



## **REGULATORY IMPACT STATEMENT**

**FOR**

**THE FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023**

**JUNE 2023**

**This Regulatory Impact Statement has been prepared by the Ministry of Youth Affairs, the Arts and Sports pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013)**

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## CHAPTER 1: INTRODUCTION AND BACKGROUND

### 1.1 Introduction

The Films and Stage Plays Act in Section 35 provides that the Minister may make Regulations for the effective implementation of any functions conferred to the Kenya Film Classification Board (KFCB).

In the exercise of the above powers, the Ministry of Youth Affairs, the Arts and Sports has drafted the Films and Stage Plays (Self-Classification) Regulations 2023. This is a statutory instrument which seeks to prescribe the form and manner of licensing film distributors and exhibitors within the Kenyan jurisdiction.

The Ministry now therefore prepares this Regulatory Impact Statement in partial fulfillment of the Statutory Instruments Act.

### 1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 is the legal framework governing the conduct of Regulatory Impact Statements within the jurisdiction of Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of a community, the statutory-making entity shall, prior to making the instrument, prepare a regulatory impact statement about the instrument.

Additionally, the Act sets out certain key elements that should be contained in the Regulatory Impact Statement as follows:

- a) A statement of the objectives of the proposed legislation and the reasons thereof;
- b) A statement explaining the effect of the proposed legislation;
- c) A statement of other practicable means of achieving those objectives, including other regulatory and non-regulatory options;
- d) An assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- e) The reasons why other means are not appropriate.

Further, Section 5 of the Act requires that a regulation-making entity conducts public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

### 1.3 What is a Regulatory Impact Statement

A Regulatory Impact Statement is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing statutory instruments. The Statement is an analytical report with a view to aiding decision makers. As an aid to decision making, a Regulatory Impact Statement essentially comprises an evaluation of possible alternative regulatory and non-regulatory approaches with the overall purpose of ensuring that the final selected regulatory approach achieves the intended aim of a greater public benefit.

Therefore, the structure of a Regulatory Impact Statement should contain the following components:

- a) Title of the proposal;
- b) Objective and intended effect of the regulatory policy;
- c) Evaluation of the policy problem;
- d) Consideration of alternative options;
- e) Assessment of all their impacts distribution;
- f) Results of public consultation;
- g) Compliance strategies; and
- h) Processes for monitoring and evaluation.

The Statement is conducted before a new statutory instrument is introduced to provide a detailed and systemic appraisal of the potential impact of the instrument with a view to ascertain the likelihood of achieving the desired objectives.

From a collective societal perspective, the Statement should confirm whether or not a proposed statutory instrument's benefits outweigh the costs. Therefore, the objective of the Statement is to improve the understanding of the real-world impact of legislative action, which include the cost-benefit analysis, integration of multiple policy objectives, improving transparency and consultation as well as enhancing accountability of the government.

## CHAPTER 2: OBJECTS OF THE FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Section 35 of the Act. The specific objectives are to provide the procedures for the licensing of film distributors and exhibitors in Kenya.

The Regulations intend to:

- a) Provide for the application and review processes for self-classification;
- b) Prescribe the specific provisions for the applicable entities under the Regulations;
- c) Prescribe the fees made for the self-classification certificate; and
- d) Prescribe the complaint handling mechanism for implementation by the applicable entity.

## CHAPTER 3: BACKGROUND AND CONTEXT

### 3.1 History of the Film Regulation in Kenya

The Films and Stage Plays Act was enacted in 1962 as the Films and Stage Plays Ordinance No. 34 of 1962. The Act came into force retrospectively in 1963 by dint of a provision in Statute Law Misc. Amendment Act No. 21 of 1966 which set the commencement date of the Ordinance, now Act, as 1st October 1963.

The Act has gone through a number of piecemeal amendments and the current version of the Act is as revised in 2012 under the Revision of Laws Cap 2 Laws of Kenya, L.N. 472/1963.

In exercise of the powers conferred on him by the Kenya Order-in-Council 1963, the then Governor Malcolm McDonald made certain regulations the effect of which was to amend various provisions of the 1962 Ordinance.

The most notable was the enactment of a new section 24 of the Ordinance which gave the Minister the powers to appoint, by notice in the gazette, the city Council of Nairobi as the licensing authority for the Nairobi area. In respect of the Regions, it was the responsibility of the Regional Assembly, by notice in the Regional Gazette, to appoint a local authority or a Regional Government Agent as the licensing authority for a specified area in the region.

This was an aspect of the decentralization of the licensing function. Section 29 of the regulations provided for a right of appeal to the Minister.

The Act has undergone numerous amendments over the years (Statute Law Misc. Amendment Act No. 21 of 1966, Statute Law Misc. Amendment Act No. 38 of 1968, Statute Law Misc. Amendment Act No. 13 of 1972, Statute Law Misc. Amendment Act No. 22 of 1987).

The famous and notable amendment was the Statute Law Misc. Amendment Act No. 10 of 1997 which repealed all provisions relating to stage plays. The same amendment further repealed section 25 which provided for licensing of cinema theatres and replaced the same with a re-worded section 25. This section was later repealed in the Statute Law Misc. Amendment Act No. 5 of 2007 together with sections 24, 26-28, 33 among other provisions of the Act.

The Statute Law Misc. Amendment Act No. 6 of 2009 created the Kenya Film Classification Board as presently constituted (Part III of the Act).

### 3.2 Existing Scenario

Pursuant to Section 24 of the Interpretations and General Provisions Act, Cap 2, Regulations under the Films and Stage Plays Act remain in force as long as they are not inconsistent with the repealing Act; until revoked or repealed by subsidiary legislation under provisions of the repealing Act.

### 3.3 Paradigm Shift

The Films and Stage Plays (Self-Classification) Regulations, 2023 seek to introduce self-classification; the standards and procedure to be followed by applicable entities, and allowing for review of self-classification decisions to the current constitutional and statutory dispensation. The

Regulations further prescribe the procedure for handling complaints relating to self-classification decisions of applicable entities.

The introduction of self-classification Regulations will allow for large volumes of films to be classified by applicable entities thereby enhancing compliance with the Act.

### 3.3.1 Statutory Dispensation

The Films and Stage Plays Act confers powers to the Cabinet Secretary to make Regulations for the better operationalization of the provisions of the Act. Section 35 (2) specifies that the Regulations may provide for licences issued into the different classes and the fees prescribed for each of the defined classes.



## CHAPTER 4: EVALUATION OF THE PROBLEM

The Executive Order on the Organization of Government in the Republic of Kenya dated 12<sup>th</sup> October 2022 (superseded by Executive Number 1 of 2023 dated 6<sup>th</sup> January 2023) placed, among others, the Kenya Film Classification Board under the State Department of Youth Affairs and the Arts in the Ministry of Youth Affairs, the Arts and Sports. To this end, the Ministry identified various gaps in the execution of the Board's mandate with respect to film classification.

### 4.1 Identified Challenges

#### a) Technological Advancements

Although technology has revolutionized film content exhibition and distribution, the potential to cause harm remains a major concern. The introduction of over-the-top services (OTT), video on demand (VoD) platforms, and digital migration has eased accessibility to unclassified content. It is therefore needful that a system that allows for unclassified content to be classified in a cost-effective and efficient manner.

#### b) Inadequate staff capacity

The proliferation of unclassified content occasioned by the advancements in technology is a phenomenon not unique to Kenya as globally with content regulators grappling with appropriate models of regulation. The human and technical capacity available to undertake classification in the conventional manner has been overtaken by the large volumes of content and the avalanche of media platforms.

The effect of this is that the Board has to innovate and rely on international best practice to address this capacity challenge.

## CHAPTER 5: LEGAL FRAMEWORK FOR THE PROPOSED FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023

An evaluation of the legal and policy frameworks related to prescribing the specific provisions for the applicable entities under the Regulations. On behalf of the Board, this Statement is intended to answer the question whether there is a legal basis for developing the proposed Regulations.

It is also intended to bring out the context and legal environment within which the proposed Regulations are being developed. Regulatory processes should be structured so that all regulatory decisions rigorously respect the principles of ‘rule of law’ that is, responsibility should be explicit for ensuring that all regulations are authorized by higher-level regulations and are consistent with the supreme law and treaty obligations. In addition, they should complement other legal requirements and ensure statutory harmony of the entire statute book.

### 5.1 The Constitution of Kenya, 2010

#### 5.1.1 Application of National Values and Principles of Governance

Article 10 binds State and Public organs and persons to apply the national values and principles of governance in the enactment, application and interpretation of any law. These, inter alia, include good governance, integrity, participation of the people, transparency and accountability.

#### 5.1.2 Right to information

Article 35 provides that the State is obligated to publish and publicize any important information affecting the nation.

Article 46 further provides that consumers have the right to the information necessary for them to gain full benefits from goods and services.

Article 47 provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Article 94(6) provides that an Act Parliament or legislation made by a state or public entity shall specify the purpose, objectives and limits for which authority has been granted, the nature and scope of the law and the principles and standards applicable the law made.

### 5.2 Films and Stage Plays Act

Section 35 of the Act confers powers to the Cabinet Secretary to make Regulations for the implementation of the provisions and purposes of the Act.

## CHAPTER 6: PUBLIC CONSULTATIONS

An evaluation of the public consultation process is necessary to ascertain whether all interested parties had the opportunity to present their views. Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses, interest groups and other government ministries, departments and agencies.

### 6.1 Legal Requirements relating to Public Participation and Consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on

Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

Article 174 gives powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development.

The values and principles of public service require the involvement of the people in the process of policy making through provision of timely and accurate information to the public.

The Statutory Instruments Act obligates a regulation making authority to carry out appropriate consultations before making statutory instruments (Regulations) where the proposed regulations are likely to have a direct, or a substantial indirect effect on business or restrict competition. It further provides that in determining whether any consultation that was undertaken, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Act also states that the persons to be consulted should be notified either directly or indirectly or by advertisement through representative organizations. They shall also be invited to make submissions by a specified date, which should not be less than fourteen (14) days or be invited to participate in public hearings concerning the proposed instrument.

