



**RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND  
NEGLECT (RAPCAN)**

**SUBMISSION TO THE PORTFOLIO COMMITTEE ON HOME AFFAIRS ON**

**THE FILMS AND PUBLICATIONS AMENDMENT BILL (B27-2006)**

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## **ABOUT RAPCAN**

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) is an NGO focused on children's rights and protection in the Western Cape. We are committed to building a society in which children are perceived as human rights bearers in their own right and not as the property of adults. We believe that it is through this route that we will strengthen our society and be able to address issues of poverty, violence and crime in the long term. Associated with this we are committed to enabling children to realise their human rights through supporting communities, schools and the children themselves to access services that give meaning to these rights.

Our programmes include community training and development, training of teachers and the development of materials and resources for children, parents and service providers to enhance understanding and implementation of children's access to appropriate care and support. We run a child witness project in conjunction with the National Prosecuting Authority and the Department of Justice at six sexual offence courts in the Western Cape. The organization is engaged in advocacy on a local, provincial, national, regional and international level to strengthen initiatives aimed at the prevention of violence and abuse against children, to lobby for the practical implementation of children's human rights and to improve service delivery to children in all areas.

## **COMMENT ON THE FILMS AND PUBLICATIONS AMENDMENT BILL**

RAPCAN welcomes the Films and Publications Amendment Bill, we commend the committee on developing a bill that we believe will provide the platform to further protect children from abuse and exploitation. Further we thank the committee for the opportunity to make this submission.

Our submission will address the following areas:

1. Context of the Submission
2. The objects of the act
3. Management systems relating to the classification of material
4. Classification of materials
5. Access and distribution of classified materials
6. Support services to Children

New recommended text is underlined and existing text that we recommended be deleted is written in ~~strikethrough text~~.

### **1. Context of the Submission**

#### **1.1 Discrimination and violence against children and women in South Africa**

The high rate of discrimination, crime and violence against children and women in South Africa is underpinned by the pervasive gender power inequalities found in our society and the most important social force behind gender based violence is the high prevalence of notions of male sexual entitlement over women and girls.□

Our broad scale responses to the situation tend to be to try to address the behaviours and choices of the victims of these crimes, we target child abuse prevention messages at children, we target anti rape and gender based violence messages at women and girls. What's missing is that we place little emphasis on changing the behaviour of men and boys who ultimately hold the power in these situations. There is an absence of expecting men and teaching young men to respect women and the rights of women and girls. We, as a society, are still tolerant of many forms of gender based violence and child abuse and only take action when irreparable damage has been done.

In the 2005/2006 financial year 28 179 sexual offences<sup>1</sup> against children were reported to the South African Police Service<sup>2</sup>. The number of reported matters in all cases of sexual offences for both adults and children was 64 731<sup>3</sup>. It is known that these matters are extremely underreported research suggests that the rate of underreporting is one every nine actual incidents<sup>4</sup>. We also believe that the rape and sexual abuse of boys is likely to be underrepresented in the reported figures.

Research indicates that most women and girls have such low expectations of genuine sexual negotiation in relationships that being forced to have sex when men demand it or to provide sex as a unit of exchange is seen as 'normal'<sup>5</sup>.

In order to address the high rate of child abuse and gender based violence it is critical that South African society develop a culture that does not tolerate gender inequality on any level.

In addition to the above South Africa experiences high rates of teenage pregnancy, high levels of domestic violence including abuse and violence within teenage relationships and high rates of HIV infection particularly of young people. All of these are serious social and public health issues which affect the broader development of South African society.

## **1.2 Exposure to age-inappropriate and pornographic material**

Children in South Africa currently have easy access to a range of inappropriate material, the images to which children have access perpetuate stereotypical notions of men and women's sexual roles often reinforcing notions of male dominance over women and women and girls as two dimensional sexual objects. This access is through films, free to public broadcasts, the internet, cellular telephones and magazines amongst other methods.

Through this children are exposed to material that they are not developmentally able to assimilate in a healthy way. In addition, because their exposure is through an

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<sup>1</sup> This includes crimes recorded as Rape (23 453) and Indecent Assault (4 726)

<sup>2</sup> *South African Police Service Annual Report* (2006) accessed at [www.saps.org.za](http://www.saps.org.za)

<sup>3</sup> 54 926 Rapes and 9 805 Indecent Assault cases

<sup>4</sup> Jewkes R, Penn-Kekana L, Levin L, Ratsaka M & Schreiber M (1999). *Violence Against women in three South African Provinces*. Medical Research Council. And Leoschut, L & Burton (2006) *How Rich the Rewards? Results of the 2005 National Youth Victimization Study* Centre for Justice and Crime Prevention

<sup>5</sup> Jewkes, R & Abrahams N. *Review Study – Rape and Sexual Coercion* Medical Research Council, Crime Prevention Resources Centre on Violence Against Women in South Africa.

artificial medium children are learning about gender roles, sex and sexuality through sources that enable emotional distancing from the acts and the consequences of these acts. This is not present in the real situation and means that when young people are in a real situation they are less likely to appreciate the actual consequences of the decisions that they make.

