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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES**


NO. R. 2436

2 September 2022

**FILMS AND PUBLICATIONS ACT, 1996 (ACT NO. 65 OF 1996), AS AMENDED****FILMS AND PUBLICATIONS AMENDMENT REGULATIONS, 2022**

I, Khumbudzo Ntshavheni, the Minister of Communications and Digital Technologies hereby, under section 31(1) of the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended, after consultation with the Council and the Appeals Tribunal, whichever is applicable, made the Regulations in the Schedule.

The Regulations concerned will come into operation on publication in the Government Gazette.

**MS KHUMBUDZO NTSHAVHENI, MP****MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES****DATE:** 25/08/2022

## SCHEDULE 1

### PART 1

**1. Definitions.** – In this Schedule, any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

**“Act”** means the Films and Publications Act, 1996 (Act No. 65 of 1996), as amended from time to time;

**“adult content”** means content in publications, films and games that is classified as suitable for people of 18 (eighteen) years and above;

**“adult premises”** means any premises –

- (a) at which the holder of a registration certificate to distribute or exhibit materials classified as "X18" may conduct business;
- (b) at which entry of any person under the age of 18 (eighteen) years, is prohibited; and
- (c) which is licensed to conduct the business of adult premises under the Businesses Act, 1991 (Act No. 71 of 1991);

**“advertisement”** means any visual or oral communication, representation, reference or notification of any kind –

- (a) which is intended to promote the sale, leasing or use of any goods or services; or
- (b) which appeals for or promotes the support of any cause;

**“Advertising Regulatory Board”** means the Advertising Regulatory Board NPC, with

registration number 2018/528875/08, and is the self-regulatory entity which regulates the content of advertising, or any entity that replaces it, but has the same functions;

**"business of adult premises"** means a business contemplated in section 24 (1) of the Act;

**"child"** means a person under the age of 18 (eighteen) years;

**"classification guidelines"** means the classification guidelines contemplated in section 4A (1)(a) of the Act;

**"classifier"** means a person appointed in terms of section 4A (1)(e) of the Act to examine and classify any film, game or publication submitted to the FPB in terms of the Act;

**"commercial online distributor"** means a distributor in relation to films, games and publications which are distributed for commercial purposes using the internet;

**"commercial purposes"** means to sell or hire, offer to sell or hire, or cause to be sold or hire, in exchange for commercial consideration;

**"Compliance Officer"** means a member of staff of the FPB appointed to undertake the functions listed in section 15A of the Act;

**"day"** means any number of days prescribed in these Regulations and shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or official South African Public Holiday, in which case the last day shall be the next succeeding business day;

**"FPB"** means the Film and Publication Board, established in terms of section 3 of the Act;

**"film festival"** means an organised, extended exhibition of films in one or more cinemas

or screening venues, usually in a single locality showcasing international releases as well as films produced by film producers in the domestic film industry;

**“game festival”** means an organised, extended exhibition of games in one or more screening venues, usually in a single locality showcasing international releases;

**“home-entertainment format”** means a film intended for viewing in private, through any electronic, mechanical or other device;

**“ICASA”** means the Independent Communications Authority of South Africa, established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

**“internet”** means the Internet as defined in section 1 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

**“non-compliant”** means a failure or refusal to comply with the Act, Regulations, Classification Guidelines or the terms and conditions contained in an online distribution agreement;

**“prescribed fee”** means the applicable fee prescribed by regulation by the Minister, in consultation with the Minister of Finance, from time to time, under section 31 (1)(a) of the Act;

**“pornography”** means the explicit description or exhibition of sexual subjects or activity in films, games and publications in a manner intended predominantly to stimulate erotic rather than aesthetic feelings;

**“public-entertainment format”** means a film that is intended for screening or exhibition to the public in cinemas, theatres and other public places;

**“public holiday”** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

**"rating"** means the allocation of an appropriate age restriction on a film, game or publication to –

- (a) provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care; and
- (b) protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences;

**"reasonable period of time"** means the amount of time that is fairly required to do whatever is required to be done, conveniently under the permitted circumstances;

**"registration certificate"** means a certificate issued by the FPB in terms of section 18 of the Act to registered distributors of films or games in order to –

- (a) distribute specified films or games;
- (b) exhibit specified films or games; or
- (c) distribute specified films or games contemplated in section 24 of the Act from adult premises; and

**"URL"** means the Uniform Resource Locator, a protocol for specifying addresses on the Internet and an address that identifies a particular file on the internet, usually consisting of the protocol, as "http", followed by the domain name.

## PART 2

### REGISTRATION AS DISTRIBUTOR

2. **Registration as a distributor.** – (1) With the exception of a member of the Press Council of South Africa or a member of the Advertising Regulatory Board, both of

whom are exempt from such requirement, an application for registration as a distributor of films in terms of section 18 (1)(a) of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, accompanied by –

- (a) proof of registration of the business of the distributor in terms of the applicable legislation;
  - (b) a document confirming that the applicant's tax affairs are in order;
  - (c) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations as a distributor of films and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained; and
  - (d) proof of payment of the prescribed fee.
- (2) An application for registration as a distributor of games in terms of section 18 (1)(a) of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, accompanied by –
- (a) proof of registration of the business of the distributor in terms of the applicable legislation;
  - (b) a document confirming that the applicant's tax affairs are in order;
  - (c) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with all the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations as a distributor of games



and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained; and

(d) proof of payment of the prescribed fee.

(3) The FPB may –

(a) issue to a distributor a registration certificate, valid for a period of 1 (one) year from the date of issue thereof; or

(b) issue to a distributor a temporary registration certificate, valid for a period of not more than 3 (three) months from the date of issue thereof; and

(c) when issuing certificates referred to in sub-regulation (3)(a) and (3)(b), impose any conditions it considers necessary for the better achievement of the objects and purposes of the Act.