### 6.2 Participation of the Stakeholders

The following stakeholders were engaged for the purposes of developing the Films and Stage Plays (Self-Classification) Regulations:

1. Crimson Multimedia Limited;
2. Matatu Owners Association;
3. Anga Cinemas;
4. Sky Entertainment;
5. Digital Broadcasters Association;
6. Safaricom Baze;
7. Netflix;
8. Multichoice Media (K) Limited;
9. Standard Group;
10. Nation Media Group;
11. Royal Media Services;
12. Hope TV;
13. Kenya Law Reform Commission;

### 6.3 Approach and Methodologies

The Ministry and the Board undertook various public consultations exercises between 28<sup>th</sup> March and 31st May 2023. The approach used included:

- I. A Public Notice on the KFCB website
- II. Public Notice on the Standard Newspaper, 28th March, 2023

### III. Public Fora in different regions of the country

The Notices specified a period of 21 days within which stakeholders and members of the public were invited to make their submissions. This period was extended for a further seven (7) days to ensure comprehensive public participation. There were a total of thirty-four (34) submissions made with respect to the Regulations. Such submissions were made by the following entities:

1. Creative Economy Working Group
2. Netflix
3. Multichoice Limited
4. Royal Media Services
5. Centre for Law in Information Technology
6. American Chamber of Commerce
7. Safaricom PLC
8. Kenya Broadcasting Corporation
9. Crimson Multimedia Ltd
10. Red Earth Fixers Ltd
11. Take Nine
12. Silas B. Owiti
13. Yakwetu Foundation
14. Coulson Harney
15. Lakeside Thespians
16. Finix Filming Company
17. Mara Moja Productions

Further, stakeholders were invited, through letter and email, to submit their written submissions within the specified time. Lastly, stakeholders were invited to attend stakeholder consultation meetings between 2<sup>nd</sup> and 31<sup>st</sup> May 2023 in different regions. The table below indicates the stakeholders who attended the various stakeholder consultation fora.

**Table 1: List of Stakeholders**

<b>NO.</b>	<b>STAKEHOLDER</b>	<b>NO. OF PARTICIPANTS</b>	<b>DATE AND VENUE</b>	<b>TIME</b>
Cluster 1	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups from Mombasa Kwale, Taita Taveta, Kilifi	25	2 <sup>nd</sup> May 2023 at the Kenya School of Government in Mombasa	9.00am-4.00pm
Cluster 2	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and	33	5 <sup>th</sup> May at the Kisumu Hotel, Kisumu	9.00am-4.00pm

	Associations) Religious groups from Kisumu, Siaya, Homa Bay and Migori			
Cluster 3	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	31	9 <sup>th</sup> May 2023 at the Kenya School of Government, Embu	9.00am-4.00pm
Cluster 4	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	30	30 <sup>th</sup> and 31 <sup>st</sup> May 2023 at the College of Insurance	9.00am-4.00pm

The consultative fora were engaging with stakeholders making submissions with regard to the Self- Classification Regulations, whose comments have been considered and where applicable incorporated into the Regulations.

## CHAPTER 7: OVERVIEW OF THE PROPOSED FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Section 35 of the Act. The specific objectives are to provide the procedures for the certification of applicable film entities in Kenya.

Specifically, the Regulations intend to:

1. Make provision for the application process for self-classification certificate;
2. Make provision for the specific provisions of the self-classification certificate;
3. Prescribe the fees applicable for self-classification;
4. Prescribe a complaint handling mechanism to be utilized by an applicable entity under the Regulations.

## CHAPTER 8: COST- BENEFIT ANALYSIS

This section seeks to assess the changes proposed by the Regulations in terms of their costs and benefits to justify the proposals pursuant to Section 7(d) of the Statutory Instruments Act.

### 8.1 Benefits of the Regulations

The approval of the Regulations is deemed to have the following accruing benefits:

1. Enhanced operationalization of the provisions of the Act with respect to classification of film
2. Enhanced compliance by industry players
3. Increased support for the industry players in a burgeoning sector
4. Harmonization with international best practices
5. Improved ease of doing business

### 8.2 Financial Costs

Implementation of the proposed set of Regulations is estimated at Kshs. 25,400,000.00 annually. This cost will be borne by the Board to, among other things, enhance the capacity of the current staff and training of the applicable entities under these Regulations. Further, the cost shall also cater for the incorporation of the self-classification module into the Board's Technical Regulatory Management System, extensive and continuous monitoring services as well as stakeholder and public awareness in a bid to operationalize the Act through the Regulations.

It is imperative to note that the resultant effect of the implementation of these Regulations will ensure the seamless execution of the Boards mandate and the ultimate goal of protecting children from exposure to harmful content which is invaluable.



## CHAPTER 9: CONSIDERATION OF ALTERNATIVES TO THE REGULATIONS

The Statutory Instruments Act requires a regulator to carry out an informal evaluation of a variety of regulatory and non-regulatory policy measures by considering relevant issues such as costs, benefits, distributional effects and administrative requirements. Regulations should be the last resort in realizing policy objectives. The options considered under this part are maintenance of the status quo, administrative measures and developing the proposed Films and Stage Plays (Self-Classification) Regulations, 2023.

### 9.1 Option 1: Maintenance of the Status-Quo

The Films and Stage Plays (Self-Classification) Regulations, 2023 are responsive to the current legislative requirements. By maintaining the status quo, the legal requirements under Section 35 of the Films and Stage Plays Act will not be fulfilled. Further, the Board may not have the requisite capacity to classify all the film content available for consumption within the country. Therefore, in the absence of these Regulations, there may be increased risk of exposure of age-inappropriate content to audiences such as children and other vulnerable members of the society.

### 9.2 Option 2: Administrative Measures

Administrative measures involve issuance of directives and circulars. This is a non-regulatory measure which, if applied, will depend on the goodwill of public officers to implement the provisions of the Films and Stage Plays Act regarding certification of self-classification entities. Administrative measures are subjective, non-binding and may be challenged in a court of competent jurisdiction. In addition, some administrative measures issued in the past have not achieved the desired objectives.

### 9.3 Option 3: Formulation of the Regulations

The Films and Stage Plays (Self-Classification) Regulations, 2023 will yield the following benefits: enhanced operationalization of the provisions of the Act with respect to classification of film; enhanced compliance by industry players; increased support for the industry players in a burgeoning sector; harmonization with international best practices; and improved ease of doing business.

The assessment of the cost and benefits in Chapter 8, indicates that the benefits of formulating the regulations far outweigh the costs, therefore, option three (3) was selected as the preferred option.

### 9.4 Impact Analysis of the Options

An impact analysis of the options justifies the purpose of formulating the regulations and the challenges that the regulations will address. It further justifies the selection of option three on formulating the proposed Films and Stage Plays (Self-Classification) Regulations, 2023 by evaluating the socio-economic, environmental and legal impact of the regulations as shown in the table below:

Table 2: Impact Analysis of the three options

Impact on Sectors	Option One: Maintaining the Status Quo	Option Two: Administrative Measures	Option Three: Formulating the proposed Films and Stage Plays (Self-Classification) Regulations, 20233
	<p>This entails doing nothing and retaining the current state of affairs.</p>	<p>This entails putting in place administrative measures to ensure implementation of the provisions of accrediting film distributors and exhibitors for self-classification under the Films and Stage Plays Act.</p>	<p>This entails:</p> <ul style="list-style-type: none"> <li>● Prescribing the procedure for the identification and co-option of film distributors and exhibitors to examine and classify films on behalf of the Board;</li> <li>● Making provision for the application process for self-classification certificate;</li> <li>● Making provision for the specific provisions of the self-classification certificates;</li> <li>● Creating the form for use to meet the requirements of the Act through the Regulations;</li> <li>● Prescribing the fees applicable for the self-classification certificate;</li> <li>● Prescribing a complaint handling mechanism to be utilized by an applicable entity under the Regulations</li> </ul>
<p>Impact on public sector</p>	<p>The public sector will be subjected to increased non-compliance occasioned by the inundation of unclassified content across media platforms whose scope is contemplated in the Regulations.</p>	<p>It is unlikely that administrative processes without the force of the law will effectively address emerging realities emerging film distribution and exhibition entities with respect to classification of film content.</p>	<p>The regulations ensure:</p> <ul style="list-style-type: none"> <li>● expeditious, efficient, lawful, reasonable and procedurally fair implementation</li> <li>● administration of actions by the government with respect to self-classification.</li> </ul>

			<ul style="list-style-type: none"> <li>● Increased support from the public</li> </ul>
Impact on the private sector	The actions of the private sector will not be guided thereby resulting in conflicts.	Administrative measures offer short term relief to addressing the issues raised with respect to licensing film distributors and exhibitors in the private sector	<ul style="list-style-type: none"> <li>● The regulations will result in ease of doing business.</li> <li>● Development of controls in the standardization will result in reduced conflicts in the private sector.</li> </ul>
Socio-economic impact	There will be no framework to ensure that socio-economic rights as provided for under Chapter 4 of the Constitution are upheld.	Administrative measures do not provide for a structure that ensures accountability hence socio-economic rights under Chapter 4 of the Constitution may not be met.	<ul style="list-style-type: none"> <li>● The Regulations support socio-economic rights provided for under Chapter 4 of the Constitution including the consumer rights and right to information.</li> <li>● The proposed regulatory instruments will facilitate the full enjoyment of consumer rights, the right to information as well as rights to fair administrative action.</li> <li>● The proposed regulatory instruments neither impose, waive nor vary any tax or fees imposed under any law in Kenya.</li> <li>● Indeed, the instrument seeks to accommodate the various modes of film distributors and exhibitors and introduces the fees prescribed thereto for the effective implementation of self-classification.</li> </ul>
Impact on existing legal frameworks	The legal requirement under Section 15(2) (a) as read with Section 35 of the Films and Stage Plays Act will not be met.	Administrative measures without the force of the law may be challenged, leading to slow/ halted service delivery.	<ul style="list-style-type: none"> <li>● Fulfills the legal requirement under Section 35 of the Films and Stage Plays Act.</li> <li>● The proposed Regulations do not impose any new legal requirement under the existing framework, therefore do not conflict or</li> </ul>

			have any negative effect on any such existing legislation.
Impact on environment	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.

