Evolved over 30 years into an innovative organisation implementing successful media strategies

Acts as a watchdog in promoting ethical and fair journalism that supports human rights

Vision to create a responsible, quality media that engages an informed citizenry in Africa and the world

Makes use of technology, data tools and successful media strategies for change – but technology is not a silver bullet
WEB RANGERS

https://webrangers.co.za

REAL411

https://real411.org
THE 5-C’s

- Communication
- Clarity
- Cooperation
- Convergence
- Capacity
DUTY TO RESPECT, PROTECT, PROMOTE AND FULFIL FUNDAMENTAL RIGHTS
DUTY TO RESPECT, PROTECT, PROMOTE AND FULFIL

<table>
<thead>
<tr>
<th>Freedom of expression</th>
<th>Competing rights and interests: E.g. Child safety</th>
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<tbody>
<tr>
<td>Regulating freedom of expression amounts to a limitation</td>
<td>Evolving maturities; information for growth, identity and self-actualisation</td>
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<tr>
<td>Rights to receive / impart information or ideas</td>
<td>Distinguish between 'sexually explicit'; 'pornography'; and CSAM</td>
</tr>
<tr>
<td>Extends to information that offends, shocks or disturbs</td>
<td>Digital and information literacy; meaningful child participation</td>
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S v M 2008 (3) SA 232 (CC)

“Every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents, umbilically destined to sink or swim with them. The unusually comprehensive and emancipatory character of section 28 presupposes that in our new dispensation the sins and traumas of fathers and mothers should not be visited on their children.

Individually and collectively all children have the right to express themselves as independent social beings, to have their own laughter as well as sorrow, to play, imagine and explore in their own way, to themselves get to understand their bodies, minds and emotions, and above all to learn as they grow how they should conduct themselves and make choices in the wide social and moral world of adulthood.”

(per Sachs J)
Guiding principles to be adopted by FPB regarding balance of competing rights and interests

Training by appropriate constitutional expert for persons at the FPB to raise awareness about what the Constitution requires and what constitutes a justifiable limitation

Clear strategy for awareness-raising to develop media and information literacy skills; start with particular grounds such as care-givers and children

Train-the-trainer curriculum, in-person and online, to upskill members of the public to provide training in their own communities

Partner with civil society, academics and others to expand the reach of the FPB

Develop ongoing approach to ensure meaningful participation of children in consultation processes, such as through programmes like Web Rangers
PROCEDURAL MATTERS
PROCEDURAL CONCERNS

Provisions of the FPAA rendered a nullity without the Regulations

Concerns regarding definitions and inconsistent use of terms

Imperative for improved and more timeous communication with stakeholders

Definitions and Terms

- At odds with s 16 of the Constitution: (i) “prohibited content; (ii) harmful;

- At odds with other legislation: (i) Promotion of Equality and Prevention of Unfair Discrimination Act; (ii) Cybercrimes Act

- At odds with technological developments: (i) reliance on definitions in ECTA; distinction between internet access providers and internet service providers
Urgently provide stakeholders with an update on the Regulations and the implementation of the FPAA

Comprehensive review of the FPAA and Regulations to ensure alignment with definitions and use of terms

Establishment of a forum or platform (e.g. mailing list, scheduled stakeholder engagements, website updates) to engage with stakeholders on an agreed periodic basis

Include the communication strategy with stakeholders in the FPB’s Annual Performance Plan
AMBIT OF THE FPB’S MANDATE IN A CONVERGING DIGITAL ENVIRONMENT
CONVERGED DIGITAL ENVIRONMENT

Unprecedented opportunities and challenges

Borderless nature of online platforms

Operate outside of any particular domestic or international law framework

Multi-stakeholder approach bringing together different expertise and skill

Public dependance on online platforms for news, entertainment, education and engagement

Differing standards from platform to platform; not cater for local context
KEY CONSIDERATIONS // PARAMETRES

- FPB is not a so-called ‘content regulator’
- Role of the FPB is not to police the internet
- FPB does not have jurisdiction outside of South Africa
- Unfettered blocking / filtering of content is not a solution
- Weakening encryption standards not effective or lawful
- Technology is not a silver bullet
UNCERTAINTY REGARDING FPB’S MANDATE

Commercial online distributors

Non-commercial online distributors

INTERMEDIARY LIABILITY

Protection of children against CSAM and pornography

Duty to furnish information

Take-down notice
<table>
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<th>Recommendation</th>
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<tr>
<td>Position paper on the FPB’s mandate</td>
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<td>Revise definition of “commercial online distributors” – core business</td>
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<tr>
<td>Sliding scale and threshold requirement for differential treatment of different distributors</td>
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<tr>
<td>Review and review requirements imposed on ISPs // Pending measure: position paper</td>
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<tr>
<td>Guidance to ISPs on distinction between sexually explicit material, pornography and CSAM</td>
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<tr>
<td>Expand level of engagement with international bodies on CSAM</td>
</tr>
<tr>
<td>Amend any provision for FPB to compel ISPs to provide it with information // Undertaking</td>
</tr>
<tr>
<td>Transparency reports</td>
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<td>Revise take-down procedures</td>
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</table>
COMPLAINTS MECHANISMS
PROCESSES AND PROCEDURES

1. Notification
2. Basis for complaint
3. Opportunity to respond
4. Interim measures
5. Determination of outcome

Clear legal and procedural standards
Develop clear code for application of complaints procedures, including criteria for valid complaint, steps and processes, determination of outcomes, interim measures and threshold requirements
ENGAGEMENT WITH ONLINE PLATFORMS // MULTI-STAKEHOLDER APPROACH: REAL411
MULTI-STAKEHOLDER APPROACH: REAL411

1. Complaints submission
2. Expert review
3. Secretariat review
4. Publication of outcome
5. Appeal mechanism
Engage with MMA to discuss partnering on Real411, taking into consideration the particular constitutional underpinning.

Leverage partnership with Real411 to engage with online platforms to develop cooperative measures to address online harms.