



**Internet Service Providers' Association (NPC)**  
**Reg. 2016/167416/08**

# How to Avoid Fines and Jail Time: A Beginners Guide for ISPs

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# Audience calibration questions

- **How many here run ISPs?**
- **How many are ISPA members?**
- **How many are ICASA licence holders?**
- **How many have already registered with the FPB?**

# FPB registration basics

## What should you do right now?

1. Register as an ISP with the Film and Publication Board
2. Respond to the October FPB notice

## Extensive list of reasons you should do this

1. It is required by law. (And has been since 2004!)
- 2.



# FPB registration basics

## When do you need to do this?

- The deadline to respond to the notice is 26th January 2023.
- Yes, that's today. So you still have a few hours left to comply. No pressure.

## Who needs to do this?

- Every internet service provider.
- What's an ISP? "any person who carries on the business of providing access to the internet by any means"

# FPB registration basics

**Does this including hosting companies?**

- Probably, yes.

**What about Internet cafés? Schools? Airports with wifi? The Yacht Club?**

- 



# FPB registration basics

## What are the consequences of not registering?

- “Any person who [...] fails to comply [...] shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R150 000 or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment;”

## Do I need to renew this registration each year?

- Technically, right now no. Practically, yes, you will need to.



# Step-by-step guide to register

## 1. Get the application from

- [www.fpb.org.za](http://www.fpb.org.za)

Our Core Mandate Areas

> Client Support

> Application Documents

> Board - E Application for License

But... the version on the FPB website is an old, out of date form.

There is a newer one Gazetted, and a form-fillable one available from ISPA.

# Step-by-step guide to register

**2. Find your CIPC registration and Tax Compliance Status (TCS)**

**3. Pay the application fee and save the Proof of Payment (PoP)**

- R678.76 (no VAT)
- ABSA 4075893541
- Ref: Your trading name

**4. Fill in the applications (tips to follow)**

**5. Send the application form to [clientsupport@fpb.org.za](mailto:clientsupport@fpb.org.za) along with the CIPC, TCS and PoP.**

# Application form tips

The application form says **"In terms of section 27A(1)(b) of the Act, Internet Service Providers must indicate all measures, or steps taken or put in place to ensure that children are not exposed to child pornography and pornography. Fill in below:"**

This is a lie.

What section 27A(1)(b) actually says is this: **"Every internet service provider shall [...] take all reasonable steps to prevent the use of their services for the hosting or distribution of child pornography."**

This is a huge difference.

# Application form tips

We are advised that under South African law there is no general obligation on Internet service providers / electronic communications service providers to monitor the data which they transmit or store; or to actively seek facts or circumstances indicating an unlawful activity. Further, that it is illegal to intercept and/or monitor electronic communications outside of specified exceptions.

We confirm that we are aware of our obligations under the Criminal Procedure Act 51 of 1977, the Cybercrimes Act and other legislation to cooperate with law enforcement authorities in combating child sexual abuse material and that we have the necessary processes in place to respond to law enforcement requests for information relating to persons hosting and/or distributing and/or accessing child sexual abuse material.

We confirm that we **provide Internet access customers with information** about procedures and software applications which can be used to assist in the control and monitoring of minors' access to Internet content and that our terms and conditions of service prohibit the hosting or distribution of child sexual abuse material using our services.

# Dealing with the FPB's October 2022 notice

1. The FPB likes PDFs, so put your response on a company letterhead PDF.
2. There are essentially three compliance areas (24C, 27A, 18E) that the FPB wants you to respond to. You need to provide written response to each.
3. Send your response to **clientsupport@fpb.org.za**. Put the same business name you used on the application form in the subject line.

# The October notice - Section 18E

- 8. Complaints against prohibited content.** – (1) Where any person which offers a service online is aware that their service is being used to host or distribute unclassified content, prohibited content, or potential prohibited content, such service indicate within 90 (ninety) days from publication of this Notice –

## Section 18E: Complaints against prohibited content

- We are not aware that our service is being used to host or distribute unclassified content, prohibited content, or potential prohibited content. As such no referrals to the Board have been made and no particulars have been furnished as contemplated in sections 24E, 24F and 24G of the Film and Publications Act.

# The October notice - Section 24C

- 2. Obligations by Internet Access and Service Providers.** – (1) Any person contemplated in section 24C of the Act is required to update the FPB in writing, within 90 (ninety) days from publication of this Notice, how they have:

## Section 24C: Obligations if you provide child-oriented services

“[Company name] confirms that it is not a person contemplated in this section in that it does not provide child-oriented services, contact services, child-oriented contact services or content services as defined.”

# The October notice - Section 27A

- 4. Registration and other obligations of internet service providers.** – (1) Any internet service provider contemplated in section 27A of the Act is required to update the FPB in writing, within 90 (ninety) days from publication of this Notice, how they have –

## Section 27A: Registration and other obligations of internet service providers

“We attach proof of registration with the Board as an ISP.”

But what are the other obligations?



