

Submission of Collected Views on the Electronic and Postal Communications (Online Content) Regulations, 2017
Coalition on the Right to Information

No.	Current Regulation	Proposed Change	Reason
PART I – PRELIMINARY PROVISIONS			
3	“indecent material” means material which is offensive, morally improper and against current standards of current behaviour which includes nudity and sex	“indecent material” means material which contains explicit and gratuitous nudity and sex	This definition seems to specifically target issues around sex but the previous wording was too broad and vague, leaving it open to misinterpretation
	“online” means a networked environment available via online whereby content is accessible to or by the public whether for a fee or otherwise and which is intended for consumption in or originated from Tanzania	“online” means by means of the internet or other computer network	These are globally recognised terms and as such have fixed definitions. If there is a desire to specify geography, this can be added or implied from the context of the law.
	-	Add definition: “content committee” is the committee responsible for electronic (online) content under the auspices of the Tanzania Communications Regulatory Authority	Currently in the regulations there is no process by which to determine whether content falls under the categories of prohibited content listed under Regulation 12. Anyone who assesses content as prohibited is allowed to issue a take-down notice which all parties are then required to comply with. It is essential that a qualified and competent body determine whether content is prohibited or not and be vested with the Authority to issue take-down notices. Otherwise anyone with a grudge, improper interpretation of these Regulations or malicious intent can issue take-down notices on any content.
PART III – GENERAL OBLIGATIONS FOR ONLINE CONTENT			

5(1)(f)	Have in place mechanisms to identify source of content	Remove	Online content providers would include any corporate or institutional website, any user of social media as well as blogs, forums, and online media. This is an extremely wide and diverse angle of content providers and as such it will not always be feasible to identify sources of all content.
5(1)(g)	Take corrective measures for objectionable or prohibited content; and	Take corrective measures for prohibited content; and	Objectionable content is too wide and undefined. Who has to object for content to be classified as objectionable? The term is also not defined in the on the interpretation section of regulations while prohibited content is.
5(1)(h)	Ensure prohibited content is removed within 12 hours upon being notified	Ensure prohibited content is removed within 48 hours upon being notified by the Content Committee of the Authority	12 hours is an extremely short time to allow someone to comply with an order. It does not give them any opportunity to dispute the notice and may cause them to lose their access to the internet if they happen not to see the take-down notice in time. In addition the sub-regulation (h) does not specify who is responsible for issuing these take-down notifications.
5(3)	An online content provider shall co-operate with law enforcement officers in ensuring functions under these regulations.	An online content provider shall co-operate with law enforcement officers in ensuring functions under these regulations. Where an online content provider takes issue with the requirements made by law enforcement officers, the dispute must be resolved in a court of law.	If an online content provider sees malintent or overstepping in the requests of law enforcement officers, it is essential that they have recourse to object of what is being asked of them. It is possible that some law enforcement requests may contravene the right to privacy or even protection of whistleblowers so a competent authority must be allowed to make a final judgement.
6(1)(b)	Remove prohibited content provided such removal is carried out in accordance with these Regulations	Remove	The responsibility for complying with take-down notices must rest with one party – the user who posted the content. Otherwise responsibilities can be diffused. Application service licensees should not have the authority to interfere with individuals’ content, this grants them authority that should not be available to private companies.
6(3)	Once the licensee is notified by the Authority or by the person affected by the	Once the licensee is notified by the Content Committee of the existence of prohibited content, it	12 hours is an extremely short time to allow someone to comply with an order. It does not give them any opportunity to dispute the notice and may cause them to