This effect may be addressed though providing space for the child to process the images to which they have been exposed. This would need to be done with emotionally mature adults, but given the pervasive taboos related to sex in our society this seldom takes place. South African children are seldom exposed to healthy developmentally appropriate sexuality education but are over exposed to unhealthy depictions of sexual engagement that are not based in reality and perpetuate social systems that are profoundly unhealthy for individuals and our society as a whole.

### **1.3 Pornography and Child Abuse**

The production of child pornography constitutes primary abuse of children, the fact of the existence and the ongoing use of the material constitutes ongoing abuse of the same child even though the primary incident is concluded. In addition to this adult and child pornography is utilised in the process of grooming other children for sexual abuse and sexual exploitation including the production of further pornography. Material showing adults (young people who are over the age of 18) who are represented as children is also problematic in that although no abuse may be taking place in the production of that material, such material implicitly condones child sexual abuse and may be used by people who intend to sexually abuse children.

RAPCAN is not suggesting that access to pornography alone is the cause of this child abuse and gender based violence in South Africa as there are a range of factors that are associated with the development of these behaviours. However we do believe that children's access to pornography and age inappropriate material contributes to high rates of child abuse and gender based violence in our society. It is also clear that it actively undermines many of the efforts of government and civil society to implement programmes that prevent the high incidence of child sexual abuse, gender based violence, teenage pregnancy and HIV.

RAPCAN does however believe that everything must be done to prevent all forms of child abuse and sexual exploitation, including the development of child pornography as this obviously has direct influence on abuse of children.

## **2. Objects of the Act**

RAPCAN fully supports the inclusion in section 2 in the objects of the Act, the reference to regulating the broadcasting of films in addition to the existing provision as well as the inclusion of the object to protect children from exposure to disturbing, harmful or age inappropriate materials. However we believe that the bill does not go far enough to realise the aspect of protecting children from exposure. This will be discussed in detail in relation to specific sections of the bill below.

RAPCAN welcomes the inclusion of interactive computer games and mobile cellular telephones into the scope of the bill.

### **3. Management systems relating to the classification of material**

#### **3.1 Composition of Board**

We support the provisions in section 3(b) of the Amendment act (relating to section 4 of the principal act) which stipulates the need to ensure that the board is broadly representative of the South African community and relevant stakeholders. It is our opinion that experts in child development and the sexual exploitation of children are relevant stakeholders and should be represented on the board.

#### **3.2 Classification Office**

We support the intended function of the classification office to ensure that children are protected against child abuse in section 9A(2)(a).

However in addition to this we recommend that the function of this office be extended to protecting children from access to disturbing, harmful or age-inappropriate material. Material of this nature will often will not amount to child abuse as defined in the definitions section of this act, however the consequences to children and to our society of the proliferation of age inappropriate sexually explicit and violent material contributes to the normalisation of behaviours that are harmful to children and to our society.

Furthermore RAPCAN strongly supports provisions in section 9A(2)(d) and (e) regarding the function of the office to issue classification guidelines in consultation with all relevant stakeholders to determine what is disturbing, harmful or age-inappropriate for children and that these must be published annually after input from relevant stakeholders. We believe that this will allow the office to remain up to date and responsive to developments in this fast evolving field.

#### **Recommendation**

- (2) The functions of the classification office shall be to- ensure that children are protected against child abuse **and from exposure to disturbing, harmful or age-inappropriate material** and in so doing to -

### **4. Classification of Films, interactive games and publications**

#### **4.1 Definition of Child Abuse**

We support the inclusion of the broad definition of Child Abuse in this bill. With reference to the use of the term sexual exploitation we wish to bring the committees attention to the provisions in the Criminal Law (Sexual Offences and Related Matters) Amendment Bill relating to Sexual Exploitation and Sexual Grooming of Children. We believe that this bill must be consistent with the sexual offences bill and include reference to grooming of children in its definition of Child Abuse.