## CHAPTER 10: COMPLIANCE AND IMPLEMENTATION

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect and design responsive implementation strategies that make the best use of them. The implementation and enforcement of these regulations will be undertaken through the existing institutional framework at national level by the Board as conferred to it under the Films and Stage Plays Act and the Ministry of Youth Affairs, the Arts and Sports whose role is to provide policy guidance and coordination of the film sector with respect to self-classification.

## CHAPTER 11: CONCLUSION

Based on the analysis in this report, the Films and Stage Plays (Self-Classification) Regulations, 2023 are extremely necessary. The regulations offer socio-economic and legal benefits which include ease of doing business and improved service delivery, which far outweigh the costs of the Regulations. The regulations also provide a framework for ensuring that the people of Kenya enjoy the socio-economic rights enshrined in the Constitution.

### 11.1 Recommendation

In light of the above conclusion, it is recommended that the Films and Stage Plays (Self-Classification) Regulations, 2023 be adopted.

## ANNEXURES

### 1. Regulations

**LEGAL NOTICE.....**

**THE FILMS AND STAGE PLAYS ACT**  
*(Cap. 222)*

**THE FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023**

**ARRANGEMENT OF REGULATIONS**

*Regulation*

- 1—Citation
- 2—Interpretation
- 3—Objective of the Regulations
- 4—Scope of the Regulations
- 5—Board to issue self-classification certificate
- 6—Application for self-classification certificate
- 7—Self-classification certificate
- 8—Applicable entity to grant Board access to the film library.
- 9—Validity of rating and re-classification
- 10—Withdrawal or re-classification of a film
- 11—Applicable entity to display film rating
- 12—Complaints handling mechanism
- 13—Board to conduct random reviews
- 14—Non-transferability of classification rating.
- 15—Annual report by applicable entities
- 16—Offences and penalties.



## **THE FILMS AND STAGE PLAYS ACT**

*(Cap. 222)*

### **THE FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023**

**IN EXERCISE** of the powers conferred by section 35 (1) of the Films and Stage Plays Act, the Cabinet Secretary makes the following Regulations—

#### **THE FILMS AND STAGE PLAYS (SELF-CLASSIFICATION) REGULATIONS, 2023**

Citation.                    **1.** These Regulations may be cited as the Films and Stage Plays (Self-Classification) Regulations, 2023.

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

“advertisement film” means a film that is made, distributed or exhibited for the purpose of the promotion of a good or service or any other similar or related matter;

“applicable entity” means a broadcaster, distributor or exhibitor of films to which these Regulations apply;

“Consumer Advisory Index” means an index of film classification ratings prescribed by the Board under the Act including abbreviations and related age classifications that are applicable to films;

“music video” means a film of variable length, that integrates a music song or music album with imagery that is produced for promotional or musical artistic purposes;

“local content” shall have the meaning assigned to it under the Kenya Information and Communications (Broadcasting) Regulations;

“over-the-top service” means a distribution or exhibition service used to offer films directly to viewers through the Internet which bypasses broadcast platforms; and

“video-on-demand service” means a distribution or exhibition service that allows a person to access a film library through the use of technology without the use of a traditional video playback device or through a broadcasting schedule.

Objective of the Regulations.

**3.** The objective of these Regulations is to prescribe the procedure for the identification and co-option of distributors and exhibitors of films to examine and classify films on behalf of the Board in accordance with the Act and the film classification guidelines prescribed thereunder.

Scope of the Regulations.

**4.** (1) These Regulations shall apply to broadcasters and providers of video-on-demand and over-the-top services that are accessible in Kenya.

(2) The Board shall be responsible for the classification and rating of advertisement films, music videos and any other classes of film that are distributed or exhibited in Kenya.

Board to issue self-classification certificates.

**5.** The Board may issue a certificate to an applicable entity to examine and classify films on behalf of the Board on the application of a qualified applicable entity and in the prescribed form.

Application for self-classification certificate.

**6.** (1) An applicable entity may apply to the Board for a self-classification certificate if that applicable entity broadcasts or offers video-on-demand services or over-the-top services through which films may be distributed, viewed or exhibited in Kenya.

(2) An application under sub-regulation (1) shall be accompanied by the prescribed fee and—

- (a) A description of the classification rating mechanism used by the applicable entity;
- (b) in the case of a provider of a video-on-demand service or an over-the-top service, a description of the process or mechanism for the removal of a film from the film library offered through that service when directed to do so by the Board; and
- (c) a catalogue of the films in the library in the case of video on demand and over the top services and a program schedule in the case of broadcasters.

Self-classification certificate.

**7.** (1) The Board shall issue an applicable entity with a self-classification certificate if the applicable entity has complied with the requirements of regulation 6.

(2) A self-classification certificate shall be valid for a period of one year from the date that it is issued by the Board.

(3) A self-classification certificate shall specify—

- (a) the particulars of the registered entity including their name and address in Kenya;
- (b) the date the certificate was issued;
- (c) validity period of the certificate;
- (d) the nature of the business of, or the service provided by, the applicable entity; and
- (e) the conditions, if any, imposed by the Board on the applicable entity.

Applicable entity to grant Board access to film library.

**8.** (1) An applicable entity that has been granted a self- classification certificate under these Regulations shall, in the case of a distributor or exhibitor of films through video-on-demand or over-the-top services, grant the Board access to the film library of the applicable entity.

(2) The access granted under sub-regulation (1) shall be for purposes of monitoring compliance.

Validity of Rating and Re-classification

**9.** (1) The rating assigned to a particular title by an applicable entity shall be valid for the same duration as that of the self-classification certificate.

(2) Upon expiry of the validity period , the applicable entity shall, where a film that was classified during the validity period is still in the catalogue, re-classify the film and assign to it the appropriate classification rating.

Withdrawal or re-classification of a film.

**10.** (1) Where the Board determines that a film whose classification rating was applied under these Regulations should not have been granted a classification rating at all or should have been granted a different classification rating, the Board may—

- (a) in the case of a broadcaster, direct the applicable entity not to broadcast or distribute the film in Kenya if the film should not be broadcast or distributed in Kenya;

- (b) in the case of a provider of a video-on-demand service or an over-the-top service, direct the applicable entity to remove the film from the video library if the film should not be viewed or exhibited in Kenya; or
- (c) in case the film was granted a wrong classification rating, direct the applicable entity to display the correct classification rating in respect of that film.

(2) A direction by the Board under sub-regulation (1) shall be in writing and shall specify the reason(s) for withdrawal or re-classification of the film and the period within which and the manner that the applicable entity shall comply with that direction.

Applicable entity to display film rating.

**11.** (1) An applicable entity shall, during the exhibition of a film, display in a clearly visible and legible manner, the appropriate rating information on each film examined and classified by the entity.

(2) The rating information displayed under sub-regulation (1) shall specify the classifiable elements found in that film in the manner set out in the Consumer Advisory Index.

Complaints handling mechanism.

**12.** (1) Complaints arising from self-classification processes or decisions by an applicable entity shall be resolved in accordance with the provisions of this Regulation and the Third Schedule.

(2) The applicable entity may resolve a complaint by a viewer or subscriber by—

- (a) reclassifying the film with a new classification rating;
- (b) preventing the broadcasting of the film;
- (c) withdrawing the film from distribution; or
- (d) removing the film from the video-on-demand or over-the-top service.

(3) The applicable entity shall resolve a complaint within seven days after receiving the complaint.

(4) A complainant who is dissatisfied with the manner in which a complaint has been resolved by the applicable entity, may, within seven days after the expiry of the period specified under sub-regulation (3), notify the Board, in writing, of the complaint and the unsatisfactory way that the complaint was resolved.

(5) The Board shall, within seven days after receiving a notification under sub-regulation (4), consider the information provided in the application and—

- (a) re-classify the film and direct, in writing, the applicable entity to apply the new classification rating to the film; or
- (b) direct the applicable entity to prevent any further broadcast, distribution or exhibition of the film, as the case may be.

(6) The applicable entity shall, within three days of being directed by the Board under sub-regulation (5)(b)—

- (a) re-classify the film as directed by the Board;
- (b) prevent any further broadcast, distribution or exhibition of the film, as the case may be, as directed by the Board; or
- (c) appeal, in writing, against the directive of the Board to the Cabinet Secretary.

(7) An appeal made under Section 29 of the Act by any applicable entity aggrieved by the direction of the Board shall be made to the Cabinet Secretary within twenty-one days or as soon as is practicable.

(8) The Cabinet Secretary shall hear and determine the appeal by the applicable entity after receiving the appeal and in this respect—

- (a) require the Board or the applicable entity to provide such information as may be necessary to determine the appeal;
- (b) appoint such persons with the necessary expertise or technical knowhow to conduct such enquiries and make such recommendations as may assist the Cabinet Secretary in the determination of the appeal; and
- (c) afford the Board or the applicable entity audience to make such representations as they think fit.

(9) The Cabinet Secretary may, in the determination of the appeal—

- (a) uphold the directions of the Board;
- (b) revoke the directions of the Board and substitute them with new directions that are appropriate in the circumstances; or
- (c) revise the directions of the Board as may be appropriate in the circumstances.

(10) The decision of the Cabinet Secretary under sub-regulation (9) shall be in writing and shall set out the reasons for the decision.

(11) A person who is dissatisfied with the determination of the Cabinet Secretary may appeal to the High Court within thirty days after being notified of that determination.

Board to  
conduct  
reviews.

**13.** (1) Notwithstanding anything contained in these Regulations, the Board may subject a film distributed or exhibited by an applicable entity to a review to determine whether or not the classification rating applied to that film by the applicable entity is the correct one.

(2) Where the Board determines that the applicable entity applied the wrong classification rating to the film, the Board shall re-classify the film and—

- (a) direct the applicable entity in writing to apply the new classification rating; or
- (b) direct the applicable entity to prevent any further broadcast, distribution or exhibition of the film, as the case may be

(3) The provisions of regulation 12 (3), (4), (5), and (6) shall apply, with necessary modification, to a direction by the Board under sub-regulation (2).

