

# Analysis of Online Content Regulations (2017)

Twaweza

September 2017

---

## Introduction

The Ministry of Information, Culture, Arts and Sports recently published draft Online Content Regulations (2017), under the Electronic and Postal Communications Act. This briefing note presents a summary of the draft regulations, followed by an analysis of their implications with a particular focus on freedom of expression and combating corruption. Suggested amendments that would mitigate the concerns raised are put forward.

## Summary of key terms in the draft regulations

The draft regulations focus largely on producers of online content, including bloggers, online forums, online video and audio producers, and social media. Key points are listed below, with reference to the relevant section of the regulations in parentheses.

**For all online content providers**, requirements under the draft regulations include:

- i. to “take into account trends and cultural sensitivities of the general public” (5(1)(c))
- ii. to “establish and make available online safe use policy or guideline” (5(1)(d))
- iii. to “use moderating tools to filter prohibited content” (5(1)(e))
- iv. to “have in place mechanisms to identify source of content” (5(1)(f))
- v. to “take corrective measures for objectionable or prohibited content” (5(1)(g))
- vi. to “ensure prohibited content is removed within 12 hours upon being notified” (5(1)(h))
- vii. to “cooperate with law enforcement officers in pursuing functions under these Regulations” (5(3))
- viii. to provide users with content filtering mechanisms and parental control (13(b))

**For blog and forums**, requirements include:

- i. to register with the Tanzania Communications Regulatory Authority (TCRA) (7(1)(a))
- ii. to ensure that any comments submitted by blog readers / forum users are moderated before they are published (7(1)(b))
- iii. to identify the source of such content (7(1)(c))

The requirements for blogs and forums “apply to Tanzania residents, Tanzanian citizens outside the country, non-citizens of Tanzania residing in the country, blogging or running online forums with contents for consumption by Tanzanians.” (7(2))

**For internet cafes**, requirements include:

- i. to establish and make available online safe use policy with regards to online content (9(a))
- ii. to adopt code of conduct for the café and post it on conspicuous place (9(b))
- iii. to put in place mechanism to filter access to prohibited content (9(c))
- iv. to install surveillance camera to record and archive activities inside the café (9(d))

For **social media users**:

- i. to be responsible and accountable for the information they publish on a social media
- ii. to use a password to prevent unauthorized access or use by unintended persons

## Prohibited content

For all content providers, the draft regulations prohibit a wide range of content, including (among other things):

- i. content that is indecent, obscene, pornographic, violent, etc. (12(1))
- ii. hate speech (12(1)(c))
- iii. content that uses bad language including the “use of disparaging or abusive words which is calculated to offend an individual or a group of persons” (12(1)(k))
- iv. “false content which is likely to mislead or deceive the public” ... “except where it is preceded by a statement that the content is not factual” (12(1)(l))

**Offences and penalties**

The regulations make contravention of any of these terms an offence, punishable with a fine not less than five million Tanzanian Shillings or imprisonment for a term not less than twelve months or both. (16).

**Analysis**

**Anonymity, whistleblowing and corruption**

One immediate effect of these regulations will be to prohibit online anonymity in Tanzania. Internet cafes will be required to keep video records of their customers. Bloggers and internet forums will be required to register with TCRA, to identify all users who post content or comments, and to cooperate with the authorities (including, one assumes, where the authorities want to know a user’s identity). In other words, if the regulations come into effect, for a blogger or forum owner to refuse to collect information on a user’s identity, or to refuse to share that information with the authorities would be a criminal offence.

This has obvious and serious implications for whistleblowing, essentially making it impossible for anyone to use a blog or forum, either their own or someone else’s, to report on corruption or other wrongdoing without revealing their identity. Since fear of retaliation or other repercussions are a major obstacle to whistleblowing, the ability to do this anonymously is vital. And since whistleblowing is an important tool in efforts to combat corruption, the effect of these regulations will be to make it easier for those who commit corruption or other offences to escape accountability.

Further, requiring all blogs to register with TCRA introduces a considerable hurdle to any new blogger. The likely effect will be that many potential bloggers will simply not take up the practice, thus depriving them of their freedom of expression and denying the country the opportunity to benefit from the ideas and observations they could offer.