	content of existence of prohibited content, it shall, within 12 hours, from the time of notification, inform its subscriber to remove the prohibited content.	shall, within 48 hours, from the time of notification, inform its subscriber to remove the prohibited content. Evidence of the take-down notice from the Content Committee should be provided to the subscriber.	lose their access to the internet if they happen not to see the take-down notice in time. In addition, in its current formulation, take-down notices can be issued by anyone who feels that they object to a person's content whereas this authority must be vested in a competent and qualified body.
6(4)	Upon receipt of notification pursuant to Sub regulation 3, the subscriber shall, within 12 hours from the time of notification, remove the prohibited content.	Upon receipt of notification pursuant to Sub regulation 3, the subscriber shall, within 48 hours from the time of notification, remove the prohibited content.	12 hours is an extremely short time to allow someone to comply with an order. It does not give them any opportunity to dispute the notice and may cause them to lose their access to the internet if they happen not to see the take-down notice in time.
6(5)	Where the subscriber fails to remove the prohibited content within 12 hours, the licensee shall suspend or terminate the subscriber's access account.	Where the subscriber fails to remove the prohibited content within 48 hours, the licensee shall suspend or terminate the subscriber's access account, pending determination of any matter before a court of law.	If the user objects to the take-down notice and is filing proceedings in this regard, their internet access cannot be suspended until any disputes before the court are resolved.
7(1)	Subject to Regulation 5 every blogger and online forum shall-	Subject to Regulation 5 every blogger and online forum that is run for commercial purposes shall-	The power and potential of the internet rests in freeing the means of communication and making them accessible to everyone. Registration is likely to involve cost, whether in time or financially for a registration fee. This burden should not be imposed on blogs and forums unless they are commercially run.
7(1)(b)	Ensure that, where his blog or forum allows the general public to post content, he sets mechanism that content is not published prior to the blogger's review	Ensure that, where his blog or forum allows the general public to post content, he removes content after receiving notice to do so from the Content Committee	Pre-moderation of all comments is almost impossible. For the platforms that receive hundreds of comments a day this is an impossible investment of time and human resources. In addition a number of global platforms used in Tanzania, such as Facebook and Instagram, do not allow this function. In the current formulation there would be no users of Facebook or Instagram in Tanzania. In addition, individual bloggers and platform managers are

			not competent or qualified to assess content to see whether or not it is prohibited. This must be done by a competent and qualified authority.
7(1)(c)	Use moderating tools to filter content and set mechanism to identify the sources of such content	Remove	It is critical that content is moderated or taken down by a competent and qualified authority. Allowing private individuals or companies who run blogs and forums the authority to remove content gives them too much power. They should only be allowed to enact the orders of a body that can appropriately make decisions on these matters. In particular, the list of prohibited content is quite broadly defined in places and so open to different interpretations. In addition, anonymity is protected by the Whistleblowers and Witness Protection Act, Article 4(3). For blog and forum owners to acquire additional information about those who post on these platforms is also an invasion of their right to privacy.
7(2)	Sub Regulation 1 shall apply to Tanzania residents, Tanzania citizens outside the country, non-citizens of Tanzania residing in the country, blogging or running online forums with contents for consumption by Tanzanians.	Sub Regulation 1 shall apply to Tanzania residents, Tanzania citizens running commercial blogs and forums outside the country, non-citizens of Tanzania residing in the country, blogging or running online forums with contents for consumption by Tanzanians.	It will be almost impossible to enforce the registration requirement for those outside the country. In addition registration should only be required for commercially run blogs and forums.
8(b)	Upon notification by the person affected by the content, the Authority, or law enforcement agency, remove the hosted content	Remove	For increased accountability and a lower enforcement burden only the user (individual, group or legal entity) who owns and posted the content should be able to take that content down. Online content hosts should not have the authority to interfere with individuals' content, this grants them authority that should not be available to private companies.

9(c)	Put in place mechanism to filter access to prohibited content	If a user is seen in an internet café accessing prohibited content, he/she should be asked to leave the premises	To require internet cafes to put in place filtering that prevents access to prohibited content is onerous and impractical. The list of prohibited content in Regulation 12 is wide and open to differing interpretations. Private companies should not have the authority to determine whether content is prohibited or not. It also creates an unnecessary burden on these often small businesses; many people currently access the internet through phones or private computers. So if specific websites are blocked (filtered) by internet cafes it will lose them business while determined users find other means to access the prohibited content.
9(d)	Install surveillance camera to record and archive activities inside the cafe	Put in place a registration form such that all customers are required to provide their names and contact details.	Most internet cafes in the country are small businesses consisting of a few computers. The cost burden of installing surveillance cameras and archiving these for an unspecified period of time will force many of these businesses to close, depriving people of a source of income and jobs. In addition, these internet cafes provide low cost access to the internet for millions of Tanzanians who cannot afford computers and smartphones. Placing these types of restrictions on them and forcing the closure of many will deprive many of these users from the world's largest knowledge bank. Putting in place a low cost solution will serve the same purpose with much less of a burden on these small businesses which are often run by young people.
10(b)	Use password to protect any user equipment or access equipment or hardware to prevent unauthorized access or use by unintended persons.	Remove	In some cases, passwords can be detrimental. In an emergency if someone is trying to contact the relative or friend of somebody who has been in an accident or been hurt, a password on a phone could prevent them from doing so. The use, or not, of passwords should be left to the individual to determine depending on their own circumstances.