Non-  
transferability  
of classification  
rating.

**14.** A classification rating that has been assigned to a film by an applicable entity shall not be transferable to another applicable entity.

Annual report  
by applicable  
entities.

**15.** (1) Each applicable entity that has been granted a self-classification certificate under these Regulations shall, on the date of the expiry of the certificate, submit a list of the films classified by the applicable entity and exhibited or distributed in Kenya during the duration of the certificate.

(2) The list submitted under sub-regulation (1) shall specify the name of each film, classification rating assigned to that film, the classifiable elements in respect of each classified film and such other additional information as the Board may, in writing, require.

Offences and  
penalties.

**16.** Any person who contravenes the provisions of these Regulations commits an offence and shall be liable, if convicted, to the penalties specified in section 32 or 34 of the Act, as the case may be.

**FIRST SCHEDULE**  
**[Regulation 6 (2)]**

1. Fee Schedule for Video on Demand and Over the Top Services

BAND	Title*	Fee Per Title	
		Local	Foreign
A.	Below 1,000 titles	1,020	1,457
B.	1,001 to 5,000 titles	784	1,120
C.	5,001 to 10,000 titles	603	862
D.	10,001 to 20,000	464	663
E.	20,001 to 30,000	357	510
F.	For every 1,000 above 30,000		100

\* *Title Includes: A Season of a Series, Feature Film, Documentary, Short Film*

2. Fee Schedule for Broadcasters

Band	No. of Programmes*	Fee per programme	
		Local	Foreign
A.	1-500	277	395
B.	501- 2,500	213	304
C.	2,501- 5,000	164	234
D.	5,001 - 10,000	126	180
E.	Above 10,000	85	100

**SECOND SCHEDULE**  
**[Regulation 7]**

**SELF-CLASSIFICATION CERTIFICATE**



Certificate Number.....

This is to certify that .....of P.O. Box .....  
(Applicable Entity's Name)

.....  
Postal Code) (County/ Country)

who is .....  
(Broadcaster/ Video on Demand Service / Over the Top Service)

has been certified as a self-classification entity in the Republic of Kenya in accordance with the Films and Stage Plays Act and the Terms and Conditions of the referenced Certificate.

*N/B: This Certificate is valid for a period of one (1) year from the date of issue.*

### **THIRD SCHEDULE [Regulation 7]**

#### **KFCB GUIDE FOR HANDLING SELF CLASSIFICATION COMPLAINTS**

##### **1.0 INTRODUCTION**

Kenya Film Classification Board (KFCB) is a state corporation established under the Films and Stage Plays Act Cap 222 of the laws of Kenya to regulate the creation, broadcast, possession, distribution and exhibition of film content. Regulation is geared towards ensuring that content conforms to national aspirations and cultural values.

##### **1.1 DEFINITIONS:**

Unless otherwise specified, all words used in this document will have the same meaning attributed to them in the Act and the Regulations.

“**Complaint**” means any grievance made by a complainant with respect to the provisions of the Films and Stage Plays Act and its Regulations;

“**Complainant**” means any person who has lodged a complaint with the Board;

##### **2.0 COMPLAINTS HANDLING MECHANISM**

The Board shall establish internal mechanisms to handle all complaints concerning all broadcasters and providers of video-on-demand and over-the-top who opt for self-classification.

Moreover, the Board shall work closely with the relevant authorities to ensure that any complaints are resolved promptly.

This complaints handling mechanism shall apply to the applicable entities that are accessible in Kenya.

Any person may lodge a complaint if aggrieved by film content or who alleges that an applicable entity is in contravention of provisions of the Films and Stage Plays Act. The Complaints shall be made in writing and shall set out the grounds upon which they are based, the nature of the damage as a result of the content or the violation complained of and the remedy sought.

## **2.3 PROCEDURE FOR HANDLING COMPLAINTS**

### **2.3.2 APPLICABLE ENTITY COMPLAINTS HANDLING PROCEDURE**

Applicable entities are required to develop their procedures for handling complaints from aggrieved consumers of films.

In the interest of timely resolution, complainants are encouraged to follow the complaints procedure prescribed by the applicable entity before making a complaint to the Board.

#### **Details of the applicable entities' complaints handling procedure**

The applicable entity complaints handling procedure, shall among other things, cover the following areas:

- a) The registered name of the applicable entity;
- b) The contacts and designation of persons authorized to receive and handle customer complaints;
- c) The manner in which the complaint may be lodged including the applicable languages;
- d) The details to be submitted when lodging a complaint including any forms that may require to be completed;
- e) The need for the complainant to retain a copy of every correspondence exchanged between the complainant and the applicable entity;
- f) The option for the complainant to forward a copy of the complaint to the Board for information purposes if he/she so wishes;
- g) The manner in which the complaint will be investigated and the process of investigation;
- h) The timeframe for responding to the complainant, and resolving the complaint;
- i) The option of the complainant to escalate the complaint to the Board if not satisfied with the response of the applicable entity;
- j) The manner in which complaints from Persons with Disabilities shall be addressed;
- k) Methods of recording and tracking complaints and responses;
- l) Duration of storage of records of complaints received and actions taken;
- m) Retention and production of any film which is the subject matter of a complaint;
- n) Categories of complaints to which the applicable entity is under no obligation to respond (complaints considered frivolous or an abuse of the complaint process or from complainants who choose to remain anonymous); and
- o) The incorporation of a mechanism for real time lodging of complaint regarding a film that is on air and a mechanism for immediate response or action.

#### **Approval of applicable entity's Complaints Procedure**

The applicable entity must ensure that: -

- a) Its complaints handling procedure is documented and submitted to the Board for approval before implementation;
- b) It notifies the Board with the details of persons designated to handle complaints from the public;
- c) If the Board is of the opinion that the applicable entity's complaint handling procedure does not meet the set guidelines, the same shall be rejected;
- d) The Board shall notify the concerned entity of its decision and the applicable entity will be required to make the necessary changes as proposed by the Board within 30 days from the date of notification; and
- e) In the interim period, the applicable entity shall be required to handle any complaints received in accordance with the procedure determined by the Board.

### **Publicizing of complaints procedure once approved**

Upon approval of the complaints handling procedure, the applicable entity shall: -

- a) Regularly inform their consumers of the existence of the complaints procedure and how an aggrieved person can lodge a complaint regarding the applicable entity;
- b) Inform consumers that the first opportunity to provide resolution for the complaint should be given to the applicable entity and if dissatisfied they can escalate the complaint to the Board or any other relevant authority; and
- c) In the event that the complainant is not satisfied with the resolution of the complaint provided by the applicable entity, including but not limited to instances where the entity fails to respond to the complaint within a maximum period of 15 days from the date of lodging the complaint, the complainant shall refer the complaint to the Board or any other relevant authority.

### **Disposing of film**

The applicable entity shall not dispose film related to a complaint so long as it has not been resolved either by the entity, the Board, or any other relevant authority.

### **Applicable entity's accountability to the Board**

At the end of every financial year, the applicable entity shall submit to the Board a written report of all complaints received during the period and the manner in which they were addressed.

## **2.3.2 THE BOARD'S COMPLAINT HANDLING PROCEDURE**

Complaints shall be lodged with the Board in reference to the violation of the Act or the self-classification regulations by any applicable entity and may be escalated to the relevant authorities if the complainant is not satisfied with the Board's action or decision.

Complainants who are familiar with the Act and its Regulations are encouraged to quote sections of the Act or its Regulations which in their view the applicable entity has breached.

### **Submission of complaints**

Complaints will be made by filling the complaints form and will be handled by the Board as follows:

- a) All complaints shall be made in writing (by letter, e-mail or via various social media assets) and shall be made either: -
  - By completing the prescribed Form annexed hereto or;
  - Where a complaint is not made on the Form, all the required details as prescribed in the Form must be included in the written complaint.
- b) The Notice of Complaint shall include sufficient detail about the complainant and the matter complained of. Specifically, complaints should include the following details:
  - The complainant's name and full contact details (including physical, postal and e-mail addresses);
  - The nature of the complaint and (where possible) the particular parts of the film complained about;
  - The name of the broadcaster/OTT/VOD, the film name/title, date and time of the programme/content aired;
  - The sections of the Act or its Regulations breached;
- c) The basis of the complaint;
- d) Nature of damage or injury suffered or violation complained or the relief or remedy sought;
- e) An indication of whether (and, if so, when) the complainant has submitted a complaint to the relevant applicable entity.

### **Handling Anonymous Complaints**

The Board will act on anonymous complaints after assessing the following: -

- a) The seriousness of the complaint reported;

- b) The extent to which allegations are specific (e.g. it is clear what is being alleged, dates, times, locations, consequences of wrongdoing, names of witnesses);
- c) The extent to which allegations are based on reliable information, not simply on hearsay;
- d) Reasons to believe that there is justification for the matter being reported anonymously and not through channels that allow for easier scrutiny; and
- e) Whether the language used is abusive or otherwise suggests a poison-pen letter.

Where the Board has no way of contacting the person making the anonymous complaint, all of the necessary information for a decision to take further must be available.

Anyone making an anonymous complaint should be aware that the Board: -

- a) May hand the complaint(s) over to the police or other authorities for their views or with a request to investigate the allegations further if deemed appropriate;
- b) Will provide the entity(s) accused or implicated in the alleged wrongdoing with copies of the allegation(s);
- c) Will view very seriously any false, carelessly prepared or malicious allegations. Inaccurate, malicious or negligent accusations by an employee are considered a matter of gross misconduct;
- d) Will dismiss as malicious any complaint that is found to have used a misleading sender name or address.

### **Complaints submitted by Persons with Disabilities**

In cases where the complainant is disadvantaged due to language barrier and/or writing or has some form of disability which may render him/her unable to clearly present the complaint, the complainant may seek assistance from authorized officers of the Board.