(4) In the event that the application contemplated in sub-regulation 2(1) is made by an applicant who is a broadcaster contemplated in section 18 (6) of the Act and who is licensed and authorised by ICASA to broadcast films classified as "X18" or which contains depictions, descriptions or scenes of explicit sexual conduct, which would have justified an "X18" classification, the application shall be accompanied by –

(a) a certified copy of the original licence and authorisation issued by ICASA to broadcast films classified as "X18" or which contain depictions, descriptions or scenes of explicit sexual conduct, which would have justified an "X18" classification and containing any conditions imposed;

(b) proof of payment of the prescribed fee; and

- (c) a detailed statement on the measures put in place by the applicant to ensure that children below the age of 18 (eighteen) years of age are not exposed and are protected from exposure and access to films classified as "X18" or which contain depictions, descriptions or scenes of explicit sexual conduct, which would have justified an "X18" classification.

**3. Renewal of registration certificate as distributor.** – (1) An application for the renewal of a registration certificate as a distributor, including as an online distributor, shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, accompanied with the proof of payment of the prescribed fee and either a confirmation that the supporting documents set out in sub-regulation 2(1), when applying for renewal of the registration certificate as a distributor of films, or set out in sub-regulation 2(2), when applying for renewal of the registration certificate as a distributor of games, are still valid and accurate, or where there have been any changes to provide copies of the said supporting documentation.

- (2) The application for the renewal of a registration certificate as a distributor in terms of sub-regulation (1) must be made before the date of expiry or, in the case of a registration certificate contemplated in regulation 2(3)(a), within 30 (thirty) days from the date of expiry of the registration certificate.
- (3) If an application for the renewal of a registration certificate as distributor is not made within 30 (thirty) days from the date of expiry of that registration certificate, such distributor shall cease to be registered as a distributor of films or games.
- (4) A distributor who has made an application for the renewal of a registration certificate within the 30 (thirty) days from date of expiry of that registration certificate, the registration certificate of such a distributor will be deemed to be of full force and effect until such time as the renewal application has been processed and the outcome of the application has been communicated by

the FPB.

- 4. Display of registration certificate.** – (1) Unless otherwise permitted by the FPB, a registration certificate contemplated in regulation 2(3)(a) or 2(3)(b) must be displayed conspicuously –

- (a) inside all premises;
- (b) in any other registered business; or
- (c) on the platform of the commercial online distributor;

at which the distribution of films and games occurs.

### **PART 3**

#### **SUBMISSION OF PUBLICATIONS, FILMS AND GAMES FOR CLASSIFICATION AND DISPLAY REQUIREMENTS**

- 5. Request for examination and classification of publications.** – (1) A request made in terms of section 16 (1) of the Act that a publication which is to be or is being distributed in the Republic be referred to a committee for classification or rating in terms of section 16 (4) of the Act, shall be submitted in writing to the FPB and shall contain –

- (a) the title of the publication, the date and number of the edition or issue, the name and address of such publisher's South African distributor;
- (b) the publication or a copy thereof or, where it is impractical to submit the publication or a copy thereof, the full address of the place where the FPB may examine the publication;
- (c) the full name and address, contact telephone, cellular phone and an

e-mail address, if available, of the person making the request, unless that person wishes to remain anonymous; and

- (d) the reasons for requesting the examination and classification of the publication, with reference to the page numbers and specific paragraphs or lines forming the subject of the report.
- (2) The FPB shall, upon receipt of a request contemplated in sub-regulation (1) and save for where the person wishes to remain anonymous –
- (a) acknowledge receipt of the request and, if the request meets all the requirements of sub-regulation (1), inform the requester of the time, date and venue when the publication will be examined for classification or rating and of his or her rights in terms of section 19 of the Act;
  - (b) where the request does not meet all the requirements of sub-regulation (1), inform the requester in writing to submit the outstanding documents or information before the publication may be examined and classified or rated; and
  - (c) where the person requesting classification or rating is not the publisher or distributor, provide a copy of the completed request to –
    - (i) the publisher or distributor of the publication forming the subject of the request; or
    - (ii) any person whose financial interests could be detrimentally affected by a decision of the FPB on such application, and inform such person concerned of his or her rights in terms of section 19 of the Act.
- (3) The exemption of a publication in terms of section 16 (1) and (2) of the Act in instances where a person requests the FPB for a publication to be

classified in terms of section 16 of the Act shall only apply to either publications that are published by a member of the Press Council of South Africa or an advertisement that falls under the jurisdiction of the Advertising Regulatory Board as defined in these Regulations.

- 6. Compulsory submission of publications.** – (1) Any distributor, other than the publisher who is a member of the Press Council of South Africa or an advertiser who is a member of the Advertising Regulatory Board, who intends to publish for distribution, or to distribute, a publication contemplated in section 16 (2) of the Act, shall submit the publication to the FPB together with the relevant Form provided by the FPB, and the prescribed fee, for examination and classification, before it may be distributed within the Republic.
- 7. Display of certificate of classification on publications classified as "X18".** – (1) If a publication is a magazine or newspaper classified as "X18" or which contains depictions, descriptions or scenes of explicit sexual conduct, which would have justified an 'X18' classification, it must be distributed in a non-transparent wrapper, which is marked "X18" and, except for a newspaper contemplated in section 16 (1) and (2) of the Act, the certificate of classification must be conspicuously displayed on the bottom right hand corner of the magazine cover.
- (2) If a publication is a book which is classified as "X18" or which contains depictions, descriptions or scenes of explicit sexual conduct, which would have justified an "X18" classification, the conditions of display of the certificate of classification shall be imposed by the classification committee.
- 8. Display of publications containing adult content.** – (1) Any publication, including a publication that is published by a member of the Press Council of South Africa or an advertisement that falls under the jurisdiction of the Advertising Regulatory Board contemplated in section 16 (1) and (2) of the Act, containing adult content shall –

- (a) be enclosed in a wrapper or bag prior to being distributed or displayed in any outlet, other than adult premises, for distribution; and
  - (b) not be displayed within reach of children, or next to or among publications intended for children.
- (2) Except for a publication contemplated in section 16 (1) and (2) of the Act, a certificate of classification shall be conspicuously displayed on the bottom right hand corner of the cover of any publication containing adult content.