#### **Recommendation:**

- Child Abuse. For the purposes of this Act, means the use of a child in the creation or production of child pornography or for sexual exploitation and

includes the sexual grooming of a child and exhibiting or showing images of sexual conduct to a child or exposing a child to or encouraging a child to witness sexual conduct.

#### **4.2 Submission of certain publications and films for classification**

We support the provisions in section 14 of this bill (referring to the new section 16 in the principal act) which recommends that all publications containing scenes of sexual conduct must be submitted for classification. We believe that this measure in conjunction with the implementation of section 9A will ensure that all sexual conduct is properly assessed in terms of age appropriateness or potential harm to children.

On the same basis we support section 16 of this bill (referring to section 18 of the principal Act) in that all films and interactive computer game must be submitted for classification.

We support the criteria relating to child abuse that will result in the publication, film or interactive computer game being classified as “refused classification”

We support the criteria relating to sexual conduct and degrading conduct which will result in a publication, film or interactive computer game being classified as “XX”

We are concerned that publications, films and interactive computer games depicting the explicit infliction of sexual or domestic violence would be classified as X18, given the extent of gender based violence and sexual violence specifically. Depictions of sexual or domestic violence should be classified as XX and fall within the category of “*explicit sexual conduct which violates or shows disrespect for the right to human dignity*” and “*conduct or an act which is degrading of human beings*” already described in the bill as grounds to classify material as XX.

#### **Recommendations:**

- Section 14 of the bill referring to section 16(4)(b)(i) of the principle act to read: “explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person including the explicit infliction of sexual violence,...”
- Section 14 of the bill referring to section 16(4)(b)(ii) of the principle act to read: “conduct or an act which is degrading of human beings including explicit infliction of domestic violence; or...”
- Section 14 of the bill referring to section 16(4)(c) in the principal act and section 16 of the bill referring to section 18(3)(c) in the principal act be amended to remove clause (ii) from both of the abovementioned sections.

### **5. Children’s access, offences and enforcement**

#### **5.1 Section 23 of the bill**

This section states that materials classified as X18 can be exhibited or distributed if the person holds a licence to conduct business of adult premises. We are concerned that this means that films, publications and interactive computer games that would be

classified XX but that are deemed to be *bona fide* documentary or is of scientific, dramatic or artistic merit and are thus classified as X18. This means that material depicting explicit sexual conduct which violates or shows disrespect for the right to human dignity or of an act which is degrading of human beings as contemplated in sections 14 and 16 of this bill. We do not believe that these films, publications and games should be allowed for exhibition or distribution by persons holding licence to conduct business of adult premises under the provisions of section 23.

**Recommendation:**

- This section must explicitly exclude distribution of material classified as X18 under section 16(4)(b) and 18(3)(b) of the Act as proposed in section 14 and 16 of the bill.

**5.2 Section 24 of the bill relating to section 24A of the principal act.**

We support the creation of an offence to prohibit the broadcast, distribution, exhibition in public, offer for sale or hire or advertisement or exhibition sale or hire of material that has not been classified, has been classified as “refused classification” or as “XX” in this section of the bill. However we feel that the term ‘exhibits in public’ should be amended by deleting the words “in public” to read: exhibits. This is due to the fact that in light of the ‘private’ nature of much abuse of children it must be an offence to exhibit such material in public or in private.

In addition to the above section 24A(2) refers to “film, interactive computer game or publication referred to in section 16(2) however section 14 of the bill referring to section 16 of the principal act refers only to publications. Section 16 of the bill referring to section 18 of the principal act addresses films and interactive video games.

RAPCAN supports the provision of section 24 of the bill relating to section 24A(3) in which it states that only holders of licences to conduct the business of adult premises may broadcast material which has been classified as X18. In addition we support the provisions of section 24A(4) which creates to offence of distributing material classified as X18 which contains scenes of sexual conduct to persons under 18 years of age.

**Recommendation:**

- Section 24 of the bill relating to section 24A(2) should be amended to read: “Any person who knowingly broadcasts, distributes, exhibits ~~in public~~, offers for sale ....any film, interactive computer game or a publication referred to in sections 16(2) and 18(1)...”

**5.3 Section 24 of the bill relating to 24B of the Act.**

In general RAPCAN supports the provisions of section 24B(1) of the bill, we believe that this is an important section for a number of different reasons.

We support the criminalisation of possession, importing, making available, exporting, broadcasting or distributing in any way certain material. However we note that the provision of section 24B(1)(b)The bill creates an offence of creating, producing or contribution to the creation or production of any film, interactive computer game or publication containing depictions, of child pornography or the abuse of children or

which advocates, advertises, encourages or promotes child pornography or the sexual exploitation of children. We fully support the principle of this provision however we believe that it must be set out in a separate section in the bill. In addition we note that these offences are contained within the Criminal Law (Sexual Offences and Related Matters) Amendment Bill and that the provisions in this act should be transitional and be repealed by the promulgation of the new sexual offences legislation.