### **Complaints Contact information:**

All complaints shall be addressed to:

The Chief Executive Officer  
 Kenya Film Classification Board,  
 Uchumi House, 15<sup>th</sup> Floor  
 P.O. Box 44226-00100 Nairobi, Kenya  
 Email: [complaints@kfcg.go.ke](mailto:complaints@kfcg.go.ke) or [info@kfcg.go.ke](mailto:info@kfcg.go.ke)  
 Website: [www.kfcg.go.ke](http://www.kfcg.go.ke)

### **Acknowledgement of Complaints**

The complaints handling process will only commence once the Board receives a duly completed form or a written complaint containing all the required details.

The Board shall acknowledge receipt of all complaints promptly.

After receipt of the complaint, the Board will carry out a process of initial assessment and investigations on the substance of the complaint.

### **Resolving Complaints**

The Board shall resolve all complaints within 10 working days.

### **Threshold for Resolving Complaints**

The Board may decline to resolve any complaint that: -

- a) Does not raise any issue under the Act or Regulations;
- b) Does not conform to the provisions of the Act or directions given by the Board;
- c) It's not presented in accordance with the Regulations or directions of the Board;
- d) Has been filed with any other authority or body that has jurisdiction to hear and resolve the complaint.

The Board shall notify the complainant in writing of the reasons for declining a complaint.



**KENYA FILM CLASSIFICATION BOARD  
CUSTOMER COMPLAINT FORM  
SELF-CLASSIFICATION**

<b>Particulars of Complainant</b>	
Name:	
ID No./Passport No./Company Registration No: .....	Telephone No:.....  Email:.....
Address:	
<b>Particulars of offending applicable entity</b>	
Name of company:	
Business Address:	
Have you referred the complaint to any entity? (please tick):	
<input type="radio"/> YES	
<input type="radio"/> NO	
<input type="radio"/> If yes, specify .....	

**Complaint Details**

Film/Programme title	
Date aired/exhibited	
Time aired/exhibited	
Provide brief description of the complaint	
.....	
.....	
.....	
.....	
.....	
.....	
Attach evidence if any	

**Sections of Regulations breached:**

**Remedy sought:**

**Complainant Declaration**

I declare that the information I have given is true, complete and correct to the best of my knowledge and belief.

Date .....

Signature/ .....

**For Office use only**

Complaint No.....

Date Received.....

History of Resolution (tick)

- Dissatisfied with the applicable entity’s remedy.....
- No response from the applicable entity .....
- Has not first contacted applicable entity.....

Recommended way forward:

- To be attended to by KFCB.....
- Not complete. Request complainant to submit missing Information

.....

- Rejected (To be first referred to the applicable entity) .....
- Others .....

Date:  .....	Name & Signature of Authorised officer  .....
--------------------	---

**Guide to filling in Form KFCB/SC/COMP-01 – Instructions to Complainant**

**1. Particulars of Complainant**

The complainant shall fill in his/her name in full, details of identity documents (ID/Passport Number) telephone number and mailing address.

If the complainant is a corporate body, the claimant shall provide the registered company name, company registration number, registered address and business address.

**2. Particulars of the applicable entity**

The complainant shall fill in the particulars of the applicable entity namely: Name of the applicable entity, film title, and address in the column provided.

**3. Complaint Details**

The complainant should provide a general explanation of the complaint.

**4. Supporting evidence**

The complainant may enclose relevant evidence which relates to the complaint;

The supporting evidence may include any correspondence or document as proof of prior attempts to resolve the matter with the applicable entity.

The complainant must indicate the film/programme title, date and time. Where possible clauses of the Regulations, or recordings of the film may be included.

**5. Remedy**



The complainant shall fill in the remedy sought from the applicable entity. The complainant is reminded that the remedy sought should be reasonable and realistic.

**6. General**

If the space provided is insufficient, please continue on a separate sheet of paper and write “see overleaf”. Any separate sheet of paper used should be attached to this Form and duly signed.

The complainant shall duly fill and sign the complaint form. In the case of a corporate body, the form shall be duly signed and stamped by the authorized person. The form shall be delivered to the Board either by hand delivery, post or email.

Made on the ....., 2023

**ABABU NAMWAMBA, EGH**  
*Cabinet Secretary for Information,  
Sports, Culture and the Arts*

2. Stakeholder Report



**REPORT ON THE  
COLLATION OF  
STAKEHOLDERS  
SUBMISSIONS ON  
REGULATIONS AND  
GUIDELINES**

**JUNE 2023**

**STATE DEPARTMENT OF YOUTH AFFAIRS AND THE ARTS**

**MINISTRY OF YOUTH AFFAIRS, THE ARTS AND SPORTS**

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## PART 1: INTRODUCTION

Kenya Film Classification Board (KFCB) is a State Corporation established under the Films and Stage Plays Act Cap 222 Laws of Kenya (the Act). The functions of the Board are to regulate the creation, broadcasting, possession, distribution and exhibition of films and to license and issue certificate to distributors and exhibitors of films.

### VISION

To be a world class film and broadcast film regulator

### MISSION

To safeguard National values and norms through efficient and effective film regulatory services

### CORE VALUES

- i. Professionalism
- ii. Integrity
- iii. Teamwork
- iv. Accountability
- v. Innovation

## PART 2: FILMS AND STAGE PLAYS REGULATIONS AND GUIDELINES

The Ministry of Youth Affairs, the Arts and Sports is vested with the responsibility of developing the film industry through policy and legislative interventions. To this end, the Ministry is conferred with the responsibility of developing Regulations under Section 35 of the Films and Stage Plays Act, Cap 222, Laws of Kenya. The Kenya Film Classification Board is established under the Act to regulate the local film sector with a view to creating an enabling regulatory environment and to protect children from exposure to inappropriate content.

To cope with the rapid evolution of technology and the emergence of new services, the Ministry of Youth Affairs, the Arts and Sports is reviewing the Regulations listed in **Table 1** below with a view to aligning the legal and regulatory framework with developments in the industry as well as international best practices.

**Table 1: Regulations and Guidelines**

No.	Proposed regulations	Summary
1.	Film and Stage Plays (Film Classification) Guidelines, 2023	These Guidelines have been developed in accordance with Section 15(2) (b) of the Films and Stage Plays Act that makes provision for prescribing procedure to be used in the classification of all classes of films. These Guidelines prescribed the guiding principles, thematic areas, as well as corresponding age ratings and advisories.
2.	Films and Stage Plays (Self-Classification) Regulations, 2023	These Regulations prescribe the procedure for the identification and co-option of film distributors and exhibitors to classify films on behalf of the Board. The proposed fees in the Regulations have been made in consideration of the volumes of audio-visual content made accessible due to technological advancements and the introduction of new forms of content distribution and exhibition such as the over-the-top service platforms. The proposed fees are accommodating to film exhibitors and distributors as evidenced in the banding as opposed to the current levying of fees.
3.	Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023	These Regulations have been developed in accordance with Section 35 to prescribe the procedure in which the Board licenses film distributors and exhibitors. The proposed fees to these Regulations are developed in recognition of the diverse forms of film distribution and exhibition across the country.
4.	Films and Stage Plays (Film	The core mandate of the Board is the classification of film. The Board took cognizance of the clamor by the public to

	Censorship) Regulations, 2023	reduce the cost of film classification. As a result, the proposed fees have been distinguished between local and foreign audio-visual content with the Board proposing a reduction of rate of fifteen (15) percent for local audio-visual content.
5.	Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023	The Regulations prescribe the procedure for the application for filming licenses, registration of film agents, and the fees thereto. The fee schedule proposed have distinguished between foreign and local fees so as to spur growth for the local film industry. To this end, local film maker fees have been proposed to reduce the same by fifteen (15) percent of the current fees. Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

## 2.1 RATIONALE FOR REVIEW FOR REVIEW AND DEVELOPMENT

### 1. Film and Stage Plays (Film Classification) Guidelines, 2023

According to Section 15(2) b of the Films and Stage Plays Act, The Board may from time to time prescribe guidelines to be applied in the classification of films. Technological advancements have led to changes in lifestyle, public expectations and concerns thus necessitating the Board to consider reviewing the classification guidelines to include emerging trends in the society.

### 2. Films and Stage Plays (Self-Classification) Regulations, 2023

The current classification fee is based on the running time of a film. However, due to the volumes of content on VOD, OTTs and Broadcast services, charging classification fees based on running time may be exorbitant. Consequently, the Board proposes to levy classification fees per title. These levies are banded to accommodate the different volumes of content on different platforms.

The Board has distinguished the classification fees for VOD, OTTs from the broadcasters due to the nature of former that render them to: contain large volumes of content; be accessible via the internet and the consumer's convenience to watch content of their choice at their preferred time and place.

### 3. Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023

The Act imposes fees for three categories of film distributors and exhibitors. These include video show & video vendors, video libraries and cinema theatres. The fees were created specifically for the traditional chain distribution and exhibition of film.

Technological advancement has changed and expanded the modes of film distribution and exhibition occasioning the need to review the current regulatory model to incorporate new technologies.

The review of the fees is informed by the following:

- i. The recognition of the diverse forms of the distribution and exhibition of audio-visual content.
- ii. The need to adjust the fees to the current market rates.
- iii. The need to apportion the requisite fees to the different forms of film /content exhibition and distribution based on their potential to expose users to harm and the negative impact they have on content consumers.

#### **4. Films and Stage Plays (Film Censorship) Regulations, 2023**

##### ***a) Film***

The Board proposes retention of the current classification fees for the foreign content and a 15% reduction on classification fees for the local content to incentivize the industry players, grow the industry and encourage local content creation, distribution and consumption.

##### ***b) Posters, Trailers and Commercials***

The Board proposes retention of the classification fees levied on posters and trailers as per the current fees schedule and an increase on the classification fees from Kshs 1000 to Kshs 5,000 and Kshs. 10,000 for local and foreign commercials respectively. The increase is based on the principle that commercials are made to persuade and influence behavior through the use of targeted visual consistency within a considerably short period. The frequency of airing such commercials has a higher potential for harm.

#### **5. Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023**

##### ***a) Fees for Foreign Filmmakers***

Based on benchmark studies conducted in other jurisdictions (Annex 1), the current filming fees were found to be favorable across Africa and therefore shall be retained as they are.

