



PROPOSED CO-REGULATION FRAMEWORK FOR AUDIO-VISUAL CONTENT CLASSIFICATION FOR BROADCAST AND OVER THE TOP (OTT)/VIDEO ON DEMAND (VOD) SERVICES

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PART I- INTRODUCTION

1. Mandate

The Kenya Film Classification Board is established under Films and Stage Plays Act Cap 222 and mandated to regulate the creation, broadcasting, possession, distribution and exhibition of films in the country with a view to promote national values, cultural aspirations and protect children from inappropriate content. Section 12 (2) of the Act states that No film or class of film shall be distributed, exhibited or broadcast, either publicly or privately, unless the Board has examined it and issued a certificate of approval in respect thereof. Further, the Board is empowered by Kenya Information and Communications Act, Cap 411A and through the Kenya Communication (Broadcasting) regulations 2009 Section 34 (1) (a) to ensure content which depicts, contains scenes or are of the language intended for adult audience are not aired during the watershed period (5a.m. to 10 p.m.)

2. Definition of term:

- a) ‘**Act**’ means Films and Stage Plays Act, CAP 222
- b) ‘**Applicable entity**’ means any such entity that operates in Kenya’s territory for purposes of exhibition and distribution of audio-visual content to the public. This includes but is not limited to broadcasters, OTT, and VOD;
- c) ‘**Board**’ means Kenya Film Classification Board.
- d) ‘**Co-opted member**’ means such a person engaged by the Board from time to time, having regard to the number of films requiring classification, to classify films.
- e) ‘**Child**’ means any person below the age of eighteen years;
- f) ‘**Self-Classification Panel**’ means such number of people constituted by the applicable entity for the purpose of content classification.
- g) ‘**Co-regulation Panel**’ means such number of people jointly constituted by the Board and the applicable entity for the purpose of content classification.
- h) ‘**Content**’ Any audio-visual recording intended for broadcasting, distribution and exhibition through any medium including the internet meant for public consumption

- i) **‘Classifiable elements’** means the specific considerations, as prescribed in the Film Classification Guidelines, which may influence the age restriction or other classification of content if it is present, based on the impact it has within a specific context.
- j) **‘Complaint’** means any communication on dissatisfaction regarding content, age ratings, consumer advisories and/or access controls for content currently available on the platform.
- k) **‘Consumer Advisory Index’** means classifiable elements in the content that would require the consumer to be cautioned: Violence (V) Crime(C) Sex (S) Obscenity (O) Nudity (N) Occult (Oc) Horror (H) Drugs (D) Alcohol (A) Harmful Substance (Hs) Blasphemy (B) Propaganda for War (W) Hate Speech and Incitement (HI) Language (L)
- l) **‘Video on Demand’** means any video service that offers videos, TV or movies available at a viewer’s convenience.
- m) **‘Over The Top services’** means any streaming service that delivers film and TV content over the internet.
- n) **Self-classification** means an arrangement that allows an applicable entity to classify its own content subject to the terms and conditions of the agreed framework.

PART II-APPLICATION OF THE FRAMEWORK

1. Scope:

This co-regulation framework applies to broadcasters, VODs, OTTs, & digital content creators, distributors, exhibitors and aggregators with a significant number of followers/subscribers/viewership and output of content in Kenya. The scope shall be reviewed from time to time to determine its extent.

This framework shall not apply to advertisements, music videos and other non-programme matter.

For the purposes of this framework, an applicable entity shall be deemed to operate in the Kenyan territory where such applicable entity has a physical presence.

2. General Principles:

- a. An applicable entity shall not broadcast or exhibit any content which is prohibited under any law for the time being in force, or has been prohibited by any court of competent jurisdiction.
- b. The applicable entity shall ensure that all broadcast content produced locally meets the filming licence requirements in accordance with Cap 222.
- c. An applicable entity shall take into consideration the following factors, when deciding to exhibit any content, after duly considering the implications of any content as falling under the following categories, and shall exercise due caution and discretion in relation to the same:
 - i. Content which undermines the country's national values, cultural aspirations and/ or exposes children to inappropriate content
 - ii. Content which affects the sovereignty and integrity of the country;
 - iii. Content which threatens, endangers or jeopardizes the security of the country;
 - iv. Content which is detrimental to Kenya's relations with foreign countries.
- d. An applicable entity shall take into consideration Kenya's multi-ethnic and multi-religious context and exercise due caution and discretion when featuring the activities, beliefs, practices, or views of any racial or religious group.