**9. Application for classification of films.** – (1) Where a distributor applies for the classification of a film, or the trailer of a film, in terms of section 18 (1)(b) of the Act, such application shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, together with copies of the film or trailer and proof of payment of the prescribed fee.

- (2) Where a film, or the trailer of a film, to be classified is in home-entertainment format, a copy of that film or trailer, in the format of its intended distribution, must accompany the application for classification.
- (3) Where a film, or the trailer of a film, to be classified is in a public-entertainment format, the applicant must, at its own expense, arrange for the screening of that film or trailer to the FPB at a venue, and on a date and at a time agreed to by the FPB.
- (4) Where a film, or the trailer of a film, has been classified in terms of the Act, the entity who applied for the classification of that film or trailer must, if the film or trailer is in a home-entertainment format, provide a copy of that film or trailer in the format in which it was classified, to the FPB free of charge.

**10. Application for classification of exempted films.** – (1) An application for the classification of a film which has been exempted in terms of section 22 or 23 of the Act shall, if it is intended for general distribution, be made on the relevant

Form provided by the FPB or submitted through an electronic system accessible on its website, and accompanied by proof of payment of the prescribed fee.

**11. Application for classification of games.** – (1) An application for the classification of a game in terms of section 18 (1)(b) of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by the proof of payment of the prescribed fee and copies of every game intended to be distributed.

(2) The application for the classification of a game must be accompanied by –

- (a) a written report which accurately and fully describes the game and its classifiable elements as prescribed in the Classification Guidelines of the FPB; and
- (b) a recording of the game which illustrates how classifiable elements as prescribed in the Classification Guidelines of the FPB are presented.

(3) The written report referred to in sub-regulation (2)(a) shall indicate whether the game does –

- (a) contain child pornography, propaganda for war or is an incitement to imminent violence;
- (b) advocate hatred based on an identifiable group characteristic that constitutes an incitement to cause harm;
- (c) depict explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person;
- (d) depict bestiality, incest, rape, conduct or an act which is degrading of human beings;

- (e) depict conduct which constitutes incitement of or encourages harmful behaviour;
  - (f) depict the explicit infliction of sexual or domestic violence;
  - (g) depict explicit presentation of extreme violence; or
  - (h) contain explicit sexual conduct.
- (4) If the FPB is of the opinion that a demonstration of the game is necessary for the proper examination of the game for classification, the applicant shall, on a date and at a time and venue appointed by the FPB, demonstrate that game to the FPB.
- (5) Where a game has been classified, the distributor who applied for the classification of that game shall provide a classified copy thereof to the FPB, free of charge, in the format in which it will be distributed.

**12. Display of classification decisions.** – (1) Every publication, film and game, classified in terms of the Act, these Regulations and Classification Guidelines of the FPB, must in terms of section 18A of the Act –

- (a) display a label in the prescribed form if it is a film or game approved for sale or hire; or
  - (b) conspicuously display the FPB's classification decision and logo on the landing page of the online medium, the online medium catalogue and at the point of sale of the commercial online distributor services.
- (2) The prescribed specifications for the classification triangle, the classification age restriction, consumer advice shall be in terms of the illustration as reflected in the Form provided by the FPB.



(3) The prescribed specification for the logo, classification triangle, the classification age restriction, consumer advice contemplated in sub-regulation (2) may not be reproduced in any format other than in terms of the Act and these Regulations.

(4) Every poster, and every advertisement in any media, of a film or game referred to in sub-regulation (1) shall display, conspicuously and clearly visible on the poster or in the advertisement –

(a) the classification, age restriction, consumer advice and any other condition imposed on the distribution of that film or game; or

(b) the letters “TBC” within the classification triangle prior to the classification of the film or game by the distributor.

**13. Re-classification of publications, films or games.** – (1) An application for the re-classification of a publication, film or game in terms of section 18J of the Act, shall be made only after a period of 1 (one) year from the date when the publication, film or game was first classified, on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and accompanied by the proof of payment of the prescribed fee.

(2) A request made in terms of section 18J (2) of the Act by a member of the public who is aggrieved or offended by a classification decision in respect of a publication, film or game, shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, together with proof of payment of the prescribed fee which application shall contain –

(a) the title of the publication, film or game;

(b) the full name and address, contact telephone, cellular phone and an e-mail address, if available, of the person making the request, unless

that person wishes to remain anonymous; and

- (c) the reasons for requesting the re-examination and re-classification of the publication, film or game, with reference where applicable to the portion/s of the content forming the subject of the report.
- (3) The FPB shall, upon receipt of a request contemplated in sub-regulation (2), save where the person wishes to remain anonymous –
- (a) acknowledge receipt of the request within 7 (seven) days of communication of the request;
  - (b) where the request does not meet all the requirements of sub-regulation (1), inform the requester in writing to submit the outstanding documents or information before the publication, film or game may be re-examined and re-classified or rated;
  - (c) if the request meets all the requirements of sub-regulation (1), inform and request the distributor of the publication, film or game to make representations; and
  - (d) if a decision has been made to reclassify the publication, film or game inform the requester and distributor of the time, date and venue when the publication, film or game will be re-examined for re-classification or rating.
- (4) In the case of a film or game in a public-entertainment format, the applicant shall, where required to do so, at his or her own expense, make arrangements for the exhibition of the film, or a demonstration of the game, to the FPB on a date and at a time and venue appointed by the FPB.