# The October notice - Section 27A (cont.)

(2) If an internet access provider has knowledge that its services are being used for the hosting or distribution of child pornography, propaganda for war, incitement of imminent violence or advocating hatred based on an identifiable group characteristic and that constitutes incitement to cause harm, such internet service provider shall—

- (a) take all reasonable steps to prevent access to the child pornography by any person;
- (b) report the presence thereof, as well as the particulars of the person maintaining or hosting or distributing or in any manner contributing to such internet address, to a police official of the South African Police Service; and
- (c) take all reasonable steps to preserve such evidence for purposes of investigation and prosecution by the relevant authorities.

(3) An internet service provider shall, upon request by the South African Police Service, furnish the particulars of users who gained or attempted to gain access to an internet address that contains child pornography.

Any person who [...] fails to comply with subsection (2) or (3) shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

# The October notice - Section 27A (cont.)

- We are aware of our obligations under the Criminal Procedure Act 51 of 1977, the Cybercrimes Act and other legislation to cooperate with law enforcement authorities in combating child sexual abuse material and that we have the necessary processes in place to respond to law enforcement requests for information and preservation of evidence relating to persons hosting and/or distributing and/or accessing child sexual abuse material.
- We comply with all lawful requests received from SAPS to furnish the particulars of users who gained or attempted to gain access to an internet address that contains child sexual abuse material.
- We are aware that, in the event that we have knowledge of the use of our services for the distribution of illegal content, we have an obligation to report this to SAPS. We are aware that SAPS is finalising reporting obligations of electronic communications service providers under section 54 of the Cybercrimes Act.
- We provide Internet access customers with information about procedures and software applications which can be used to assist in the control and monitoring of minors' access to Internet content.
- We have a take-down notice procedure and comply with the requirements of section 77 of the ECT Act. Take-down notices against us can be lodged here: <https://ispa.org.za/tdn>

# A broader look at the FPB Act

“**commercial online distributor**” means a distributor in relation to films, games and publications which are distributed for commercial purposes using the internet;

“**non-commercial online distributor**” means any person who distributes content using the internet, or enables content to be distributed by a user of online services, for personal or private purposes;

“**prohibited content**” means content which amounts to propaganda for war, incitement of imminent violence, advocacy of hatred that is based on an identifiable group characteristic, and that constitutes incitement to cause harm, or is prohibited in sections 16(2), 16(4) and 18(3);

# A broader look at the FPB Act

18E. (1) **Any person may complain** to the Board about unclassified, **prohibited content, or potential prohibited content**, in relation to services being offered online by any person, including commercial online distributors and **non-commercial online distributors**.

(2) If, upon investigation by the Board or by the compliance officers in terms of section 15, it is established that there is merit in the complaint and or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of this Act or has not been submitted for examination and classification as required in terms of sections 16, 18, 18C or 18D, the matter must be referred to the Board which may, subject to due process of law—

- (a) in the case of a **non-commercial online distributor, issue a take-down notice** in accordance with the procedure in section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002); or
- (b) in the case of **internet service providers, issue a take-down notice** in terms of section 77 of Electronic Communications and Transactions, 2002 (Act No. 25 of 2002).

(3) For the purposes of this section and sections 24E, 24F and 24G, the internet service provider **shall be compelled to furnish** the Board or a member of the South African Police Services **with information of the identity of the person** who published the prohibited content.

# Final thoughts FPB Act

- Overlap with the Cybercrimes Act
- Reminder: Do **not** monitor your customers
  - ECT Act: “there is no general obligation on a service provider to monitor the data which it transmits or stores; or actively seek facts or circumstances indicating an unlawful activity.”
  - RIC Act: Various provisions make it a criminal offense to intercept the communications of your customers without consent.
- Compliments for the Film and Publication Board

# Other ways to get fined or end up in jail

## ICASA Compliance

- Licensees have many reporting obligations to ICASA, depending on the licences held, as many as two dozen reports each year.
- Tariff notifications
  - ICASA regulations require licensees to file tariff charges related to the termination, amendment and introduction of new and existing products and services.
  - Must notify ICASA of any termination of product/service, amendment of product/service, new product/service launch, and any product/service promotions, at least 7 business days prior to implementation

# Other ways to get fined or end up in jail

## Law Enforcement Requests

- Section 205 subpoenas (to be replaced with directions in terms of the Cybercrimes Act)
- Don't disclose customer information without a legal request to do so
- Do preserve data while the requesting party gets paperwork in place

## SARS requests

## Protection from Harassment Act

## Maintenance Act

## RICA (OIC developments)

## POPIA

# About ISPA

- Why join?
  - Access to advice when you need it
  - Make things like the FPB registration process much easier
  - Liability protection for third party activity and content on your network
  - Support an industry body
    - A lot of ISPA's work also benefits non-members
- Fees start at R820.00 per month (excl. VAT) for small members
- [www.ispa.org.za](http://www.ispa.org.za)
  - > Membership
  - > Application form



**Thank you for your time!**

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