

DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

NO. 3568

23 June 2023

**Film and
Publication
Board****Content Regulatory Authority of South Africa**ECO Glades 2, 420 Witch Hazel Ave
ECO Park, Centurion, 0169
Pvt Bag X31, Highveld Park, 0169T +27(0) 12 003 1400
F +27 (0) 83 000 1100
www.fpb.org.za**FILM AND PUBLICATION BOARD FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED DRAFT ACCREDITATION FRAMEWORK OF THE FILM AND PUBLICATION BOARD**

1. I, Ms Zamantungwa Mkosi, the Chairperson of Council at the Film and Publication Board, in terms of section 18D of the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended (FP Act), hereby publishes for public comment the following draft accreditation framework, together with a mock application form annexed thereto.

2. Interested persons who wish to comment on any or both of the draft accreditation or the mock application form listed above may submit their written representations **within 30 (thirty) working days** of publication of this Notice. 3. All comments should be marked for the attention of **Mr Oupa Makhalemele**, at the following contact details:

By hand: **The Film and Publication Board Eco Glade 2 420 Witch Hazel Avenue Centurion 1609**

By mail: **The Film and Publication Board Private Bag X31 Highveld Park 0169**

By email: **oupa.makhalemele@fpb.org.za**

Kindly write ***draft Accreditation Framework of the Film and Publication Board with mock application form*** in the subject field of your email.

Enquiries: **012 003 1400** 4. A copy of the draft regulatory instruments listed above are also available at **www.fpb.org.za**. **Film and Publication Board Date:**

FPB Council Members:

Ms. Zamantungwa Mkosi – Council Chairperson; Dr. Siyasanga Tyali – Deputy Chairperson;
Ms. Lungelo Nxele; Ms. Mpho Sedibe; Dr. Andile Nontso; Mr. Phosa Mashangoane; Adv. Lufuno Nevondwe; Ms. Maggie Pillay; Ms. Zanele Nkosi



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**DRAFT FRAMEWORK ON THE ACCREDITATION OF FILMS, GAMES AND
PUBLICATIONS CLASSIFIED UNDER A FOREIGN OR INTERNATIONAL SYSTEM IN
TERMS OF SECTION 18D OF THE FILMS AND PUBLICATION ACT, 65 OF 1996.**

DRAFT

FPB Council Members:

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1 INTRODUCTION

- 1.1 This Draft Framework is issued pursuant to the powers and duties of the Film and Publication Council ("**Council**") as set out in section 4A of the Films and Publication Act, 65 of 1996, ("**the Act**") to guide commercial online distributors who wish to distribute films, games or publications by making an application to the Council for the accreditation of films, games or publications using a foreign or international classification system.
- 1.2 This Framework set out the procedure to be followed as well as describes the conditions and terms on which the Council will consider and approve an application by a commercial online distributor to utilise an international or foreign accreditation system for its films, games and/or publications, which it distributes in the Republic of South Africa ("**Republic**").

2 DEFINITIONS

- 2.1 "**Act**" means the Film and Publications Act, 65 of 1996.
- 2.2 "**Board**" means the Film and Publication Board, established by section 3 of the Act.
- 2.3 "**Classification**" means any decision by the Board in terms of the Act.
- 2.4 "**Council**" means the Council established by section 3 of the Act.
- 2.5 "**Distribute**" shall have the meaning assigned thereto in the Act.
- 2.6 "**Online Commercial Distributor**" means a distributor in relation to films, games, and publications which are distributed for commercial purposes using the internet."
- 2.7 "**Film**" shall have the meaning assigned thereto in the Act.
- 2.8 "**Game**" shall have the meaning assigned thereto in the Act.
- 2.9 "**Publication**" shall have the meaning assigned thereto in the Act.

