides that "[a] child's best interests are of paramount importance in every matter concerning the child."

6 All rights in the Bill of Rights may only be limited in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors.[18]

[17] Section 16(2) of the Constitution.
[18] See section 36 of the Constitution, which lists a minimum of five factors that are relevant for purposes of the "limitation analysis".

7 The state is obliged to respect, protect, promote and fulfil the rights in the Bill of Rights.[19]

8 In addition to the abovementioned individual rights, the Bill of Rights as a single body of law, contains an "objective normative value system"[20] based on the founding values of human dignity, equality and freedom. The surest way of avoiding any unconstitutionality in legislation and individual legislative provisions would be to ensure that they promote the values that underlie our open and democratic society, as well as the spirit, purport and objects of the Bill of Rights.[21]

WHAT THE BILL OF RIGHTS DEMANDS

9 For purposes of applying the abovementioned constitutional imperative(s) to the issue of representations of explicit sexual conduct and more specifically, the distribution of films, games and publications via various platforms (media), the following important considerations have to be weighed in the balance:

10 On the one hand –

10.1 the inherent dignity or worth of all people must be protected and respected,

10.2 people must be protected from all forms of violence,

10.3 people may not be treated in cruel, inhuman or degrading ways, and

10.4 children's best interest must be the paramount consideration in every matter affecting children.

11 On the other hand, the free expression right –

11.1 entitles those who produce pornography for profits, to impart information and ideas, whilst also

11.2 entitling those who wish to wish to view pornography, to receive information and ideas.

12 The balancing exercise between these competing rights claims is always a difficult and delicate matter. In such matters, the ***objective normative value system*** contained in the Bill of Rights is

[19] Section 7(2) of the Constitution.
[20] See *Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC) at [54]-[56] and [43]-[44].*
[21] See section 39(1) and 39(2) of the Bill of Rights.

a guiding principle to strike an appropriate and just balance.[22] CFJ proposes that in this highly contested environment the ***spirit, purport and objects*** of the Bill of Rights are important keys to a just outcome. In determining what the Bill of Rights demands in the present context, the following considerations in our opinion are instructive:

12.1 In *De Reuck*[23] the Constitutional Court, after identifying the core values of freedom of expression, held that the limitation of pornography[24] "does not implicate the core values of the right" and that pornography is, "for the most part, expression of little value which is found on the periphery of the right". The Court also acknowledged that child pornography is not afforded constitutional protection in many democratic societies.[25]

12.2 Retired Constitutional Court judge Laurie Ackermann has expressed the view that Germany probably has the richest and most deeply philosophically grounded scholarship and jurisprudence on human worth (human dignity) and equality in the world.[26] The approach of the German courts regarding the protection of human dignity in this context, can be summed up as follows:[27]

"…in the course of statutory interpretation, German judges have developed a concept of pornography that views it in the light of the Basic Law's primary injunction to protect human dignity. In a case that centered on the infamous Fanny Hill, the Federal Court of Justice declined to pronounce the book pornographic since it presented sexuality in the broader context of human life. Rather than deploying a subjective standard that attempts to determine the extent to which a particular work offends the viewer or reader,[28] the German court analyzed the presentation of sexuality in its human context. ***Mathias Reimann summarized the characteristically Kantian German approach: The court essentially asks whether the material presents the characters truly as human beings with a value in and of***

[22] Carmichele at [54]: Our Constitution is not merely a formal document regulating public power. It also embodies, like the German Constitution, an objective, normative value system. As was stated by the German Federal Constitutional Court:

> "The jurisprudence of the Federal Constitutional Court is consistently to the effect that the basic right norms contain not only defensive subjective rights for the individual but embody at the same time an objective value system which, as a fundamental constitutional value for all areas of the law, acts as a guiding principle and stimulus for the legislature, executive and judiciary."

[23] *De Reuck v Director of Public Prosecutions (WLD)* 2004 (1) SA 406 (CC) ("*De Reuck*")
[24] The court specifically had to consider child pornography in the particular matter.
[25] De Reuck at para [59].
[26] See *Human Dignity: Lodestar for equality in South Africa* (Laurie Ackermann, JUTA, 2012) at p 13.
[27] **Kommers, Donald P.; Miller, Russell A. (2012-11-01).** ***The Constitutional Jurisprudence of the Federal Republic of Germany***: Third edition, Revised and Expanded (Kindle Locations 13428-13480, 13758-13767). Duke University Press. Kindle Edition.
[28] This was the approach of the U.S. Supreme Court in Memoirs v. Massachusetts, 383 U.S. 413 (1966).

themselves. If the material does, the court will find the sexual explicitness acceptable because sex forms a natural part of life. If, on the other hand, the material basically employs its characters only as objects for other purposes, notably sexual stimulation, the court will find the depiction of sex unacceptable because the work treats the characters not as humans, but only as objects. Such a work denies the characters their human individuality and personhood. The approach of the German court thus concerns itself not with the viewer's prurient interest but—ultimately— with human dignity.[29] *The regulation of pornography, then— whether done under the limited provisions of the criminal law or the somewhat broader provisions of the youth protection statute— is, like so much else in German constitutional law, centered on the protection of dignity under Article 1."*

How to balance the opposing constitutional claims

13 The major question therefore is how to resolve competing claims in the context of expression of explicit sexual conduct. Should the state allow human dignity (worth) to be sacrificed (in instances where the violation/disrespecting thereof is established) for the sake of freedom of expression? The Constitutional Court in *De Reuck* has provided guidance suggesting that the legitimate (constitutionally acceptable, lawful, justifiable) exercise of this freedom does not extend as far as to encompass violating/disrespecting human dignity.