**14. Application to appear before FPB.** – (1) An application to appear before the FPB or classification committee, to adduce oral or written evidence and, to

address the FPB or the that classification committee in terms of section 19 of the Act shall be made in writing to the FPB within 7 (seven) days from the date on which the person becomes aware, by a person –

- (a) who has referred a publication to a classification committee for classification in terms of section 16 (1) or submitted a publication for classification in terms of section 16 (2);
  - (b) who has applied for the classification or the reclassification of a publication, film or game;
  - (c) who has applied for a permit, exemption or licence;
  - (d) who is a publisher of a publication which is the subject of an application for classification; or
  - (e) whose financial interest could be detrimentally affected by a decision of the FPB on such application, or regarding an exemption or Permit, the withdrawal of which is being considered.
- (2) The FPB or the classification committee shall respectively, upon receipt of an application contemplated in sub-regulation (1) –
- (a) acknowledge receipt of the application within 7 (seven) days;
  - (b) provide the time, date and location on which the applicant shall appear before the FPB or the classification committee, to adduce oral or written evidence and, to address same; and
  - (c) having considered the arguments, the FPB or the classification committee shall inform the applicant in writing within 30 (thirty) days of the outcome, the reasons for and grounds upon which such a decision is based, which shall include, in the case of a “refused classification” or

a “XX” classification of a publication, film or game a reference to the particular section of the Act which formed the basis of the decision.

#### **PART 4**

### **ACCREDITATION OF COMMERCIAL ONLINE DISTRIBUTORS’ CLASSIFICATION SYSTEM**

**15. Accreditation of a Foreign or International Classification System.** – (1) An application by a commercial online distributor for the accreditation of classification ratings issued by any foreign or international classification authority or body in relation to the classification of publications, where applicable, films or games in terms of section 18D of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by proof of payment of the prescribed fee.

(2) The application referred to in sub-regulation (1) must indicate –

- (a) the accessibility by the FPB of the applicant’s online service for compliance, monitoring and auditing purposes; and
- (b) the alignment of the foreign or international ratings to the applicable ratings in terms of the Act and the Classification Guidelines of the FPB.

(3) The FPB shall, upon receipt of an application contemplated in sub-regulation (1) –

- (a) acknowledge receipt of the application for the accreditation of classification ratings issued by any foreign or international classification authority or body in relation to the classification of films or games within 7 (seven) days; and
- (b) if the application meets all the requirements of sub-regulation (1),

inform the applicant in writing of the outcome within 30 (thirty) days; or

- (b) where the application does not meet all the requirements of sub-regulation (1), inform the applicant in writing to submit the outstanding documents or information before the application shall be considered.
- (4) On approval of the application, the FPB shall issue the applicant within 7 (seven) days a Notice of Accreditation of the classification ratings issued by any foreign or international classification authority or body in terms of section 18D of the Act.
- (5) Until such time that the application as contemplated in sub-regulation (1) is approved by the FPB, the distributor must –
- (a) submit the publication, where applicable, film or game to the FPB together with the relevant Form provided by the FPB, and the prescribed fee, for examination and classification; or
  - (b) in line with the Permit issued in terms of regulation 17(4) undertake self-classification of its own publications, films or games in accordance with the Act, these Regulations and the Classification Guidelines of the FPB, before it may be distributed within the Republic.
- (6) The accreditation of classification ratings issued by any foreign or international classification authority or body approved by the FPB in terms of section 18D of the Act shall only be valid for 1 (one) year but may be renewed annually on payment of the annual prescribed fee.
- (7) Should the classification ratings issued by any duly approved foreign or international classification authority or body fail to meet all the requirements of sub-regulation (2) and the commercial online distributor fails to remedy any noncompliance within 30 (thirty) days of receipt of written notice from the FPB calling upon it to do so, the accreditation shall be suspended

pending the rectification or remedying of such noncompliance.

## **PART 5**

### **SUBMISSION OF ONLINE CONTENT FOR CLASSIFICATION**

- 16. Submission of online content for classification.** – (1) Any distributor, other than that of a publication, or a film, that is published or exhibited by a member of the Press Council of South Africa or an advertisement that falls under the jurisdiction of the Advertising Regulatory Board contemplated in section 16 (1) and (2) of the Act, who has been issued with a registration certificate by the FPB as such of a publication, film or game and who wishes to distribute online any publication, which falls within the ambit of section 16 (2) of the Act, or a film or game, in terms of section 18 of the Act, must, unless that publication, film or game is already classified by the FPB, submit such publication, film or game for classification.

## **PART 6**

### **PROCEDURE FOR THE APPLICATION BY COMMERCIAL ONLINE DISTRIBUTORS TO SELF-CLASSIFY CONTENT**

- 17. Procedure for application for self-classification of films, games and publications.** – (1) An application in terms of section 18C of the Act by a commercial online distributor for an annual Permit to conduct classifications of publications, where applicable, films or games, shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and accompanied by –
- (a) proof of registration of the business of the applicant in terms of the applicable legislation;

- (b) a document confirming that the applicant's tax affairs are in order;
  - (c) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations as a distributor of films or games and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained; and
  - (d) proof of payment of the prescribed fee.
- (2) The FPB must, upon receipt of an application contemplated in sub-regulation (1) –
- (a) acknowledge receipt of the application for the annual Permit within 7 (seven) days; and
  - (b) if the application meets all the requirements of sub-regulation (1) inform the applicant in writing of the outcome within 30 (thirty) days; or
  - (c) where the application does not meet all the requirements of sub-regulation (1) inform the applicant in writing to submit the outstanding documents or information before the application shall be considered.
- (3) On approval of the application, the FPB must issue the applicant with a Permit in terms of section 18C of the Act within 7 (seven) days.
- (5) The Permit must accredit the applicant to be an authorised commercial online distributor and to undertake self-classification of publications, where applicable, films or games distributed by it on its own online distribution platform in accordance with the Act, these Regulations and –
- (a) the Classification Guidelines of the FPB; or