PART III- CO-REGULATION OPERATION STRUCTURE

1. Operation Guidelines

For the purposes of this part, the following operation guidelines shall apply:

- a) The procedures for co-regulation shall be aligned to the Board's Film Classification Guidelines.

- b) Notwithstanding anything contained in this framework, an applicable entity who contravenes any law for the time being in force shall be liable for consequential action as provided in the law which has so been contravened.
- c) The applicable entity shall establish a dedicated online communication channel with the Board for purposes of resolving complaints
- d) For ensuring observance and adherence to this framework by the applicable entity, and for addressing any complaints made under this operation structure, the below three-tier structure shall apply:
 - i. Level I – Self Classification Panel constituted by the applicable entity;
 - ii. Level II — Co-regulation Classification Panel jointly constituted by the applicable entity and the Board; and
 - iii. Level III – KFCB Classification Panel constituted by the Board.

2. Classification Panel levels

(i) Self Classification Panel:

- (1) The applicable entity shall constitute the Level I Self Classification Panel. In this regard, the applicable entity shall:
- (a) Establish a Self-Classification Panel for purposes of content classification.
 - (b) Avail the Self Classification Panel members for periodic training and certification by the Board.
 - (c) Submit a list of all its programs requiring classification to the Board on a quarterly basis.
 - (d) Facilitate the Self Classification Panel to classify 70% of all its content before broadcasting, exhibition or distribution.
 - (e) Submit 30% of all classifiable content for classification by the Board. The Board shall have the discretion on choice and nature of content to be submitted for classification.

- (f) Display, in a clearly visible and legible manner, the appropriate rating information on all examined content before exhibiting to the public. This rating shall detail the classifiable elements provided for in the Consumer Advisory Index.
- (g) Submit quarterly classification report as per the prescribed format.
- (h) Invest in classification technology (Computer enabled software) to supplement human interface in classification of large volumes of content.

(2) All class of films exhibited and broadcast on all platforms shall be classified into the categories referred to in the Film Classification Guidelines.

(ii) Co-Regulation Classification Panel

There shall be a Co-regulation Classification Panel constituted by the Board and the applicable entity.

- a) The Co-regulation Classification Panel shall be constituted on ad-hoc basis to review progress, monitor compliance and feedback on the self-classification process, complaints and resolutions.
- b) The Co-regulation Classification Panel shall perform the following specific functions:
 - (i) Monitor and ensure adherence to the Film Classification Guidelines by the applicable entities;
 - (ii) Address non-compliance issues that the entity may have not addressed within 5 working days from when the issue was raised.
 - (iii) Address public complaints against any content classification decisions;

(iii) KFCB Classification Panel

There shall be a Board Classification Panel constituted by the Board.

- (a) The Board shall develop an Oversight Mechanism with the following functions:
 - i. Classify 30% of all classifiable content submitted by the applicable entity.
 - ii. Undertake random sampling of the 70% content classified by the Self Classification Panel to monitor for adherence to the Film Classification Guidelines;

iii. Maintain a catalogue of co-regulating applicable entities with the following information: name of applicable entity, total running time submitted for classification, running time classified as well as any other information that shall be agreed upon by the Board and the applicable entity.

(b) The Board shall monitor content on all platforms exhibited or broadcast by applicable entities to ascertain compliance with applicable regulations.

PART IV- COMPLAINTS RESOLUTION MECHANISM

1. Complaints Resolution Mechanism

The scope of complaints from users are limited to content being provided by entities, age ratings, content advisories and/or parental access controls.

In this regard, the applicable entity shall develop or enhance their existing complaints handling mechanism to incorporate the provisions of the Framework.

In resolving complaints about violations, the following shall be considered:

- a) warning, or reprimanding such entity; or
- b) direct such entity to:
 - i. make appropriate modification on the rating,
 - ii. reclassify the content; or
 - iii. Review Consumer Advisory Index and parental control access measures.