14 In other words, as a general premise, freedom of expression should be exercised in a manner so as not to violate the constitutional value of human dignity. It is reasonable and justifiable to limit freedom of expression in order to protect human dignity and to protect respect for human dignity. Conversely, however, freedom of expression should not be limited more than is necessary to achieve this constitutional objective in the particular circumstances.

15 The Constitutional Court's guidance is based on its reasoning that limitation of expression in this context does not implicate the core values of the free expression right and the expression in question therefore for the most part is of little value and is found on the periphery of the right.

16 The logical conclusion would be that when human dignity (and for that matter also the specific rights that give effect to it, such as the protection of people from violence and/or inhuman or degrading treatment, and the protection of children) is implicated, limitation of expression of explicit sexual conduct would be justified.

[29] Mathias Reimann, "Prurient Interest and Human Dignity: Pornography Regulation in West Germany and the U.S.," University of Michigan Journal of Law Reform 21 (1987– 88): 201– 53, at 229.

17 It is important to note that the Constitutional Court's decision in *Print Media South Africa and another v Minister of Home Affairs and others* (CCT 113/11) [2012] ZACC 22 ("*Print Media*") does not contradict the aforementioned conclusion / general supposition. The court in Print Media merely found that the Act's administrative prior classification system was constitutionally deficient in the particular circumstances of the case, due to the availability of less restrictive alternatives for achieving important legislative purposes.

18 Apart from the abovementioned fundamental proposition, there are also certain policy considerations that support the limitation of expression of explicit sexual conduct. So, for example, there is a growing body of scientific/research evidence and empirical data regarding the harms to both adults and children resulting from or associated with exposure to pornography.[30] These considerations provide a further basis for limitation of the expression in question.

[30] See Annexure E attached hereto.

ANNEXURE B

SUMMARY TIMELINE OF INTERACTION WITH PARLIAMENT, DoC AND FPB

1 **26 May 2016:** Deliver written submissions to the PCC

2 **30 August 2016:** Deliver oral submissions in the PCC public hearings

3 **22 September 2016:** Meeting with the DoC, after their initial feedback to the PCC requiring further engagement with stakeholders

4 **6 October 2016:** Deliver updated written submissions to the DoC, on their request

5 **25 November 2016:** Deliver a Memorandum to the Chair of the PCC and to the DoC, after DoC fails to report to the PCC our main concerns (as communicated through points1 to 4 above) in PCC meetings on 13 October and 15 November 2016

[NOTE: We have up to now refrained from acting on the PCC's violation of the separation of powers principle – by getting the DoC to consult with stakeholders and reporting back to it – which led to our main concerns not making it onto the list of matters for consideration and deliberation by the PCC. This procedural irregularity can still be cured if the Committee gives proper consideration to the issues that the PCC has neglected to deal with.**]**

6 **8 March 2017:** Upon invitation from the Chair of the PCC, meet with representatives of the PCC, and the Parliamentary legal advisor, Ms Ngema

[NOTE: At this meeting we were told by the Parliamentary legal advisor that for the PCC to consider what we had to say regarding the Bill at this stage would create a precedent requiring Parliament to consult outside of the set processes of public hearings. The decision accordingly was to deny us an opportunity to address the Chair in response to his invitation to meet with him.*****

***** We decided to accept the PCC decision, although it came to our knowledge that the PCC requested further inputs from the Centre for Constitutional Rights and Media Monitoring Africa, after the public hearings had taken place.

The Parliamentary legal advisor informed us at the meeting that we would have a further opportunity to engage on the Bill in the second house (NCOP) at a later stage.**]**

7 **5 April 2018** (and again on 17 April 2018, 30 July and 17 August 2018)**:** Deliver a Memorandum on procedural irregularities in relation to the Bill, to the Chair of the Committee (and others)

8 **3 and 17 August 2018:** Deliver to the Chair and Committee secretary a list of 6,528 petitioners/correspondents who support our main concerns in relation to the Bill

ANNEXURE C

https://causeforjustice.org/wp-content/uploads/2018/09/Annexure-C_Memorandum-to-JTM_Chairs_FPAB_5-April-2018.pdf

ANNEXURE D

https://causeforjustice.org/wp-content/uploads/2018/09/Annexure-D_XX-definiton-Proposal.pdf

ANNEXURE E

https://causeforjustice.org/wp-content/uploads/2018/09/Annexure-E_NCOSE_Pornography-PublicHealth_ResearchSummary_7-31-18.pdf