- (b) an accredited foreign or international classification system in terms of regulation 15(4) in respect of publications, films or games.
- (6) The commercial online distributor may provide the FPB on request and within a reasonable period of time a product list of all publications, films and games offered for sale or hire through the online medium.
- (7) The commercial online distributor must inform the FPB within 7 (seven) days after the Permit has been issued of its “XX” and “X18” classifications of publications, films or games to enable the FPB to publish these classifications in the Government Gazette, after which such classifications are deemed to have been made by the FPB.
- (8) Should any of the publications, films or games after due inquiry be in conflict with, or the commercial online distributor not classify publications, films or games in accordance with the Act, these Regulations and the Classification Guidelines of the FPB and the commercial online distributor fails to remedy any noncompliance within 30 (thirty) days of receipt of written notice from the FPB calling upon it to do so, the Permit shall be suspended pending the rectification or remedying of such noncompliance by the commercial online distributor.
- (9) Until such time that the application contemplated in sub-regulation 17(1) of Schedule 1 is approved by the FPB, the applicant must submit any publication, where applicable, film or game which is to be distributed by it on its own online distribution platform to the FPB together with the relevant Form provided by the FPB, and the prescribed fee, for examination and classification before it may be distributed within the Republic.
- (10) The Permit in terms of section 18C of the Act may be renewed annually on payment of the annual prescribed fee.



**18. Classification by the Distributor and Display of FPB logo.** – (1) The issuing of the Permit in terms of section 18C of the Act is subject to the following conditions –

- (a) the distributor must classify the publications, where applicable, films and/or games which has not yet been classified by the FPB in accordance with the Act, these Regulations and the Classification Guidelines of the FPB; and
- (b) the distributor must display the classification as described in regulation 12(1) on the details page of the applicable content.

**19. Training on the Act, Regulations and Classification Guidelines of the FPB.** – (1) Representatives of the commercial online distributor responsible for classification of publications, where applicable, films or games intended for distribution in South African may in terms of section 18C (3) of the Act be requested to attend a training workshop to be organized and provided by the FPB on the Act, these Regulations and/or the Classification Guidelines of the FPB at a time and venue as agreed between the parties from time to time.

**20. Compliance Monitoring by the FPB.** – (1) For the duration of the Permit issued in terms of regulation 17(3) the commercial online distributor shall within a reasonable period of time and upon request by the FPB make available any or all the classification decisions of, the publications, where applicable, films or games in order to assess whether the classification decision by the commercial online distributor is in line with the Classification Guidelines of the FPB.

- (1) The FPB may submit any written queries to the commercial online distributor in relation to the application of the Act, these Regulations and the Classification Guidelines of the FPB.

## PART 7

## PROCEDURE FOR APPOINTMENT OF CLASSIFICATION COMMITTEES

**21. Appointment of classification committees.** – (1) The FPB shall, whenever a publication, film or game is submitted for examination and classification, appoint a classification committee from the panel of classifiers appointed in terms of section 4A (1)(e) of the Act, to examine, classify and rate that publication, film or game, as the case may be, in accordance with the relevant sections of the Act, these Regulations and the Classification Guidelines of the FPB.

(2) In order to ensure that the classification committee is constituted by classifiers with the relevant skills and experience necessary for the proper examination and appropriate classification and rating of the publication, film or game referred to it, the FPB shall have regard to the nature, genre, theme and/or content of the publication, film or game to be examined, classified and rated.

(3) A classifier shall hold the following relevant skills and experience, namely –

(a) A Bachelor's Degree or equivalent qualification (NQF Level 6) and/or work experience in relevant fields, including:

(i) arts and culture;

(ii) social, legal, psychological or educational services;

(iii) communications sciences;

(iv) advocacy and community services;

(v) media or political studies; or

(vi) any other relevant field of experience necessary for the proper examination and appropriate classification of the type of material

referred to by FPB;

- (b) Knowledge on the Act, these Regulations and Classification Guidelines of the FPB;
- (c) Ability to interpret and apply relevant legislation;
- (d) Report writing and analytical skills; and
- (e) A good understanding of visual and new media, and converging technology.

## PART 8

### PROCEDURE FOR CLASSIFICATION OF PUBLICATIONS, FILMS AND GAMES

**22. Procedure for classification of publications, films and games by classification committees.** – (1) Every member of a classification committee shall, in respect of every publication, film or game referred to that classification committee for classification –

- (a) examine such publication, film or game in its entirety, except with respect to child pornography, having regard to section 16 (4) and (6), with regards to the examination and classification of publications, section 18 (3) and (5), with regards to the examination and classification of films or games, of the Act and the Classification Guidelines of the FPB;
- (b) immediately after the examination of such publication, film or game, record his or her opinion in the classification report about the appropriate classification and rating of that publication, film or game, with reference to the Classification Guidelines of the FPB and the

relevant sections of the Act; and

- (c) immediately after completion of the classification report contemplated in sub-regulation (1)(b) together with other members of the classification committee, discuss such opinion on the appropriate classification or rating of that publication, film or game in order to reach consensus regarding the final classification and rating of that publication, film or game.
- (2) When the members of the classification committee have reached consensus or made a majority decision, one of the classifiers shall record the consensus or majority decision of the classification committee in the final classification committee report, specifying the reasons for that decision with reference to the Classification Guidelines of the FPB and the relevant sections of the Act.
  - (3) Where a classification committee fails to reach consensus or make a majority decision, the classification committee must request the FPB, in writing in the final classification committee report, to appoint an additional classifier to that classification committee.
  - (4) Where the FPB, in response to a request by the classification committee, appoints an additional classifier to the classification committee, the publication, film or game to be classified must be regarded as not having been classified or rated and the procedures set out in sub-regulations (1) and (2) must apply afresh to that publication, film or game.
  - (5) Where, in the opinion of a classification committee, an expert opinion may be required for the proper classification or rating of a publication, film or game, the classification committee must request the FPB, in writing, to appoint an expert to assist the classification committee in the classification or rating of a publication, film or game.
  - (6) An expert appointed to assist the classification committee shall not be