Section 24A relates to penalties for distribution or exhibition, 24B to penalties for possession. Currently the offence relating to the production of such material is tucked inconspicuously away under “penalties for possession” in 24B(1)(b).

Furthermore we believe that the maximum penalty of 10 years for the production or creation of such material may be inconsistent with provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill and Sentencing legislation. The person/s who create or produce child pornography must be treated as seriously as the person/s directly committing abusive acts against the child.

Further with regard to section 24B(1) in general we feel that the reference to material containing depictions or scenes of child pornography or abuse or sexual exploitation including advocating, advertising, encouraging or promoting such acts must be expanded to include sexual grooming of children.

With regard to section 24B(3). We strongly support the provisions of this section which places a responsibility on a person having control over a film, game or publication containing depictions of sexual conduct but does not take all reasonable steps to prevent access to such materials. However we believe that this section must include the depiction of nudity which objectifies women and has no *bona fide* documentary, scientific, dramatic or artistic merit.

broadcasters who currently broadcast material containing sexual conduct over channels that are freely available to the public and publishers of similar print material are not taking all reasonable steps to prevent children’s access to such material. We would suggest that at this point in time most South African children some as young as 9 years old have watched and continue to watch these programmes which are definitely age-inappropriate. The 10 o clock ‘adult viewing’ cut off time is unrealistic and does not address the current social realities in which children have access to such programming. A lack of parental supervision due to family circumstances, social factors, socio-economic realities and personal inadequacies mean that parents are not always available to monitor their children’s viewing. It is not acceptable and entirely irresponsible of broadcasters to absolve themselves of responsibility for this by placing this responsibility on parents.

The rights to freedom of expression must be balanced here with the rights of children to be free from all forms of harm including psychological harm. In our opinion the potential for harm in this instance far outweighs the right of the broadcaster.

In addition, the easy availability of sexually explicit films and images to children through publicly available broadcasts or print media, has impact on the broader reality of gender inequality, discrimination and violence and issues mentioned earlier

such as teenage pregnancy and HIV infection. For these reasons serious attempts must be made to ensure that material objectifying women and promoting prevalent notions of social and sexual male dominance through sexual conduct or nudity are not available to children in the way that is currently the case.

We submit that it is the responsibility of the broadcaster who chooses to broadcast as well as, but not only, the parents who may not be in a position to monitor usage to ensure that children are not exposed to programming which shows scenes which may be disturbing, harmful and age inappropriate.

### **Recommendations:**

- Section 24B(1) to be amended to read:  
“...or sequences of child pornography, sexual grooming of children or child abuse of children or which advocates, advertises, encourages or promotes child pornography, sexual grooming of children or child abuse ~~sexual exploitation of children, ...”~~
- We recommend the creation of a clear section entitled **“Prohibition, offences and penalties for creation and production of films, interactive computer games and publications”**. The current provision in 24B(1)(b) must be moved to this separate section.
- Section 24B(3) to be amended to read:  
“... which contains depictions, descriptions or sequences of sexual conduct or nudity that has no bona fide educational, documentary, scientific, dramatic or artistic merit and who fails....”
- Section 24B(3) of the bill is currently silent on what constitutes “reasonable steps to prevent access” current measures are hopelessly insufficient to prevent children from accessing age-inappropriate material showing sexual conduct. Classification of material alone is not the answer. It is necessary to develop through regulations or the act directly clear limitations on the distribution and availability of material containing scenes etc. of sexual conduct that is not classified as Refused Classification, XX or X18 in order to ensure that children are better protected from exposure to age inappropriate material that may cause emotional or psychological harm.

#### **5.4 Telecommunication – Section 24B(4) of the Bill**

With regard to section 24B(4) relating to telecommunication. RAPCAN supports this section however we are concerned that it is limited only to offences created in this Act and should be extended to include offences that will be created by the Criminal Law (Sexual Offences and Related Matters) Bill.

In addition we are concerned that this bill does nothing to promote the responsibility of cellular telephone service providers to prevent access to child pornography through the medium or to prevent children’s access to age-inappropriate material. Available technology means that children can access the internet through cellular telephone technology. In addition to this children have access to a range of harmful,

disturbing and age-inappropriate material through subscriptions and download services.