(c) Where the applicable entity fails to comply with the guidance or advisories of the Complaints Resolutions Mechanism, the Board shall apply the provisions of the Act.

PART IV-MISCELLANEOUS

Disclosure of Information

a. An applicable entity shall make true and full disclosure of all grievances regarding content classification received by it, the manner in which the grievances are disposed, the action taken on the grievance and the reply sent to the complainant.

b. The applicable entity shall preserve records of content broadcasted, exhibited or distributed by it for a minimum period of 60 days and make it available to the Board for classification and/or verification as may be requisitioned by them in a lawfully authorized manner for compliance monitoring.

PART V-VIOLATIONS

The provisions of the Films and Stage Plays Act Cap 222 shall apply in the event of violation of the framework.

PART VI: ANNEXURES

Film Classification Guidelines

GAZETTE NOTICE NO.....

THE FILMS AND STAGE PLAYS ACT

(Cap. 222)

IN EXERCISE of the powers conferred by section 15 (2) (b) of the Films and Stage Plays Act, the Kenya Film Classification Board prescribes the Guidelines set out in the Schedule to be applied by the Board in the classification of films.

SCHEDULE

THE FILMS AND STAGE PLAYS (FILM CLASSIFICATION) GUIDELINES, 2022

PART I—PRELIMINARY

Citation. **1.** These Guidelines may be cited as the Films and Stage Plays (Film Classification) Guidelines, 2021.

Interpretation. **2.** In these Guidelines, unless the context otherwise requires—

“advertisement” means a sponsored public message intended to promote or sell a product, service or idea;

“coarse language” means crude or offensive language that lacks

refinement or taste;

“drug abuse” means the improper or excessive use of drugs;

“explicit” means language or depiction with strong details relating to sex acts of violence;

“film” has the same meaning assigned to it in section 2 of the Act;

“hate speech” has the same meaning assigned to it in section 13 (1) of the National Cohesion and Integration Act, 2008;

“justified by context”, in reference to a film or a scene in a film, means depiction that is relevant or necessary for the integrity and continuity of a film;

“pornography” means the depiction of sex acts intended to cause sexual excitement;

“programme” means a body of live or recorded material consisting of images, sounds or both embodied in signals emitted for the purpose of broadcasting;

“restricted film” means a film that is not permitted to be distributed, exhibited or broadcast;

“sex act” means an act performed for sexual gratification and includes foreplay;

“sexual violence” means sexual assault or sexual aggression where the victim does not consent;

“video” means a system of recording, reproducing or broadcasting moving visual images on or from videotape; and

“watershed period” means the period between five o’clock in the morning and ten o’clock at night, or such other time as may be prescribed by the Communications Authority of Kenya, during which films or television advertisements intended for adults shall not be broadcast on television.

Application. **3.** These Guidelines shall apply to films, television programmes, audio-visual commercials and other videos including music videos and play station videos, and their posters that may be created, broadcast, possessed, distributed and exhibited in Kenya.

Principles. **4.** In the application of these Guidelines, the Board shall operate under the following principles—

- (a) the protection of children and vulnerable adults from potentially harmful or unsuitable content; and
- (b) the empowerment of consumers, especially parents and persons responsible for children, to make informed viewing decisions.

PART II—THEMATIC AREAS AND CLASSIFIABLE ELEMENTS

Violence and crime. **5.** (1) Mild portrayals of violence and crime that are relevant to the plot may be allowed in films meant for children.

(2) Stronger depictions of violence and crime may be allowed for films not meant for children if the depictions are justified by context.