- entitled to vote on the appropriate classification or rating of that publication, film or game, but may express his or her opinion, in writing, for the benefit of the classification committee.
- (7) Where, in the opinion of a classification committee, a demonstration of a game is necessary for the proper classification or rating of that game, the classification committee must request the FPB, in writing, to arrange for such demonstration of that game to that classification committee.
- (8) A member of the classification committee shall, at the end of examination and classification –
- (a) collate all the reports of classifiers;
  - (b) ensure that every report has been duly signed by the relevant classifier; and
  - (c) submit all the reports to the classification office of the FPB, accompanied by the publication, film or game, if it is in a home-entertainment format.
- (9) Every member of a classification committee must, treat as confidential all discussions, notes and reports related to the examination and classification of a publication, film or game referred to the classification committee and must not divulge any such information to the public or the applicant.
- (10) If, after examination, the classification committee is satisfied that a publication contains material contemplated in section 16 (4)(a) or (b) of the Act, or a film or game contains material contemplated in section 18 (3)(a) or (b) of the Act and in either instance a report containing such classification decision has been compiled, the classification decision must be referred to the Chief Executive Officer of the FPB to deal with the matter in terms of section 16 (5) or (6) or section 18 (4) or (5) of the Act, as the case may be.

- (11) Where a publication, film or game has been classified, the distributor who applied for the classification of that publication, film or game must provide a classified copy thereof to the FPB, free of charge, in the format in which it will be distributed.

**23. Publications, films or games containing child pornography.** – (1) If the classification committee discovers an image or scene of child pornography during any classification process, the publication, film or game classification process must be handled as follows –

- (a) The classification process must be stopped, unless the classification committee is satisfied that the image or scene evokes predominantly aesthetic rather than erotic feelings where the image or scene depicts a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 (eighteen) years –
  - (i) engaged in an act that constitutes a sexual offence;
  - (ii) engaged in an act of sexual penetration;
  - (iii) engaged in an act of sexual violation;
  - (iv) engaged in an act of self-masturbation;
  - (v) displaying the genital organs of such person in a state of arousal or stimulation;
  - (vi) unduly displaying the genital organs or anus of such person;
  - (vii) displaying any form of stimulation of a sexual nature of such person's breasts;

- (viii) engaged in sexually suggestive or lewd acts;
  - (ix) engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
  - (x) engaged in any conduct or activity characteristically associated with sexual intercourse;
  - (xi) showing or describing such person –
    - (aa) participating in, or assisting or facilitating another person to participate in; or
    - (bb) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in sub-regulation (1)(a) (i) to (x) ; or
  - (xii) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons.
- (b) In the event that the classification committee stops the classification process as envisaged in sub-regulation (1)(a) the members of the committee shall compile their classification reports noting the page, time or scene, in the publication, film or game respectively at which child pornography appeared and submit such reports to a certified content analyst at the FPB who shall analyse the page, time or scene of the publication, film or game respectively in order to determine

whether the content contains child pornography.

- (c) In the event that the certified content analyst of the FPB confirms that the page, time or scene of the publication, film or game respectively identified by the members of the committee contains an image or scene of child pornography, the classification report in question together with the assessment by the certified content analyst of the FPB must be submitted to the Chief Executive Officer of the FPB.
  - (d) The Chief Executive Officer of the FPB must hand to the South African Police Service and National Director of Public Prosecutions –
    - (i) copies of the classification reports;
    - (ii) the assessment by the certified content analyst of the FPB;
    - (iii) an affidavit recording the chain of events; and
    - (iv) the publication, film or game containing child pornography.
  - (e) The Chief Executive Officer of the FPB must, in writing, inform the applicant who submitted the publication, film or game for classification of the decision, in terms of section 16 (4)(a) of the Act, to refuse to classify the publication, film or game and of his or her right to appeal to the Appeal Tribunal within 30 (thirty) days from the date of such notification.
- (2) Subject to the applicant pursuing the appeal to the Appeal Tribunal referred to in sub-regulation 23 (1)(e), where if the appeal is heard and the decision of child pornography is confirmed, or where the applicant fails to launch an appeal to the Appeal Tribunal, the FPB shall advise the applicant or distributor to surrender all publications, films or games and other material that contain child pornography to the FPB for handing over thereof, to the



South African Police Service for criminal investigation or prosecution.

## PART 9

### EXEMPTIONS

**24. Application to be exempted from the Act in respect of certain publications, films and games.** – (1) Any person or institution may, in respect of publications, which are required to be classified in terms of section 16 of the Act, or films or games, which are required to be classified in terms of section 18 of the Act, that, include educational or cultural materials endorsed by learning institutions, films on skills demonstrations or instructions, music, sports, physical exercise, design and spiritual events, content of a public interest, children's educational content, documentaries which may have not been exhibited on a broadcasting platform, or content that promotes gender equality, on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, apply for exemption from full classification and from section 24A of the Act by submitting –

- (a) the full name and surname of the applicant or, in the case of a registered business, full names and surnames of all those directly connected with the business and the nature of the business;
- (b) the physical address of the person or institution applying for exemption;
- (c) the contact details of the person or institution applying for exemption;
- (d) the occupation of the person, if applicable;
- (e) a document confirming that the applicant's tax affairs are in order;
- (f) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and

regulations applicable to it, with its legal obligations pertaining to its business in general and with its obligations as a distributor of films or games and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;

- (g) proof of payment of the prescribed fee; and
  - (h) detailed reasons for the application for exemption.
- (2) If the FPB decides not to grant an exemption to the publication, film or game submitted in terms of sub-regulation (1) the FPB shall submit such film, game or publication for classification in terms of section 18 of the Act.
- (3) Where the FPB submits any publication, film or game for full classification in terms of sub-regulation (2) the applicant shall be liable for the full classification fee.
- (4) Every application for exemption of a publication, film or game must be considered separately and on its own merit.