##### ***b) Fees for Local Filmmakers***

Local film industry stakeholders have indicated that the current filming fees are prohibitive thus discouraging many from pursuing filmmaking careers while compelling others to engage in illegal filming activities. To address this concern, the Board recommends a reduction of the current fees by 15% for the local filmmakers.

##### ***c) Banding of Fees***

Banding of fees was done to ensure filmmakers with projects requiring few filming days are charged reasonable fees while those with projects taking long periods of time enjoy benefits of the economies of scale.

##### ***d) Daily Filming Fees***

All filming fees are covered in the bands. However, in case filming is not completed within the licensed period in the band, the daily filming fees are an option for extension. The fees shall only be applicable to extension of valid filming Licence.

##### ***e) Filming Fees Increase for Commercials/Advertisements***

The increase of the fees is necessitated by the high economic value of the advertisements and the frequency with which they are aired/exhibited thus increasing their potential to cause harm.

## 2.2 PUBLIC PARTICIPATION

### 2.2.1 PUBLIC NOTICE(Annex 1)

In accordance with the Constitution, 2010, the Board published the draft Regulations and Guidelines and invited members of the public to provide written comments, recommendations or justification (s) thereof from the **28<sup>th</sup> March 2023** to **28<sup>th</sup> April 2023**.

All written submissions were forwarded through [regulations@kfcg.go.ke](mailto:regulations@kfcg.go.ke) or the Boards postal address.

At the end of the Notice period, the Board had received a total number of \_\_\_ submissions. The submissions and the responses thereto, are attached herein as Annex I.

### 2.2.2 STAKEHOLDER ENGAGEMENT FORUMS

In a bid to enhance public participation, the Board five stakeholder engagement forums across the country. (*Pictorials Annex 3*) The forums took place as follows:

- i. Mombasa: 2<sup>nd</sup> May 2023 at the Kenya School of Government;
- ii. Kisumu on 5<sup>th</sup> May 2023 at the Kisumu Hotel;
- iii. Embu on 9<sup>th</sup> May 2023 at the Kenya School of Government; and
- iv. Nairobi on 30<sup>th</sup> and 31<sup>st</sup> May at the College of Insurance.

The submissions and the responses thereto, are attached herein as Annex I.



## ANNEX I: PUBLIC NOTICE



### INVITATION FOR PUBLIC PARTICIPATION ON THE FILMS AND STAGE PLAYS REGULATIONS AND GUIDELINES

The Ministry of Youth Affairs, the Arts and Sports is vested with the responsibility of developing the film industry through policy and legislative interventions. To this end, the Ministry is conferred with the responsibility of developing Regulations under Section 35 of the *Films and Stage Plays Act, Cap 222, Laws of Kenya*.

The Kenya Film Classification Board is established under the Act to regulate the local film sector with a view to creating an enabling regulatory environment and to protect children from exposure to inappropriate content.

To cope with the rapid evolution of technology and the emergence of new services, the Ministry of Youth Affairs, the Arts and Sports is reviewing the Regulations below with a view to aligning the legal and regulatory framework with developments in the industry as well as international best practices.

Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

No.	Proposed regulations	Summary
1.	Film and Stage Plays (Film Classification) Guidelines, 2023	These Guidelines have been developed in accordance with Section 15(2) (b) of the Films and Stage Plays Act that makes provision for prescribing procedure to be used in the classification of all classes of films. These Guidelines prescribed the guiding principles, thematic areas, as well as corresponding age ratings and advisories.
2.	Films and Stage Plays (Self-Classification) Regulations, 2023	These Regulations prescribe the procedure for the identification and co-option of film distributors and exhibitors to classify films on behalf of the

		Board. The proposed fees in the Regulations have been made in consideration of the volumes of audio-visual content made accessible due to technological advancements and the introduction of new forms of content distribution and exhibition such as the over-the-top service platforms. The proposed fees are accommodating to film exhibitors and distributors as evidenced in the banding as opposed to the current levying of fees.
3.	Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023	These Regulations have been developed in accordance with Section 35 to prescribe the procedure in which the Board licenses film distributors and exhibitors. The proposed fees to these Regulations are developed in recognition of the diverse forms of film distribution and exhibition across the country.
4.	Films and Stage Plays (Film Censorship) Regulations, 2023	The core mandate of the Board is the classification of film. The Board took cognizance of the clamor by the public to reduce the cost of film classification. As a result, the proposed fees have been distinguished between local and foreign audio-visual content with the Board proposing a reduction of rate of fifteen (15) percent for local audio-visual content.
5.	Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023	The Regulations prescribe the procedure for the application for filming licenses, registration of film agents, and the fees thereto. The fee schedule proposed have distinguished between foreign and local fees so as to spur growth for the local film industry. To this end, local film maker fees have been proposed to reduce the same by fifteen (15) percent of the current fees. Accordingly, foreign fees have been retained as per the current schedule. The fee schedules have been banded with a view to ensuring reasonability with respect to filming.

The aforesated regulatory and legal instruments can be accessed at <https://kfcg.go.ke/~kfcgok/policies>

In accordance with the Constitution, 2010, this is to hereby invite members of the public to provide written comments, recommendations or justification (s) thereof on the draft Regulations and Guidelines.

All written submissions should be forwarded through [regulations@kfcg.go.ke](mailto:regulations@kfcg.go.ke) or the address provided below, not later than **Friday, 21<sup>st</sup> April 2023**.

**The Chief Executive Officer**

Kenya Film Classification Board

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**28<sup>th</sup> March 2023**

**Hon. Ababu Namwamba, EGH**

**Cabinet Secretary**

ANNEX II: STAKEHOLDER SUBMISSIONS MATRIX

No	PROVISION/ CLAUSE	PROPOSAL	KFCB RECOMMENDATION	REGION
1	General	<p>The Board to train the entities staff,at the Board's cost in a Train-the-Trainer format with refresher training, when required. The Board to provide a Manual, to allow applicable entities train internally.</p> <p>KFCB to waive the cost of certificates</p>	<p>This is noted and will be effected during implementation.</p> <p>The applicable entity, if onboarded onto self-classification, will not be required to pay for film classification under the Censorship Regulations.</p>	ONLINE
2	Clauses 2,4: Applies to broadcasters and providers of video on-demand and over-the-top services that are accessible in Kenya.	<p>Internet Service Provider means a person who provides another with the service of transmitting information through the means of a communication network</p> <p>Online Intermediary means an Internet Service Provider or an over-the-top service provider or a person who merely provides to another person an internet-enabled service such as the storage, hosting, routing, caching, search and retrieval, transmission or other form of data and information processing service with respect to a film or such other content where such service provider does not exercise editorial control over the content. User-generated content</p>	<p>This proposal is not adopted– it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content</p>	

		<p>means an image, video, text, audio or such other material that is provided through an over-the-top service It is vital to take into account the fundamentally different roles played by different online service providers and platforms. It is critical to avoid an overly broad and indiscriminate approach. For example, what makes sense for contentsharing platforms may not be appropriate or technically feasible for a search engine or for a platform that hosts mobile apps. Video-sharing platforms are a type of hosting service whose primary purpose is to store and disseminate users' video content. Video-sharing platforms like YouTube serve as both an entertainment destination and a video library for the world. They are different from traditional broadcast services and Video On Demand provided by another person, known as an Online Intermediary, where the person providing the material exercises editorial control over the material.</p>		
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	Insert Paragraph 4	4. An online intermediary (a). shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and (b)does not have a general obligation monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity.		NAIROBI
	IN EXERCISE of the powers conferred by section 35 (1) of the Films and Stage Plays Act, the Cabinet Secretary for ICT, Innovation and the Digital Economy makes the following Regulations—	IN EXERCISE of the powers conferred by section 35 (1) of the Films and Stage Plays Act, the Cabinet Secretary makes the following Regulations—	Adopted	
	Definition online intermediary	An online intermediary has the same meaning as defined under the Copyright Act Cap 130	This proposal is not adopted- the term has not been used anywhere in the regulation.	
	Definition Community Guidelines:	Community/Users Guidelines: Online intermediaries rules articulating acceptable use policy, child online protection and vulnerable adults protection mechanisms for their respective platforms. These guidelines must meet the minimum KFCB standards	This proposal is not adopted– Comment noted but it will be applicable to User Generated Content	

3	Clause 3:	For clarity and certainty purposes, the Regulations be amended to expressly provide that the access to be granted to KFCB should be limited to viewing and to a particular film upon appropriate justification by KFCB	Provide clarity on the scope of the Self Classification i.e does not cover User Generated content platforms	
	Clause 2	To ensure clarity and certainty, the draft Guidelines clearly indicate that it does not apply to OTT service providers which allow third party content creators to upload and exhibit content (or “film” (adopting the definition from the parent act) through the platforms provided by OTT service providers.	Provide clarity on the scope of the Self Classification i.e does not cover User Generated content platforms	
	Clauses 2,4	Regulations be amended to only prescribe Regulations governing content disseminated through traditional media channels and not content provided by OTT and VOD service providers.	This proposal is not adopted - The Film and Stage Plays Act provides for Classification of any Audiovisual content despite the platform of exhibition.	
		The Regulations be amended to only prescribe provisions governing content disseminated through traditional media channels and not content provided by OTT service providers. This view has been expressed on several previous occasions by stakeholders including more recently in connection with the	This proposal is not adopted – repetition.	