(3) Classifiable elements of violence and crime shall include—

- (a) the normalisation of the use of violence as a solution to problems;
- (b) the depiction of violent criminal behaviour including mutilation and self-mutilation rituals;
- (c) emphasis on violent techniques and acts including forms of torture and gang violence;
- (d) fighting and combat techniques;
- (e) the encouragement of aggressive and sadistic attitudes towards the infliction of pain and violence;
- (f) the erotic portrayal of explicit and prolonged sexual violence,

sexual assault or sexual coercion;

- (g) the portrayal of excessive blood, gore, dismembered body parts or disfigured body parts;
- (h) the portrayal of seriously injured people;
- (i) the portrayal of human remains or dead bodies;
- (j) the portrayal of antisocial behaviour including bullying;
- (k) the portrayal of potentially dangerous or harmful behaviour including suicide;
- (l) the portrayal of the making or construction and accessing of weapons;
- (m) the detailed portrayal of criminal and violent techniques; and
- (n) the portrayal of explicit cruelty or violence towards animals.

(4) Any film that induces, incites, justifies, reinforces or glorifies violence or terror or the perpetrators of violence or terror or contains any element against the maintenance of law and order or promotes antinational attitudes shall be restricted.

Sex, obscenity
and nudity.

6. (1) Classifiable elements of sex, obscenity and nudity shall be—

- (a) portrayal of the exposure or fondling of female breasts, or human or animal genitalia;
- (b) portrayal of explicit sexual acts;
- (c) portrayal of sexually offensive behaviour or language;
- (d) portrayal of undressing that is sexually suggestive;
- (e) portrayal of acts of indecent exposure; and

(f) portrayal of child pornography.

(2) Any film, poster or television programme that portrays, encourages, justifies or glorifies perverted or social unacceptable sex acts, women as sexual objects or sexual violence shall be restricted.

Occult and
horror.

7. (1) Classifiable elements of occult and horror shall be—

(a) portrayal of frightening elements or scary scenes;

(b) portrayal of magic, supernatural forces, supernatural events and related acts including hypnosis, mind-reading and extreme religious rituals;

(c) portrayal of exorcism;

(d) portrayal of paranormal or mysterious events or facts that cannot be explained by science; and

(e) human or animal sacrifice.

(2) Any film, poster or television programme that promotes or encourages occult practices, black magic, witchcraft and similar practices, and instils fear or revulsion about the consequences of not following such practices shall be restricted.

(3) The Board shall, when classifying horror films, take into consideration the impact and shock effect of such films to ensure that children are protected from disturbing content.

Drugs, alcohol
and other
harmful
substances.

8. (1) Classifiable elements of drugs, alcohol and other harmful substances shall include—

(a) the portrayal of the use of illegal narcotic drugs or psychotropic substances;

- (b) the portrayal of the use of tobacco and tobacco products;
- (c) the portrayal of the misuse or abuse of drugs; and
- (d) the portrayal of the use of alcohol, solvents and other harmful substances.

(2) Any film, poster or television programme that portrays children being used in the production, trafficking or distribution of harmful drugs without any real context shall be restricted.

(3) Any film, poster or television programme that justifies, promotes, encourages or glamorises the misuse and abuse of drug-related products or associates drugs, alcohol and illegal substances with sexual prowess or a glamorous and successful lifestyle shall be restricted.

Religion and community.

9. (1) Classifiable elements of religion and community shall include—

- (a) portrayal of profanity against a particular religion or community;
- (b) portrayal of a religion or community in distorting and demeaning manner;
- (c) portrayal of religious or community symbols, rituals or practices in a derogatory manner; and
- (d) portrayal of the use of expletives with religious or community connotations.

(2) Any film, poster or television programme that incites disharmony, animosity, conflict, hatred or ill-will between different religious groups or communities shall be restricted.

Propaganda for war, hate speech or incitement to violence.

10. (1) Classifiable elements of propaganda for war, hate speech and incitement shall be—

- (a) portrayal of incitement to violence;

- (b) portrayal of repetitious emotional phrases in order to incite war, hate speech or violence;
- (c) portrayal of exaggerated or misrepresented facts in order to incite war, hate speech or violence;
- (d) portrayal of the use of offensive names to induce rejection, ridicule or condemnation in order to incite war, hate speech or violence;
- (e) portrayal of the use of propaganda to rally people behind war, hate speech or incitement to violence;
- (f) portrayal of the demonization of political opposition in order to incite hate speech or violence
- (g) portrayal of brainwashing and indoctrination techniques in order to incite war, hate speech or violence; and
- (h) portrayal of elements and techniques used in ethnic cleansing and massacres.