**25. Procedure for exemption of films intended for exhibition at film festivals.**

– (1) Any person or institution may, in writing, on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, apply to the FPB for exemption from full classification and from section 24A (2)(a) of the Act in respect of films intended for exhibition at a film festival, by submitting 30 (thirty) days prior to the date of the festival –

- (a) the full name and surname of the applicant or, in the case of a registered business, full names and surnames of all those directly connected with the business and the nature of the business;
- (b) the physical address of the person or institution applying for exemption;

- (c) the contact details of the person or institution applying for exemption;
  - (d) the occupation of the person, if applicable;
  - (e) a document confirming that the applicant's tax affairs are in order;
  - (f) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;
  - (g) proof of payment of the prescribed fee;
  - (h) an application for exemption in writing and a detailed statement stating the basis of the application;
  - (i) a list and copies of all films to be exhibited at the film festival;
  - (j) a brief summary of the narrative of each film indicating the various classification elements in respect of each film as prescribed in Classification Guidelines of the FPB; and
  - (k) an affidavit by the applicant to the effect that there is or has been no contravention of chapter 1, 2 and 3 of the Criminal Law (Sexual Offences Act and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) and section 24B of the Act.
- (2) Upon receipt of the application and supporting documents, the FPB must decide whether to grant an exemption or not.
- (3) If the FPB decides not to grant an exemption to a film submitted in terms of sub-regulation (1) the FPB must submit such film for full classification in

terms of section 18 of the Act.

- (4) Where the FPB submits any film for full classification in terms of sub-regulation (3) the applicant shall be liable for the full classification fee.
- (5) No exemption shall be granted in respect of a film which if submitted for classification, would be classified as "X18".
- (6) No application for exemption that is submitted less than 30 (thirty) days prior to the film festival shall be considered by the FPB.
- (7) Where the application for an exemption is approved, the applicant must ensure that before screening the film at the relevant film festival or cinema, it displays the classification rating allocated by the FPB and a cautionary message indicating that the film –
  - (a) was exempted from full classification at the request of the applicant;
  - (b) was classified by the FPB in terms of section 18 of the Act; and
  - (c) may not be screened without a full classification at any other event or venue.
- (8) The applicant may not beyond the exemption period publicly screen or distribute such film.
- (9) The cautionary notice contemplated in sub-regulation (7) must be as follows –

“WARNING

This film has not been classified in terms of the Films and Publications Act, 1996, and has been exempted from full classification for the purposes of this

film festival which begins on *[insert date]* and ends on *[insert date]*. This film may not be screened at any venue or event without submission for classification to the FPB."

- (10) The notice contemplated in sub-regulation (9) shall be displayed for not less than 10 (ten) seconds.

**26. Procedure for exemption of games intended for exhibition or distribution at game festivals.** – (1) Any person or institution may, in writing, on the relevant

Form provided by the FPB or submitted through an electronic system accessible on its website, apply to the FPB for exemption from full classification and from section 24A (2)(a) of the Act in respect of games intended for screening or distribution at a game festival, by submitting 30 (thirty) days prior to the date of the festival –

- (a) the full name and surname of the applicant or, in the case of a registered business, full names and surnames of all those directly connected with the business and the nature of the business;
- (b) the physical address of the person or institution applying for exemption;
- (c) the contact details of the person or institution applying for exemption;
- (d) the occupation of the person, if applicable;
- (e) a document confirming that the applicant's tax affairs are in order;
- (f) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;

- (g) proof of payment of the prescribed fee;
  - (h) an application for exemption in writing and a detailed statement stating the basis of the application;
  - (i) a list of the games to be exhibited or distributed at the game festival;
  - (j) brief reports which accurately describe the games and their respective classifiable elements as prescribed in the Classification Guidelines of the FPB, recordings of the games which illustrates how classifiable elements as prescribed in the Classification Guidelines of the FPB are presented; and
  - (k) an affidavit by the applicant to the effect that there is or has been no contravention of chapter 1, 2 and 3 of the Criminal Law (Sexual Offences Act and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007) and section 24B of the Act.
- (2) Upon receipt of the application and supporting documents, the FPB must decide whether to grant an exemption or not.
  - (3) If the FPB decides not to grant an exemption to a game submitted in terms of sub-regulation 26(1) of Schedule 1, the FPB must submit such game for full classification in terms of section 18 of the Act.
  - (4) Where the FPB submits any game for full classification in terms of sub-regulation (3) the applicant shall be liable for the full classification fee.
  - (5) No exemption shall be granted in respect of a game which if submitted for classification, would be classified as "X18".
  - (6) No application for exemption that is submitted less than 30 (thirty) days prior to the game festival must be considered by the FPB.

- (7) Where the application for an exemption is approved, the applicant must ensure that before screening or distribution of the game at the relevant game festival, it displays a cautionary message indicating that the game –
- (a) was exempted from full classification at the request of the applicant;
  - (b) was classified by the FPB in terms of section 18 of the Act; and
  - (c) may not be screened or distributed without a full classification at any other event or venue.
- (8) The applicant may not beyond the exemption period publicly screen or distribute such game.
- (9) The cautionary notice contemplated in sub-regulation (7) shall be as follows –
- “WARNING
- This game has not been classified in terms of the Films and Publications Act, 1996, and has been exempted from full classification for the purposes of this game festival which begins on *[insert date]* and ends on *[insert date]*. This game may not be screened or distributed at any venue or event without submission for classification to the FPB.”
- (10) The notice contemplated in sub-regulation (9) must be displayed for not less than 10 (ten) seconds.

## PART 10

### ADULT PREMISES

**27. Application for exemption to distribute films, games and publications classified as "X18" at a physical premises.** – (1) Any distributor who

intends to apply for an exemption to exhibit or distribute a publication, film or game classified as "X18" in terms of section 24 (1) of the Act at a physical premises, must first obtain a licence to conduct the business of adult premises, issued by a licensing authority in terms of the Businesses Act, 1991 (Act No. 71 of 1991), before submitting an application for an exemption on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and submit the application to the FPB, accompanied by –

- (a) a certified copy of the licence issued by the licensing authority;
- (b) proof of registration of the business of the applicant in terms of the applicable legislation;
- (c) a document confirming that the applicant's tax affairs are in order;
- (d) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;
- (e) proof of payment of the prescribed fee;
- (f) an illustration in the form of a photograph, of the prominent display at all entrances of the premises, prohibiting the entry of persons under the age of 18 (eighteen) years; and
- (g) an explanation indicating how the business shall ensure that children under the age of 18 (eighteen) would not be able to access the premises.