3 ACCREDITATION OF A FOREIGN OR INTERNATIONAL CLASSIFICATION SYSTEM

- 3.1 In terms of section 18D of the Act, a commercial online distributor wishing to obtain approval to distribute its films, games and/or publications within the Republic, using a classification system which is a foreign or international classification system, must apply to the Council for approval and accreditation of such classification system to be used by the commercial online distributor.
- 3.2 The Council will consider any such application for accreditation and may either –

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- 3.2.1 accept the foreign or international classification system as being sufficient, approve and allow the commercial online distributor to accredit its films, games and/or publications for distribution within the Republic applying such foreign or international classification system;
- 3.2.2 accept the foreign or international classification system as sufficient, subject to certain conditions (as may be stipulated by the Council) being met by the commercial online distributor when it applies the foreign or international classification system to rate films, games and/or publications for distribution within the Republic thereafter; or
- 3.2.3 reject the foreign or international classification system as not being sufficient to meet the requirements of the Act and/or on the basis that the commercial online distributor has not satisfied the requirements of the Act in relation to its application to the Council.

4 ACCREDITATION APPLICATION PROCESS

- 4.1 A commercial online distributor making an application for accreditation of a foreign or international classification system as set out in section 18D, must pay the prescribed application fee as set out in the Films and Publication Amendment Tariff's Regulations from time to time and/or as published by the Minister from time to time.
- 4.2 The prescribed application fee can be paid in line with the details set out below:
- [•]
- 4.3 The commercial online distributor must complete the prescribed application form for accreditation (obtainable from the FPB's offices during business hours or from the FPB's website) and submit it to the Council with the necessary supporting documentation, through the following channels:
- 4.3.1 Emails: [•]
- 4.3.2 Postal address: Private Bag X31, Highveld Park, 0169
- 4.3.3 Physical address: 420 Witch Hazel

Eco Glade 2, Eco Park
Centurion 0169

5 ACKNOWLEDGEMENT OF RECEIPT OF THE APPLICATION

- 5.1 Once the application is received and recorded on the system(s) of the FPB, the commercial online distributor will receive an acknowledgement email or letter with a reference number for the application within 7 (seven) business days.

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- 5.2 If the commercial online distributor wishes to provide additional information to its application or if any information supplied as part of the application has become outdated or incomplete, such additional or supplementary information can be emailed to or made accessible to the Council via an FPB stipulated communication portal or mechanism. The application reference number must be provided to the FPB with each additional information submission.

6 ASSESSMENT OF THE APPLICATION

- 6.1 In considering and assessing the application for accreditation the FPB is required to assess the following:
- 6.1.1 the accessibility of the applicant's online service by the FPB to allow the FPB to be able to carry out compliance, monitoring and auditing activities on a routine and regular basis; and
- 6.1.2 consider the alignment of the foreign or international ratings to the applicable ratings in terms of the Act and the Classification Guidelines of the FPB.¹

7 ALIGNMENT OF THE FOREIGN OR INTERNATIONAL RATINGS TO THE APPLICABLE RATINGS IN TERMS OF THE ACT AND FPB CLASSIFICATION REQUIREMENTS

- 7.1 In determining whether the foreign or international classification system is aligned with that set out in the Act or to the extent thereto, the Council will consider the following:
- 7.1.1 the Constitution of the Republic of South Africa, 1996, is the supreme law of the Republic, and informs all laws, including the accreditation under the Act, in determining the alignment with a foreign or international classification system, such system must not infringe on rights under the Constitution (unless such limitation is justifiable under section 36). This means that if a film, game or publication as classified under the foreign or international system, propagates for war or incites imminent violence, infringes the right to freedom of expression for example, it should not be accredited;
- 7.1.2 the process and methodology which the commercial online distributor will apply in the classification process and in managing ratings that are applied;
- 7.1.3 demonstration by the commercial online distributors of how the foreign classification system takes cognisance of the requirements under the Act including diversity, socio-cultural norms/standards within the Republic;

¹ Department of Communications and Digital Technologies, Classification Guidelines for the Classification of Films, Games and Certain Publications No. 2218 (1 July 2022).