		Draft Kenya Film Bill, 2021.		
Clauses 2,4 : Paragraph 2: Definitions		Internet Service Provider means a person who provides another with the service of transmitting information through the means of a communication network	This proposal is not adopted– it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content	
		Online Intermediary means an Internet Service Provider or an over-the-top service provider or a person who merely provides to another person an internet-enabled service such as the storage, hosting, routing, caching, search and retrieval, transmission or other form of data and information processing service with respect to a film or such other content where such service provider does not exercise editorial control over the content.		
		User-generated content means an image, video, text, audio or such other material that is provided through an over-the-top service provided by another person, known as an Online Intermediary, where the person providing the material exercises editorial control over the materi		

		Exclude an online intermediary from the definition of owner, creator, maker, distributor or exhibitor of a film		NAIROBI
	<b>Insert a new paragraph 4:</b>	An online intermediary: a) shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and		
		(b) does not have a general obligation to monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity.		
	Clause 6	This provision be deleted in its entirety to account for the operational and logistical impossibility of self-classification by OTT service providers complying with their obligations due to the volume of content that would be involved.	This proposal is not adopted– it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content	
	Clause 8	Regulations to be amended to expressly provide that the access to be granted to KFCB should be limited to viewing and to a particular film upon appropriate justification by KFCB		

	Clause 7 &9	Regulations to expressly exclude OTT/VOD service providers from obtaining a self-classification certificate.		
	Clause 10	The Board should not subject entities to double rating of content (Kenya and International Standards).		
	<b>Clause 12</b>	KFCB should review the requirement for OTT and VODservice providers to display rating based onKenyan law as well as International standards. This section should be amended to only provide for ratings conforming to international standards.		
	<b>Clause 13</b>	This is not a problematic provision as it not only provides an avenue for consumers to raise complaints but also creates an appeal process should a party (consumer or OTT/VOD service provider) feel aggrieved by KFCB’s decision.		
		For the implementation of the provisions and purposes of the Act, this mandate should be exercised within the Ambit of the Act. The Films & Stage Plays Act does not provide for the development of guidelines for OTTs	Section 35 provides that the Ministry may make Regulations for the effective operationalization of the Act.	

	Entire Regulation	This provision be deleted in its entirety to account for the operational and logistical impossibility of self-classification by OTT and VOD service providers complying with their obligations due to the volume of content that would be involved.	This proposal is not adopted– it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content	
4	clause 7.2	The Board should consider extending validity of Self-classification certificates for a longer period than one year. Three years would be a reasonable period. Any concerns associated with issuing self-classification certificates which are valid for a Netflix longer period of time can be addressed by various monitoring mechanisms which will be available to the KFCB under the Self-Classification Regulations	This proposal may be considered in the review through monitoring and evaluation during the implementation of the Regulations.	
	Clause 10(1b)	KFCB to explain how feasible it is to remove a film from the video catalogue taking into account the fundamental differences between operating models on the different audiovisual services.		
	Clause 12	KFCB should revise the draft instrument to include a comprehensive appeals procedure, to ensure that the rights of content service	This proposal is adopted	ONLINE

		providers are safeguarded.		
	Clause 12	The Board should expound on consumer education regarding the parental control mechanisms and safety measures (see discussion above) available on a service be included as one of the options to resolve a consumer complaint.	This proposal is adopted	
	Second Schedule	KFCB should clarify the mechanisms of the proposed fee structure; in particular Netflix wishes to confirm if this fee structure proposed per-title refers to the actual number of films self-classified by the applicable entity from time to time; if so, this should be clearly stated in the fee schedule.	This is adopted and will be clarified. A title does refer to the actual number of titles self-classified.	
5	Arrangement of regulations	Propose deletion of random and amend as below. 11—Board to conduct ad hoc or impromptu reviews	This proposal is not adopted – "The Clause shall read as The Board shall conduct monitoring"	
	Regulation 2 on interpretation	Define broadcaster as below. "broadcaster" have the meaning assigned to it under the Kenya Information and Communications Act, 1998	Adopted	
	Regulation 2 on interpretation	Include the definition of the Act as below. "the Act shall be the Films and Stage Plays Act CAP 222"	Adopted	
	Regulation 2 on interpretation	Include the definition of a film library as below. "Film library shall mean a collection of films, motion	This is not adopted. It is a self-explanatory phrase	

		pictures, videodiscs, videocassettes, and any other materials stored on film.”		
Regulation 4 Scope of the Regulations		Amend by including the below. 4. (1) These Regulations shall apply to distributors, exhibitors, broadcasters and providers of video-on-demand and over-the-top services that are accessible in Kenya	Adopted	
Regulation 9 on validity of rating and classification		Propose deletion as below. 9. (1) The rating assigned to the title by an applicable entity shall be valid for a period of five years. 2) Upon expiry of the period, the applicable entity, where a film is still available in their catalogue, will review and assign the appropriate classification rating	This proposal is not adopted – The classification guidelines are reviewed due to the dynamic nature of the society.	
Regulation 10 on Withdrawal/reclassification of a film.		Amend as below. A direction by the Board under sub-regulation (1) shall be in writing and shall specify the reason(s) for withdrawal or reclassification of the film and the period within which and the manner that the applicable entity shall comply with that direction	Adopted	
Regulation 12(6) on complaints mechanism		Amend as below. The applicable entity shall resolve a complaint made under sub regulation (4) within fourteen days after receiving the complaint	Adopted but changed to 10 days	

Regulation 12(8)	Amend as below. The Board shall, within seven fourteen days after receiving a notification under sub regulation (7), consider the information provided under subregulation (5) and—	Adopted but changed to 10 days	
Regulation 12(9)	The applicable entity shall, within three seven days of being directed by the Board under sub-regulation (8)(b)—	Adopted but changed to three days	NAIROBI
Regulations 12(10)	Propose deletion as below. (10) An appeal made under Section 29 of the Act by any applicable entity aggrieved by the direction of the Board shall be made to the Communications and Multimedia Appeals Tribunal Cabinet Secretary within twenty-one days or as soon as is practicable. (11) The Communications and Multimedia Appeals Tribunal Cabinet Secretary shall hear and determine the appeal by the applicable entity after receiving the appeal and in this respect— (a) require the Board or the applicable entity to provide such information as may be necessary to determine the appeal; (b) appoint such persons with the necessary expertise or technical knowhow to conduct such enquiries and make such	This proposal is not adopted-The appeals mechanism is prescribed in Section 29 of the Films and Stage Plays Act. Thus an entity such as the Communications and Multimedia Appeals Tribunal cannot hear and determine appeals from the Board under the Act.	

		<p>recommendations as may assist the Cabinet Secretary in the determination of the appeal; and (c) afford the Board or the applicable entity audience to make such representations as they think fit. (12) The Tribunal Cabinet Secretary may, in the determination of the appeal— (a) uphold the directions of the Board; (b) revoke the directions of the Board and substitute them with new directions that are appropriate in the circumstances; or (c) revise the directions of the Board as may be appropriate in the circumstances. (13) The decision of the Cabinet Secretary under sub-regulation (10) shall be in writing and shall set out the reasons for the decision</p>		
	Regulation 12(14)	<p>Amend as below. (14) A person who is dissatisfied with the determination of the Cabinet Secretary Communications and Multimedia Appeals Tribunal may appeal to the High Court within thirty days after being notified of that determination</p>	This proposal is not adoptedd-The appeals mechanism is prescribed in Section 29 of the Films and Stage Plays Act	
	Regulation 13 : title on random reviews	<p>Board to conduct random ad hoc/impromptu reviews</p>	This proposal is not adopted	
	Regulation 13 (1)	<p>The Board may, Notwithstanding anything contained in these Regulations, subject a film</p>	Adopt	



		distributed or exhibited by an applicable entity to a review to determine the accuracy whether or not of the classification rating applied to that film by the applicable entity is the correct one		
	Regulation 13 (3)	Propose deletion or clarification	Provision amended	
	Second Schedule	Fee Per Title (KES/KSHS.) Fee per programme(KES/KSH S.)	Adopted	
6	Films & Stage Plays Act, Cap 222	Review the Act as the regulation is inconsistency with Film and stage plays Act	The self-classification regulation is anchored on section 11B which provides for the co-option of person to examine and classify films.	
			Further section 35 provides that the Minister may make regulations prescribing anything under the Act for implementation of the Act.	
	Films & Stage Plays Act, Cap 222	The Board to explain its role in regulating online content	The definition of Film in the Act covers all audiovisual content regardless of the distribution/exhibition medium	
	Second Schedule	The application fees for self-classifiers listed in the Second Schedule of the Films and Stage Plays (Self-Classification) Regulations, 2023, we propose that a fixed fee of Kshs 1,000,000 would be fair and reasonable.	Not adopted – Prescribing a fixed fee will disadvantage some stations as the amount varies across different stations	ONLINE
	Second Schedule	The Cabinet Secretary and Board reconsider all the fees in the various regulations, as they are unlikely to meet the Cabinet Secretary and the Board's objectives. We	Not adopted – Prescribing a fixed fee will disadvantage some stations as the amount varies across different stations	

		propose that the Cabinet Secretary and the Board consider imposing fixed fees that are fair, reasonable and rationally connected to the actual costs incurred by the Board to carry out its regulatory functions.		
	Second Schedule	The number and types of films are constantly changing, with titles added and removed on an ongoing basis. There is no indication on the point in time at which the volumes will be calculated. It is therefore not clear what an operator will pay if there are huge fluctuations in their volume of films during the year.	This is adopted. Clarification will be provided in the fee schedule.	
		It is inappropriate to distinguish the cost between local and foreign content. This will have the effect of punishing operators for foreign films, but will not automatically result in the inclusion of more local films in the various services.	Not adopted. It is the initiative of the government to encourage/ promote local content. Further, the current fee is higher than the proposed fee for both local and foreign content.	
7	Clause 2; 4	Define and exclude user generated content and videography. This will align the Regulations with the scope set by the Films and Stage Plays Act.	This is not adopted. With respect to provision to exclude videography, the same is not adopted. Making of a film is a requirement distinct from these Regulations therefore the same should be adhered to.	
	Clause 10:	Include a dispute management mechanism regarding issues arising out of classification. This will be in line with the	Already provided for in Clause 12 (10)	NAIROBI