11(2)	Notwithstanding Sub Regulation 1 or other provisions of these Regulations, any authorized person who executes a directive or assists with execution of such directive and obtains knowledge of any information shall not-	Notwithstanding Sub Regulation 1 or other provisions of these Regulations, any authorized person who executes a directive or assists with execution of such directive and obtains knowledge of any information shall-	There is an error in including 'not' here because it only applies to 11(2)(a) not 11(2)(b).
11(2)(a)	Disclose such information to another person unless that other person is a law enforcement officer and to the extent that such disclosure is necessary for the proper performance of the official duties of the authorized person or the law enforcement officer receiving the disclosure; or	Not disclose such information to another person unless that other person is a law enforcement officer and to the extent that such disclosure is necessary for the proper performance of the official duties of the authorized person or the law enforcement officer receiving the disclosure; or	This is part of the same error mentioned above
12(1)(a)	Indecent content save for sex and nudity sex scenes approved by the body responsible for film censorship;	Indecent material save for sex and nudity sex scenes approved by the body responsible for film censorship;	The definition for indecent content provided in Regulation 12 matches exactly the definition of indecent material in the Preliminary Provisions so there is no need to introduce a new term here.
12(1)(b)	Obscene content	Remove	There are so many subjective terms in the definition of obscene content, it leaves so much room for misinterpretation and differing interpretation. For users to be able to comply with these regulations and know what they can and cannot post online these clauses need to be clear and specific. The spirit of the definition of obscene content is covered by articles (a), (e), (f).
12(1)(d)	Explicit sex acts or pornography	Remove	Covered in the slightly amended definition of (e) below

12(1)(e)	Sex crimes, rape or attempted rape and statutory rape, or bestiality	Sex crimes, rape or attempted rape and statutory rape, bestiality or pornography	12(1)(d) and 12(1)(e) cover similar issues and so are best combined. These issues are also covered in 12(1)(a) so there is no need for constant repetition.
12(1)(f)	Content that portrays violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation	Content that intentionally promotes violence, whether physical, verbal or psychological, that can upset, alarm and offend viewers and cause undue fear among the audience or encourage imitation	In some cases violence is part of real life and there can be valid reasons for portraying it. For example a campaign designed to reduce domestic violence may contain graphic images. In laws regulating content intention is important to consider.
12(1)(g)	Content that portrays sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed	Content that intentionally promotes sadistic practices and torture, explicit and excessive imageries of injury and aggression, and of blood or scenes of executions or of people clearly being killed	Without changing portrays to promotes, some of this sub Regulation could be applied to news content.
12(1)(h)	Content that causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder	Content that encourages or incites crime	Annoying someone is subjective and should not be punishable by a prison term. Threatening harm or evil is a crime as is public disorder therefore the sub Regulation is much more clear to interpret this way
12(1)(j)(v)	Any other content related to the above	Remove	It is important for users of online content to understand exactly what is and is not prohibited content. Specificity is critical in legal documents.
12(1)(k)	Content that uses bad language including but not limited to:- i) the use of disparaging or abusive words which is calculated to offend an individual or group of persons ii) crude references words, in any language commonly used	Remove	Offending someone should not be a criminal offense. This clause essentially criminalises opinion. In addition the vague terms incorporated into this sub Regulation make it almost impossible to interpret for both citizens and law enforcement authorities. This can result in substantial wastage of state resources in policing unclear content issues online. In addition, hate speech is covered in 12(1)(c)