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- 7.1.4 an outline of the process, actions plans and review mechanisms of the commercial online distributor in its applying and managing ratings assigned to its films, games and/or publications;
- 7.1.5 how the foreign or international classification system provides adults with the necessary information to make informed viewing, gaming and reading choices for themselves and the children in their care. This includes an illustration of mechanisms in place to ensure child protection;
- 7.1.6 where the content concerns children, the manner in which the foreign or international classification system strikes a reasonable balance between the interest and protection of children from potentially disturbing, harmful and age-inappropriate content;
- 7.1.7 demonstrate how the guidelines within the classification system inform the ratings that the commercial online distributor will apply to its online material and publications;
- 7.1.8 whether the regulatory standard of the international or foreign classification system grossly violate any South African sociocultural norms/standards;
- 7.1.9 what measures and/or mechanisms are set out under the classification system after classification to enforce compliance and how do they compare with those set out under the Act, its regulations and guidelines;
- 7.1.10 is the classification system transparent (this is in light of the FPB's aim to be transparent to the public);
- 7.1.11 does the commercial online distributor have a policy or procedure designated for the efficient management of online material and classification standards; and
- 7.1.12 the tolerance level determined by the commercial online distributor through its assessment and testing of the foreign or international classification system, by assessing the factors taken into account under the foreign or international classification system against factors that would be assessed under the FPB rating system. Where the tolerance level between the two is below 75%, accreditation will not be granted and the commercial online distributor must rectify the divergence. The FPB will continuously monitor the tolerance level after accreditation has been granted.

8 FACTORS AND CONDITIONS WHICH THE FPB WILL TAKE INTO ACCOUNT

- 8.1 Upon approval, the commercial online distributor would be required to enter into a Memorandum of Understanding ("**MOU**") with FPB to manage the application of ratings based on the accredited foreign or international classification system to ensure quality assurance for classifiable elements and standards that fall within the scope of the FPB's mandate.

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8.2 The commercial online distributor is expected to have already been or have made application for registration with the regulator or authority, as the case may be, who is in charge of or manages the foreign or international classification system, for which accreditation is sought from the FPB.

8.3 In assessing an application, the Council will *inter alia* consider the following factors:

8.3.1 Quality indicators

8.3.1.1 Whether the commercial online distributor is accredited by a relevant classification authority or body under a foreign or international classification system and whether such classification system shares the same primary focus of the FPB;

8.3.1.2 Whether currently there is an MOU in place with the classification authority or body and the FPB;

8.3.2 Quality assurer's details

8.3.2.1 The Quality Assurance function provided by suitably qualified Quality Assurers, with a minimum academic qualification at NQF Level 7 or its equivalent, who will furnish the FPB with sufficiently detailed Curriculum Vitae ("**CV**") as part of the application.

8.3.3 Legal basis and quality assurer expertise

The FPB will consider the following -

8.3.3.1 The Council will also consider the classification authority or body's Code of Conduct, Quality Assurance Practice and Principles, Fraudulent Activities, Matters of Confidentiality and De-Registration processes;

8.3.3.2 Whether the classification authority or body commits to quick turnaround times – a commitment to deliver 48 hours turnaround time from submission of online material to be rated;

8.3.3.3 Demonstration that individuals responsible for quality assurance mechanisms are experienced and highly trained individuals. Classifiers must possess training at a minimum South African qualification level 7 of the National Qualifications Framework ("**NFQ**") or an equivalent thereto, in areas such socio-cultural studies, law, ethics and or any other relevant qualification.

8.3.4 Commercial online distributors Record Keeping and Monitoring tools and systems

8.3.4.1 The commercial online distributor is expected to have implemented a suitable system and tools to allow for effective reporting to the FPB on the ratings applied to publications, exceptions and tolerance level achievement and to

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allow for the FPB to have effective access (during the application process and if the application is successful, during the entire duration that the accreditation is effective) to carry out QA checks and to carry out randomised spot checks, audits and analysis of the ratings applied to the films, games and/or publications distributed by the commercial online distributor.

- 8.3.4.2 The assessment by the FPB as part of the application process will be designed to test the efficacy of the aforementioned tools and systems.