These concerns could be mitigated by the following changes to the draft regulations:

<b>Specific concern</b>	<b>Suggested changes / proposed new text</b>
Blogs and forums are required to register with TCRA	Remove sub-clause 7(1)(a), or require only blogs and forums with a specified number of users (e.g. 100,000) to register.
All content providers are required to have mechanisms to identify the source of user-generated content	Remove sub-clause 5(1)(f)
Blogs and forums are required to identify the source of any reader/user comments	Remove sub-clause 7(1)(c)
Internet cafes are required to install surveillance cameras that record and archive users	Remove sub-clause 9(d)

**Pre-moderation and freedom of expression**

A second effect of the regulations will be to require anyone who operates a blog or forum in Tanzania to moderate all user-submitted content before it is publicly visible. This would require bloggers, for example, to review every comment posted on their blog and to check that it meets the requirements of the regulations before that comment is published. For any blog or forum that currently receives large amounts of user-generated content, this requirement would either introduce massive additional staffing requirements and costs and/or massively reduce the amount of content that gets published. In either case, operating a platform with an active community of users would become financially impossible for anyone other than the very wealthy.

A second effect of the requirement for pre-moderation would be to deny users their right to freedom of expression, by requiring that any opinion they express must be approved by site operators.

These concerns could be mitigated by the following changes to the draft regulations:

<b>Specific concern</b>	<b>Suggested changes / proposed new text</b>
Blogs and forums are required to pre-moderate all user-submitted content before it is published	Replace sub-clauses 5(1)(e) and 7(1)(b) with a requirement that blogs and forums must have the ability to moderate content after posting and to remove content if the courts require them to do so.

**Lack of clarity around social media**

The definitions and other terms of the regulations create uncertainty around social media. In particular, some forms of social media – including Facebook, Twitter and Instagram – would meet the definition of a forum as a “site where people can hold conversations in the form of posted messages or journals and whereby most forums allow anonymous visitors to view forum postings, but require creation of an account in order to post messages in the forum.” As such, the regulations would appear to require Facebook and the other social media companies to fulfil the requirements for blogs and forums, including registration with TCRA, pre-moderation of all content posted by users, identification of all users, etc.

These large social media companies are not based in Tanzania but have significant numbers of users in Tanzania. But it is unlikely that the companies would be willing to register with TCRA, and inconceivable that they would introduce pre-moderation and prohibit anonymity for their Tanzanian users. It is more likely that they would choose to make their services unavailable to users in Tanzania, thus depriving Tanzanian citizens of the opportunity to engage fully and freely in communications with the wider world, and of all the benefits that this can bring.

These concerns could be mitigated by the following changes to the draft regulations:

<b>Specific concern</b>	<b>Suggested changes / proposed new text</b>
Social media platforms are required to register with TCRA, identify users and pre-moderate content	Remove clause 7 and sub-clause 5(1)(f)

**Content prohibitions and freedom of expression**

Some of the prohibitions on different types of content are reasonable or defensible – such as prohibitions on hate speech and pornographic content. However, in other cases, these prohibitions go beyond appropriate limits on freedom of expression – for example, the prohibition on satirical or fictional content that is not pre-labelled as such. Similarly, the prohibition on “disparaging words” is a clear restriction on freedom of opinion. It is even possible that true statements of fact could be made a criminal offence under this prohibition, where the fact itself is considered disparaging. Imagine, for example, referring to someone as “corrupt” where they are indeed corrupt: this would be both true and disparaging, and under these regulations it would be illegal. Under international law and best practice, a statement that is clearly an expression of an opinion, or one that is true, should be permitted.

These concerns could be mitigated by the following changes to the draft regulations:

<b><i>Specific concern</i></b>	<b><i>Suggested changes / proposed new text</i></b>
Satirical or fictional content that is not pre-labelled as such is prohibited	In sub-clause 12(1)(l), replace the word “likely” with “intended”, so it reads “false content which is intended to mislead or deceive the public ...”
The prohibition on “disparaging words” includes disparagement that is clearly an opinion or that is factual	In sub-clause 12(1)(k)(i), insert the words “and which is factually incorrect” after the word “persons”, so it reads “which is calculated to offend an individual or group of persons and which is factually incorrect;”