(2) Any film, poster or television programme that evokes contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of race, sex, pregnancy, marital status, health status, colour, ethnic origin, social origin, age, disability, language, culture, nationality or religion shall be restricted.

(3) Any film, poster or television programme that encourages people to rise against social order shall be restricted.

PART III—FILM RATING AND CLASSIFICATION

Rating scale.

11. (1) The Board shall, when classifying a film, poster or television programme, place the frequency and intensity of classifiable elements into a scale which shall range from zero to five and rate the film, poster or programme as specified in the Schedule.

(2) The film rating specified in the third column of the First Schedule

shall be interpreted in accordance with the Second Schedule.

General
exhibition films

12. A film shall be classified as a general exhibition film if that film is suitable for general family viewing and does not contain scenes that may be harmful or disturbing to children.

Parental
guidance films.

13. (1) A film shall be classified as a film requiring parental guidance if it contains scenes that may upset children younger than ten years old if they view the film alone.

(2) The themes of parental guidance films shall have a low sense of threat or menace and may feature serious themes if those themes take into account that the audience may include children younger than ten years old.

Films
unsuitable for
children
younger than
sixteen years.

14. (1) A film shall be classified as being unsuitable for children younger than sixteen years if the film portrays mature themes.

(2) The themes in a film unsuitable for children younger than sixteen years shall be treated with discretion and shall be appropriate for audiences which include persons who are older than sixteen years old.

(3) A film that is unsuitable for children younger than sixteen years shall not be exhibited for audiences which include children who are younger than sixteen years.

Adults' only
films.

15. (1) A film shall be classified as an adults' only film if it contains scenes which are suitable for adults and may portray and explore themes of a mature nature.

(2) An adults' only film shall not be exhibited for audiences which include children who are younger than eighteen years.

Restricted films.

16. (1) A film shall be classified as a restricted film if it contains scenes that—

(a) erode the moral fabric of society, undermine the national interest, undermine national stability or create disharmony between racial or

religious groups;

- (b) promote the denigration of races or religions;
- (c) promote undesirable fetishes or behaviours; or
- (d) promote or glamorise homosexuality.

(2) A restricted film shall not be exhibited commercially.

PART IV—TELEVISION ADVERTISEMENTS

Objectives of this Part.

17. The objectives of this Part are to ensure that television advertisements—

- (a) are decent and tasteful in their content and presentation;
- (b) do not cause offence to the general public; and
- (c) do not stereotype groups in a demeaning or offensive way.

National policies.

18. A television advertisement shall not be broadcast if it contains any message or visual that—

- (a) constitutes a breach of any written law;
- (b) condones the commission of illegal acts;
- (c) disrupt or attempt to disrupt the harmony or stability of the country;
- (d) is detrimental to Kenya’s relationship with another country.

Religion and community.

19. A television advertisement shall not—

- (a) contain any statement or suggestion that may offend any community or religious group; or
- (b) depict any community or religion in a flippant, frivolous or

inaccurate manner.

Moral standards
and social
behaviour.

20. A television advertisement shall not—

- (a) promote, justify or glamorise homosexuality, sexual promiscuity, juvenile delinquency, drug abuse or similar behaviour;
- (b) portray homosexuality, sexual promiscuity, juvenile delinquency, drug abuse or similar behaviour as normal or mainstream;
- (c) portray sexual innuendo or be sexually suggestive;
- (d) portray skimpily clad men or women; and
- (e) undermine family as the basic unit of society.

Children and
advertising.

21. (1) Television advertisements shall not promote unwholesome values and behaviour to children.

(2) Television advertisements targeted at children or placed in television programmes likely to be seen by children shall not contain visuals, effects or words that may cause moral or psychological harm to children.

(3) Television advertisements that feature children—

- (a) shall be considered from the point of view of children; and
- (b) shall not portray children performing acts that may endanger the children or others.

Language.

22. Television advertisements shall maintain a good standard of language.

Alcoholic
drinks.

23. Television advertisements for alcoholic drinks shall not—

- (a) be broadcast during the watershed period;

- (b) have children in them;
- (c) glamorise the abuse or misuse of alcoholic drinks; or
- (d) associate alcoholic drinks with sexual prowess or a glamorous or successful lifestyle.