		principle of fair administration of justice and the right to be heard.		
		Include a clause mandating the Board to give reasons for refusal	This is adopted.	
		Include a clause giving the Board the option of agreeing with the applicable party in line with the constitutional right of access to information under Article 35 of the Constitution.	This is adopted.	
	Clause 12	Include a clause giving the Board the option of agreeing with the applicable entity. The Board is an impartial arbiter and the regulations should reflect this rather than imputing mischief on the part of the applicable party.	Where the Board agrees with the rating by applicable entity, this proposal shall not take effect.	
	Section 35 (1)	this mandate should be exercised within the ambit of the Act to ensure that any and all measures adopted are legitimate.	This is noted.	
8	Clause 6	This provision be deleted in its entirety to account for the operational and logistical impossibility of self-classification by OTT service providers complying with their obligations due to the volume of content that would be involved.	This Regulation does not apply to user generated content.	ONLINE
	Clause 6	The Regulations to be amended to expressly provide that the access to be granted to KFCB should be limited to viewing and to a	The applicable entity is required to give unlimited access to the library that is made accessible within the Kenyan jurisdiction.	ONLINE

		particular film upon appropriate justification by KFCB.		
	Clause 11	KFCB to amend this section to allow for ratings to be based on internationally accepted standards as opposed to Consumer Advisory Index which is territorial in nature.	Classification of film is jurisdictional specific, therefore Board is in within its powers to prescribe best practices within its enabling Act.	
9	General	KFCB to provide more guidelines on classification	The Film Classification Guidelines as proposed have been published for stakeholder input.	ONLINE
	Clause 9	Clarify why a classification/rating should expire after 5 years.	This is provided for under the Act. Five years is a standard period within which societal dynamics have shifted and can therefore occasion review.	
	Second Schedule	The cost of classification per title is high, 1,000 titles on VOD will cost you over a million shillings, these costs will be passed on to the consumer.	The current classification cost based on running time is significantly higher than the proposed fee schedule.	
10	Second Schedule	In regards to the fee schedule for the self classification certificate, the fee per title (band A-C) for the local Video on Demand entities is prohibitive and local entities would not be able to compete with foreign entities who have larger profit margins. Therefore, KFCB should revise the fee schedule so that local entities can have a more supportive environment and boost the creative economy.	The current classification cost based on running time is significantly higher than the proposed fee schedule.	ONLINE
	Clause 7	The certificate would need to be renewed annually, the stated	The current classification cost based on running time	

		fees would reduce the profit margins of these local entities and reduce the number of jobs created within the Video on Demand value chain.	is significantly higher than the proposed fee schedule.	
11	Clause 7	There is lack of oversight mechanisms to ensure that the self-classification certificates are issued only to qualified entities trusted to classify films accurately	Section 29 of the Act provides for an appeal mechanism	
	Clause 4	Limited scope of application: The regulations apply only to broadcasters and providers of video-on-demand and over-the-top services that are accessible in Kenya. This means that films distributed or exhibited outside Kenya are not covered by the regulations, leaving a gap in the regulation of films that can be accessed by Kenyan viewers.	The mandate of the Board is with respect to regulation of content within the jurisdiction of Kenya and accessibility of the same within the country.	KISUMU
		The regulations do not provide for penalties for non-compliance, which could lead to non-compliance by applicable entities, thereby undermining the effectiveness of the regulations.	Clause 15 of the Regulations provides for offences and penalties for non-compliance within the ambit of Section 32 and 34 of the Films and Stage Plays Act.	
12		The regulations do not provide clarity if Filming Agents are included in the self-classification framework.	they are not included in the framework	KISUMU

		The regulations to clearly indicate whose responsibility it is to pay classification fees.	The applicant ( for self classification it's the Entity and for classification it is the filmmaker/exhibitor/distributor depending on who applies for classification)	
13		Clarity to be provided by the Board on whether broadcasters are included in the self-classification framework.	they are part of the scope	
14				
		The Board to provide scope on who are included in the self-classification framework and how film makers will be exempted from classification fees.	Broadcasters, OTTs and VODs. Section 12 (2) exempts films for educational purposes as approved by KICD and films in the medical profession	KISUMU
15		The regulations are not clear on where commercial youtube channel fall in the self-classification framework.	User Generated content does not fall within the scope of this framework	KISUMU
		KFCB to elaborate whether film makers will be given an opportunity to classify films in the self-classification framework.	Filmmakers do not fall within the scope of this framework	
16		The Board to substantiate if classification of films apply to both local and international film content.	The Act obligates that all films are classified prior to distribution and exhibition within the Kenyan jurisdiction	KISUMU
17		Explain the rationale behind the Board's use of "may be" and not "shall be" in the classification rating.	Based on the regulatory or legislative intention "shall" and "may" are used to impose mandatory or discretionary action.	KISUMU
18		The Board to clarify why it seem to be more strict on local film	Regulation of film content applies to both local and international content equally.	KISUMU

		makers than international ones.		
19		expound the regulator's capacity to regulate both the local and international content.	The Board has put in measures to enhance capacity through the self-classification framework and automation of its services	KISUMU
20	This important clause is missing in the Regulations	there should be a provision in the regulations for training of entities on self-classification to the entities that voluntarily join.	This will be a requirement in the regulations for the Board to capacity build those who opt to be onboarded in self-classification.	NAIROBI
	Clause 10	The Board should harmonize the complaints handling mechanism with already existing mechanisms.	The Board will harmonize the complaints handling mechanism with other existing mechanisms.	
	Complaints Resolution Mechanism			
	General	The regulations do not include mechanisms on how the Board will handle live programmes such as pastors preaching on live television throughout a given day.	Live programmes are not part of the Board's mandate.	
	General	The proposed regulations do not indicate whether content creators and broadcasters like Signs Tv, Akili Tv and Edu Tv are exempted from paying the required fees or lowering the rates charged by the Board since they are non-commercial, and their content only seeks to educate.	The Films and Stage Plays Act, prescribes 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 however, only educational documentaries approved by the Kenya Institute of Curriculum Development, films restricted for use in the medical profession and content produced by the Government for purposes of education or awareness on its development agenda and projects.	
General	Clarification on the opting out for Self-classification	Yes, however once you opt out all other applicable		

		considering it is voluntary.	requirements under the Act shall apply.	
21	General	KFCB to clarify if music videos used as filler material within a show will be categorized as a content on its own or will it be treated as a being part of an entire programme.	Music videos fall outside the scope of this framework. The provisions of the Act with respect to classification of such content shall apply.	NAIROBI
	Second schedule	KFCB should expound how the broadcaster will be charged under the Self-Classification regulations in terms of the amount to be paid in cases where a broadcaster does a single show every week.	The appropriate band in the second schedule shall apply.	
	General	The proposed regulations should provide a possibility of moving content from one platform to another.	The Self classification certificate is not transferable. All applicable charges under the self classification regulations shall apply to the new platform	
22	General	Proposal for creatives to not be charged if they move content from one broadcaster to a platform like Viusasa.	Where content has been classified and a rating assigned by the Board the content will not attract fees to the applicable entity where the content is transferred.	NAIROBI
23		Proposal for the Board to provide qualifications for freelance film producers to self-classification framework.	Film producers do not fall within the scope of self classification	EMBU
24		How will broadcasters and OTTs be charged in the new framework?	The fees charged are as prescribed in the first and second schedules in the Regulations	EMBU
25	Self-Classification Regulations	The Board to ensure platforms such as DSTV comply with the regulations. Most of the films on these	The Board shall enforce compliance with the provisions of these Regulations and the Act	MOMBAS A



		platforms is currently not classified/ suitable for children		
26	Self-Classification Regulations	The proposed regulations do not explain if students producing films for fun/social media or school programs will be subjected to self-classification regulations.	User Generated content does not fall within the scope of the self classification framework	MOMBAS A
27	Self-Classification Regulations	The classification certificate is usually valid for 5 years, the proposed change is is not considerate.	The self classification certificate issued to an applicable entity is valid for one(1) year from the date of issue. However a certificate of approval that assigns a rating to a film is valid for five(5) years	
28	Self-Classification Regulations	The Board should provide guarantees that it has put in place measures to curd non-adhereherence to the regulations by the OTTS especially Netflix.	The Board shall enforce compliance with the provisions of these Regulations and the Act	MOMBAS A
29	Self-Classification Regulations	Applicability of these Regulations for all Broadcasters, OTTs and VoD should be clarified as to whether or not they are mandatory.	These regulations are not mandatory.	MOMBAS A
30	Self-Classification Guidelines	The regulations are supposed to provide clear requirements for self-classifiction trainings' eligibility.	Onboarding on the self classification framework qualifies an applicable entity for training	MOMBAS A
		Clarity on the training fees	The self classifications fees are inclusive of training fees	
31	Self-Classification Guidelines	Provide the timeframe for training not provided in the regulations.	Immediately the applicable entity comes onboard the self classification framework, training is scheduled.	MOMBAS A

32	Self-Classification Regulations	Clarification needed on social media influencers producing content be subjected to self-regulation	User Generated content does not fall within the scope of this framework	MOMBAS A
33	Self-Classification Regulations	Clarify if the regulations captured cinema distributors under self-classification framework	Cinema distributors do not fall within the scope of this framework	MOMBAS A

ANNEX III: PICTORIALS

1. Mombasa



2. Kisumu

REGULATORY IMPACT STATEMENT ON THE SELF-CLASSIFICATION



3. Embu



4. Nairobi



REGULATORY IMPACT STATEMENT ON THE SELF-CLASSIFICATION



## REGULATORY IMPACT STATEMENT ON THE SELF-CLASSIFICATION

### Comprehensive Financial Implication

Implementation of the proposed set of Regulations will be Kshs. 25,400,000.00 annually. This cost will be borne by the Board to among other things, enhance the capacity of the current staff, improve the media monitoring infrastructure and configuration of the content classification system. Further, these costs will cater for stakeholder and public awareness coupled with continuous monitoring and inspection in order to enhance compliance with these regulations .

Self Classification Regulations		
No.	Item	Amount
1	Staff Training & Awareness	2,200,000
2	System Configuration	2,500,000
3	Media Monitoring Services	4,500,000
4	Classification Guidelines Training for Applicable entities	1,000,000
5	Internet Services	700,000
6	Daily Subsistence Allowance	5,500,000
7	Classification Monitoring Software	5,500,000
8	Public Sens. Programmes	3,500,000
<b>Total</b>		<b>25,400,000</b>