	in the United Republic, which are considered obscene or profane including crude references to sexual intercourse and sexual organs iii) hate speech		
12(1)(I)	False content which is likely to mislead or deceive the public except where it is clearly pre-stated that the content is:-	Deliberately false malicious content which is intended to deceive the public except where it is clearly stated that the content is:-	False content is a vague and subjective term. A number of cases brought under the Cybercrimes Act (2015) under Article 16 have been thrown out due to the difficulties in prosecuting using this type of terminology. Showing bad intention will help to close this gap. In addition it will not always be practical for satire, parody or fiction to pre-state what it is, as long as it is stated somewhere there should be no issue
12(1)(I)(ii)	Fiction; and	Fiction; or	These conditions cannot all exist at the same time
12 (2)	“indecent content” means content which is offensive, morally improper and against current standards of accepted behaviour, including nudity and sex; “obscene content” means content which gives rise to a feeling of disgust by reason of its lewd portrayal and is essentially offensive to one’s prevailing notion of decency and modesty, with a possibility of having a negative influence and corrupting the mind of those easily influenced;	Remove definitions of “indecent content” and “obscene content”	Covered in preliminary provisions or unnecessary
13 (a)	Online content provider shall ensure that-	Online content provider shall aim to ensure that-	These entities can put in place protective measure to try to ensure children do not access prohibited content such

	(a) children do not register, access or contribute to prohibited content	(a) children do not register, access or contribute to prohibited content	as pop ups asking users to confirm their age. However they cannot guarantee that child users will not lie and as such should not be criminally liable for the same. Children's online safety is much more the responsibility of their parents and/or guardians than online content providers.
13(b)	Users are provided with content filtering mechanisms and parental control	Users are provided with parental control	We should ensure children are protected but not specify exactly how as this may place an onerous burden on content providers. Filtering mechanisms are generally hard to make available to individual users in a tailored way.
PART IV - COMPLAINTS HANDLING			
14(1)	Any person may file a complaint to the online content provider against parties referred in Regulation 2 in relation to any matter connected with prohibited content	Any person may file a complaint to the Content Committee against parties referred in Regulation 2 in relation to any matter connected with prohibited content	As in previous explanations, it is essential that a competent and qualified authority be tasked with making determinations about prohibited content rather than just any individual. Empowering individuals and legal entities to issue take-down notices is subject to grave misuse.
14(2)	Online content provider shall, within 12 hours, resolve the complaint filed under this Regulation.	The Content Committee shall, within 5 working days, meet to resolve the complaint filed under this Regulation	Again this creates a coherent process for any accusations of prohibited content. Since the Content Committee consists of a group of individuals, they will need more than 12 hours to meet and deliberate the issue
14(3)	Where the online content provider fails to resolve complaint under this regulation, the aggrieved person may, within thirty days refer the complaint to the Authority.	Where the Content Committee fails to resolve the complaint under this Regulation, or where either party is unsatisfied with the resolution, they may, within 10 working days, refer the complaint to the Minister	As with all legal issues subject to interpretation and dispute, a proper process must be created and followed.
14(4)	Added	Add clause: Where the Minister fails to resolve the complaint under this Regulation, or where either	The final arbitrator of these disputes should always be a court of law in order to comply with appropriate process and guarantee the rights of both parties

		party is unsatisfied with the resolution, they may, within 10 working days, refer the complaint to a court of law	
15(1)	Upon receiving the complaint under this regulation, the Authority shall serve the online content provider with copy of the complaint and require the online content provider to reply within 12 hours.	Upon receiving a complaint under this regulation that is not related to prohibited content, the Authority will make a decision on the same.	It is important to have a complaints process for both prohibited content, addressed in Regulation 14 and for issues not related to prohibited content addressed here.
15(2)	Where a person is not satisfied with the response of the content provider in Sub regulation 1, the Authority may consider and deal with the complaint through Content Committee procedures.	Where a person or legal entity is not satisfied with the response of the Authority, they may, within 30 days, refer the issue to a court of law	It is important to safeguard due process and allow for expressions of dissatisfaction with the decisions of the Authority
PART V – MISCELLANEOUS PROVISIONS			
16	Any person who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not less than five million Tanzania shillings or to imprisonment for a term of not less than twelve (12) months	Any person who contravenes the provisions of these Regulations, commits an offence and shall, upon conviction be liable to a fine of not more than five million Tanzania shillings or to imprisonment for a term of not more than twelve (12) months	While the Regulations contained herein are a laudable effort to regulate the content available online and to ensure that all business involved in the provision of online services comply with some minimum standards, the offences contained are not criminal and neither do they warrant such harsh punishments. In addition there should be a difference in how individual users are treated in comparison with commercial entities. Placing a maximum fine and sentence allows courts the appropriate discretion while not creating incentives for over-censorship.