Children are a key sector of the cellular service provision market and no doubt there are large sums of money to be made of children as subscribers to the service and out of children downloading a range of materials including those that are harmful, disturbing and age-inappropriate.

Money making is often disguised as the “right to freedom of expression” again we note that the potential violation of children’s rights outweigh access to and availability of material that is not in their best interests.

### **Recommendations:**

- Section 24B(4) must be expanded to include offences created by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill.
  
- A requirement must be placed on cellular service providers to ensure that all reasonable steps are taken to ensure that child pornography is not available through the medium and that children do not have access to material (including text and images) that is potentially damaging, harmful or age-inappropriate.
  
- Currently cellular service providers go out of their way to publicise the potential protective elements of children’s access to cell phones without addressing the negative. Cellular service providers must be required to provide parents and adults with educational material, this must include:
  - The ways in which children may be exploited through the cellular telephone technology.
  - Children’s potential voluntary participation in creating and exchanging sexually explicit material.
  - The way in which grooming of children is conducted by adults and other young people through cellular telephone technology.
  - The fact that cellular telephones may include access to the world wide web.
  - The kinds of potentially harmful material available through cellular service providers.
  - How to prevent children’s access to certain material
  - How to monitor and supervise children’s cellular telephone usage
  
- This must be available irrespective of the telephone or service being obtained primarily intended for use by a child.

### **5.5 Section 24 of the bill relating to section 24C of the act (Internet Service Providers)**

RAPCAN supports the provisions relating to the requirements for internet service providers (ISPs) to monitor services, display safety messages including chat room safety messages, reporting mechanisms, report any knowledge of suspicious on-line behaviour and make filter software available to subscribers.

However we are gravely concerned that the bill only refers to “internet service providers who provide child-oriented services including chat-rooms”. These provisions must apply to all internet service providers as children have access to the whole internet and do not limit themselves to child oriented services.

In addition we believe that these provisions are hopelessly inadequate and, similar to our comments relating to cellular telephone service providers above, feel that the silence relating to the responsibility of ISPs to prevent and block access to child pornography as well as material that is potentially disturbing, harmful and age-inappropriate is unacceptable in this bill. If the intention of this bill is to protect children’s rights and promote their best interests and not the best interests of the information and communication technologies (ICT) industry then it will take more than simply classifying material to ensure that children are protected from exposure.

The provision that filter software be made available to subscribers is necessary but insufficient, it is possible for the ISPs to filter all material available through their sites and take the responsibility for this off the end user. In addition it is possible for certain material to be blocked at a national level through so called “backbone providers”<sup>6</sup>. For example ECPAT International report that “*British Telecom have developed and implemented software, known as Cleanfeed, which enables it to stop child abuse images being accessed through its service. The impact of the BT decision is wide-reaching in the UK because BT is the backbone provider, through which all other UK based ISPs operate*”<sup>7</sup>

Children often have greater expertise in navigating the internet than their parents do. It is thus necessary for education to be available to parents and adults regarding children’s use of the internet.

### **Recommendations:**

- Section 24C(1) to be amended to read:  
“Internet service providers ~~who provide child oriented services, including chat rooms,~~ shall – ....”
- Requirements be placed on backbone providers in South Africa to install software blocking images of child pornography and abuse.
- Or requirements be placed on ISPs to install filter and blocking software on their sites to block images of child pornography.
- In addition to the above that all internet service providers provide and install free filter software to subscribers to filter adult pornography sites where children may have access to the computer.
- ISPs must provide subscribers (particularly parents or adults who supervise children) with educational material. This must include:
  - The ways in which children may be exploited through the internet

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<sup>6</sup> Muir, D (2005) *Violence Against Children in Cyberspace* ECPAT International p57

<sup>7</sup> Muir, D (2005) *Violence Against Children in Cyberspace* ECPAT International p58

- The kinds of potentially harmful material children may have access to through the internet
  - Children's potential voluntary participation in creating and exchanging sexually explicit material.
  - The way in which online grooming of children is conducted by adults and other young people
  - How to prevent children's access to certain material
  - Monitoring and supervision of children's use of the internet
- All schools, youth centres, internet cafes and any other public site to which children have access to computers must be required to take all reasonable steps (including preventing access of children and using filters) to block children's access to sites containing child abuse or age-inappropriate material. Failure to do this must constitute an offence.

## **6. Support Services To Children**

The bill is also currently silent on the issue of provision of emotional and psychological support services to children who have been victimised through any of the offences that are created in the bill.

### **Recommendation:**

- The bill must ensure that children who are victims of child abuse or who are exposed to materials that can cause psychological harm have access to counselling and psychological support services that are provided by the state.