9 AUDIT PROCEDURE AND ASSESSMENT

- 9.1 If the application is accepted, an online audit will be conducted and thereafter the Council will issue a Notice of Accreditation of the foreign or international system classification within 7 (seven) days.
- 9.2 The FPB audit team will conduct an online audit of the commercial online distributor's services and thereafter provide an audit report.
- 9.3 The [FPB Committee] will consider the audit report including the recommendations provided and either approve accreditation for a period as determined by the Council and provide an accreditation certificate or reject the audit report.
- 9.4 If the application is rejected, the commercial online distributor will be provided with a compliance plan and given an opportunity to resubmit its application within a stipulated time period (with the maximum time period being 6 months). Where the commercial online distributor fails to resubmit the application, such a distributor will have to reapply for accreditation.
- 9.5 Commercial online distributors should note that until such time that their application for accreditation has been approved, such distributors must submit their films, games or publications to the FPB together with the relevant form and the prescribed fee, for examination and classification.

10 REQUIREMENTS AND FEES

- 10.1 The commercial online distributor is to be aware that all ratings that it assigns to any films, games and publications using an accredited foreign or international classification system must be accompanied by the FPB logo on each film, game and publication to which these ratings are applied.
- 10.2 Regardless of the accreditation for the application of ratings based on a foreign or international classification system, the commercial online distributor will be required to pay the relevant fees as are set out in the then applicable Fee Tariff, in accordance with the requirements of the Act and regulations.

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11 DURATION AND VALIDITY OF ACCREDITATION

- 11.1 The accreditation shall be valid for a period not exceeding five years.
- 11.2 A commercial online distributor will be required to make a new application for any accreditation to be approved after the expiry date of the then current accreditation approval.
- 11.3 The Council reserves the right to terminate any accreditation that it has approved, including before the expiry of a valid accreditation, including where the commercial online distributor:
- 11.3.1 is in breach of the provisions of the Act;
 - 11.3.2 is in breach of the conditions and requirements of any approval;
 - 11.3.3 is in breach of the terms of any MOU that it has in place with the FPB;
 - 11.3.4 has a material change in its business operations;
 - 11.3.5 any event as set out in paragraph 12 occurs;
 - 11.3.6 if there are material changes in the ratings system applied by the foreign and international classification system as accredited by the Council; and/or
 - 11.3.7 if the minimum ratings tolerance levels stipulated by the Council is exceeded by the commercial online distributor (unless the Council agrees to and approves suitable workarounds which the commercial online distributor implements).
 - 11.3.8 The accreditation shall not be transferable, and shall apply only to the commercial online distributor that has successfully applied for such accreditation, having complied with all the necessary requirements and regulations.

12 CHANGES IN THE COMMERCIAL ONLINE DISTRIBUTOR'S BUSINESS

- 12.1 A commercial online distributor is obliged to timeously notify the FPB if there are any changes to its business including in the following circumstances –
- 12.1.1 there is a material change in the nature of its business operations;
 - 12.1.2 any change in shareholding and/or ownership and/or control in the commercial online distributor;
 - 12.1.3 any change in the legal or corporate structure of the commercial online distributor;
 - 12.1.4 a compromise, scheme of arrangement or composition by the commercial online distributor with any or all of its creditors;
 - 12.1.5 liquidation of the commercial online distributor, whether provisionally or finally;

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- 12.1.6 the placement of the commercial online distributor under business rescue proceedings or any similar administration, whether voluntarily or upon application by a third party;
- 12.1.7 the existence of circumstances which would allow for the commercial online distributor to be subject to any winding up (whether provisional or final), dissolution, or business rescue proceedings (whether voluntary or upon application by a third party) (or, in respect of all the foregoing, any analogous arrangements under any law to which the commercial online distributor is subject) of the commercial online distributor under any law to which the commercial online distributor is subject regulating the bankruptcy, insolvency, winding up, judicial management, dissolution or rescue of corporate entities; or
- 12.1.8 if the commercial online distributor is not incorporated under the laws of the Republic, the existence of circumstances which would allow for the commercial online distributor to be subject to any winding up (whether provisional or final), dissolution, or business rescue proceedings if the commercial online distributor had been incorporated under the laws of the Republic.

13 ENQUIRIES

- 13.1 Should you require further information and/or have any enquiries, you can contact **[Mr. Oupa Makhalemele at 012 000 1400 or 078 7026652, or email: omakhalemele@fpb.org.za]** during business hours.