Intimate products and services.

24. (1) Television advertisements for intimate products and services shall not be broadcast during the watershed period.

(2) Television advertisements or community service announcements for condoms and contraceptive products shall not be broadcast during the watershed period if they do not contain a public health or safety message.

Betting and gaming.

25. Television advertisements relating to betting, gaming or lotteries shall not be broadcast during the watershed period unless they are advertisements for Government or Government-sponsored lotteries or contests.

FIRST SCHEDULE

(p. 11

(1))

FILM RATING

Scale	Intensity of classifiable elements	Film rating
0 – 1	Low-impact classifiable elements	General Exhibition (GE)
2	Mild impact classifiable elements	Parental Guidance (PG)
3	Moderate impact classifiable elements	Unsuitable for persons younger than sixteen years (16)
4	Strong impact classifiable elements	Adults only (18)
5	Extreme impact classifiable elements	Restricted

SECOND SCHEDULE

(p. 11

(2))

INTERPRETATION OF FILM RATING

A. GENERAL EXHIBITION	
Theme	Permissible elements

Violence	Mild portrayal of violence is permitted. The occasional mild threat or menace is permitted if justified by context.
Sex	Sex acts are not permitted. Portrayal of sexual preferences of any kind are not permitted.
Nudity	Nudity is not permitted.
Language	Coarse language is not permitted.
Drug use	References to illegal drugs or drug use are not permitted.
Horror	Portrayal of horror shall be non-threatening or tinged with humour. Fright scenes shall be mild and not psychologically disturbing.
B. PARENTAL GUIDANCE	
Violence	Moderate portrayal of violence without details is permitted if justified by context. Portrayal of violence shall not dwell on cruelty, infliction of pain or torture of any form.
Sex	Sex acts may be implied and shall be infrequent. Only mild sexual references including kissing and hugging and innuendo are permitted.
Nudity	Discreet and fleeting side-profile nudity is permitted in a non-sexual context. Infrequent portrayal of frontal nudity of the upper body may be permitted in exceptional circumstances and in a non-sexual context including portrayals of tribal ways of life or health programmes.
Drug use	Discreet references to illegal drug use are permitted if they do not promote or endorse drug abuse and are justified by context.
Horror	Frightening sequences are permitted if they are not prolonged or intense.
C. UNSUITABLE FOR PERSONS YOUNGER THAN SIXTEEN YEARS	
Violence	Portrayal of infliction of pain and injury may be permitted if it is not prolonged or detailed. Explicit sexual violence is not permitted.
Sex	Non-explicit depiction of sex acts may be permitted if it is not prolonged or detailed.
Nudity	Infrequent, brief and discreet portrayal of non-frontal nudity may be permitted if it is justified by context.
Drug use	The film as a whole shall not promote or encourage drug use.
Horror	Frightening scenes which are more prolonged may be permitted.
D. ADULTS ONLY	
Violence	Realistic depiction of violence and gore with strong impact may be permitted if justified by context. Portrayal of the violence and gore shall not be excessive, gratuitous or exploitative.
Sex	Portrayal of sex acts may be permitted if justified by context but shall not contain strong details.
Nudity	Full frontal nudity with moderate detail may be permitted if justified by

	context. Close up of genitalia is not permitted.
Language	Coarse language may be permitted if it is not excessive.
Drug use	Portrayal of drug use is permitted if it does not promote or endorse drug use.
Horror	Prolonged or intense sequences that evoke fear or terror may be permitted.
E. RESTRICTED	
Violence	Portrayal of detailed or gratuitous depiction of extreme violence or cruelty is not permitted. Portrayal of detailed instructions on methods of crime or killing is not permitted.
Sex	Portrayal of exploitative and pornographic sex acts, the depiction of obscene and unnatural sex acts, and the gratuitous, exploitative or offensive depiction of sex acts including fetishes or offensive and abhorrent sex acts, are not permitted.
Nudity	Portrayal of exploitative and excessive nudity is not permitted.
Drug use	Portrayal of material glorifying or encouraging drug use is not permitted.