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ANNEXURE A: MOCK APPLICATION FORM FOR DEMONSTRATION PURPOSES

FILM AND PUBLICATION BOARD

420 WITCH HAZEL, ECO GLADE 2, ECO PARK

CENTURION 0169

PRIVATE BAG X 31, HIGHVELD 0169

E-MAIL ADDRESS: [●]

WEBSITE: www.fpb.org.za

APPLICATION FOR ACCREDITATION OF FILMS, GAMES AND PUBLICATIONS CLASSIFIED BY FOREIGN OR INTERNATIONAL SYSTEM

The Film and Publication Board may refuse to process your application if this form is not fully completed.

This application form is designed to assist the Films and Publication Council (hereinafter referred to as "**the Council**") in assessing an application for accreditation of a film, game or publication classified in accordance with a foreign or an international classification system. Please fill out this form, attach proof of payment of the prescribed fees, and any other relevant documentation and send it to (email address) or alternatively hand delivery to the address set out above.

NOTE:

- a) Applicants must refer to the Films and Publication Act, 65 of 1996 ("**the Act**") as amended from time to time and any regulations published under the Act with regard to the requirements to be fulfilled by the applicant.
- b) Information that is required in terms of this form which does not fit within the provided space may be contained in an appendix attached to the form. Each appendix must be numbered with reference to the relevant part of the form.
- c) Where any information in this form does not apply to the applicant, the applicant must indicate that the relevant information in the form is not applicable.

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1 PARTICULARS OF THE APPLICANT	
Name of applicant	
Designated contact person	
Applicant's street address	
Applicant's principal place of business (if different from street address)	
Applicant's postal address	
Applicant's telephone number	
Applicant's telefax number	
Email address of designated contact person	
LEGAL FORM OF APPLICANT	

FPB Council Members:

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Indicate if the applicant is: A natural person A partnership A juristic person Other (specify)	
If the applicant is a natural person or partnership:	
Provide the identity number of the applicant of each partner in the partnership.	
Attach a certified copy of the identity document of the registrant or certified copies of the identity document of each partner in the registrant marked clearly as Appendix 2.2.2 of this form.	
If the applicant is a juristic person:	
Registration number of registrant:	
Attach certified copies of the registrant's certificate of incorporation and memorandum and articles of association or other founding documents of the registrant (e.g. memorandum and articles of association, association agreement,	

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constitution) marked clearly as Appendix 2.3.3 of this form.	
Description of applicant's business	
The applicant confirms that its tax affairs are in order (attach proof thereto)	
FOREIGN OR INTERNATIONAL CLASSIFICATION FRAMEWORK	
Country/jurisdiction	
Regulatory instrument	
Regulatory body	
The applicant warrants that it complies with all laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained	
Classified rating and process thereto.	
Reason for rating	
Is the applicant's online service platform accessible to the Council for	

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compliance, monitoring and auditing purposes?	
If so, specify the measures taken to ensure that the Council has access to platform?	
If the online service platform is not made accessible to the Council, what steps will it undertake to make the platform accessible?	
Does the foreign or international rating align with the applicable ratings in terms of the Act and Classification Guidelines of the Films and Publication Board?	
Motivation of alignment	
Reporting and auditing process – describe the manner in which the applicant will track and monitor and apply the foreign classification system and how will records of same be kept?	
Methodology and reporting to FPB – describe the record keeping methodology and reporting formats that will be used and provided to the FPB to manage and monitor the classifications applied under the foreign classification system	

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<p>Indicate details and location of applicant's business and operational premises where the FPB can carry out onsite inspections</p>	
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The applicant or person signing this application on behalf of the applicant acknowledges as follows:

I acknowledge that the Council reserves the right to have any authorisation issued pursuant to this application set aside should any material made herein, at any time, be found to be false.

Signed (Applicant)

I certify that this declaration was signed and sworn to before me aton the day of 20..., by the deponent who acknowledged that he/she: knows and understands the contents hereof; has no objection to taking the prescribed oath or affirmation; and considers this oath or affirmation to be truthful and binding on his/her conscience.

COMMISSIONER OF OATHS

Name:
Address:
Capacity

FPB Council Members:
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