- (2) Notices stating that no persons under the age of 18 (eighteen) years may enter the licensed premises where films, games or publications classified as "X18" are distributed must be conspicuously displayed on the outer side of all entrances to such premises.
- (3) A film, game or publication classified as "X18" may not be distributed on any of the platforms listed here, namely –
  - (a) by mail order;
  - (b) on social media; or
  - (c) by any retail outlet other than adult premises.

#### **DISTRIBUTION OF FILMS OR GAMES CLASSIFIED AS "X18" ONLINE**

**28. Application for exemption to distribute publications, films and games classified as "X18" online.** – (1) An application for exemption by a registered film or game distributor to distribute a film or game classified as "X18" online in terms of section 24 (3) of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by –

- (a) proof of registration of the business of the applicant in terms of the applicable legislation;
- (b) a document confirming that the applicant's tax affairs are in order;
- (c) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained;

and

- (d) proof of payment of the prescribed fee.
- (2) The application referred to in sub-regulation (1) must indicate how the distributor shall ensure –
- (a) that children under the age of 18 (eighteen) would not be able to access a film or game classified as “X18” online or any promotion of such a film or game;
  - (b) that the classification and age restriction are clearly displayed on the screen of the user throughout the screening;
  - (c) that the user has confirmed that he or she is 18 (eighteen) years or older prior to commencing viewing of the film, playing the game or viewing the promotion of the film or game;
  - (d) that it shall not distribute any promotion of the film or game to be accessed without it being paid for by way of a credit card or another child secure method agreed to by the FPB; and
  - (e) the keeping of a register, solely for the distributor’s private records and kept for 1 (one) year from the date on which distribution took place, indicating –
    - (i) all instances where access was granted to a user; and
    - (ii) the user’s name, address and verified age.
- (3) The FPB must, upon receipt of an application contemplated in sub-regulation (1) –

- (a) acknowledge receipt of the application for exemption by a registered film or game distributor to distribute a film or game classified as “X18” online in terms of section 24 (3) of the Act within 7 (seven) days; and
  - (b) if the application meets all the requirements of sub-regulation 28(1) of Schedule 1, inform the applicant in writing of the outcome within 30 (thirty) days; or
  - (c) where the application does not meet all the requirements of sub-regulation 28 (1) of Schedule 1, inform the applicant in writing to submit the outstanding documents or information before the application shall be considered.
- (4) On approval of the application, the FPB must issue the applicant with a Notice of Exemption in terms of section 24 (3) of the Act within 7 (seven) days.
- (5) Until such time that the application as contemplated in sub-regulation (1) is approved by the FPB, the distributor shall not be exempted to distribute a film or game classified as “X18” online.
- (6) Should a distributor, knowingly or negligently, grant access to a film or game classified as “X18” to a child under the age of 18 (eighteen) then he or she shall be guilty of an offence as contemplated in section 24A (4) of the Act.
- (7) The exemption of a registered film or game distributor to distribute a film or game classified as “X18” online in terms of section 24 (3) of the Act shall only be valid for 1 (one) year but may be renewed annually on payment of the annual prescribed fee.

## **PART 11**

### **OBLIGATIONS OF INTERNET SERVICE PROVIDERS IN RELATION TO THE**

## **DUTY TO REGISTER WITH THE FPB AND DISPLAY REGISTRATION CERTIFICATES**

**29. Internet Service Providers.** – (1) An application for registration as an internet service provider in terms of section 27A of the Act shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by –

- (a) proof of registration of the business of the applicant in terms of the applicable legislation;
  - (b) a document confirming that the applicant's tax affairs are in order; and
  - (c) a declaration that the applicant warrants to the best of its knowledge and insofar as it is reasonably aware, that it complies with the laws and regulations applicable to it, with its legal obligations pertaining to its business in general and undertakes to continue to take all reasonable and necessary steps to ensure that such compliance is maintained.
- (2) Every internet service provider must, when making an application for registration as an internet service provider, indicate in the application form all measures, or steps taken or put in place to ensure that children are not exposed to child pornography and pornography.
- (3) The FPB may, in terms of section 27A of the Act, require an internet service provider to demonstrate that the measures contemplated in sub-regulation (2) are still effective.

**30. Display of registration certificate.** – (1) The registration certificate as an internet service provider shall be displayed conspicuously –

- (a) inside all premises;

- (b) in any other registered business; or
- (c) on the platform of the internet service provider.

## **PART 12**

### **COMPLAINTS AGAINST PROHIBITED CONTENT, DISTRIBUTION OF PRIVATE SEXUAL PHOTOGRAPHS AND FILMS AND FILMING AND DISTRIBUTION OF FILMS AND PHOTOGRAPHS DEPICTING SEXUAL VIOLENCE AND VIOLENCE AGAINST CHILDREN**

- 31. Complaints by any person about unclassified, prohibited content, or potential prohibited content in terms of services being offered online, the distribution of private sexual photographs and films and filming, and distribution of films and photographs depicting sexual violence and violence against children.** – (1) A complaint regarding unclassified, prohibited content, or potential prohibited content in relation to services being offered online by any person in terms of section 18E and section 18H of the Act, the distribution of private sexual photographs and films, and filming in terms of section 18F of the Act, and distribution of films and photographs depicting sexual violence and violence against children in terms of section 18G, shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website.
- (2) The FPB shall, upon receipt of a complaint contemplated in sub-regulation (1) –
- (a) acknowledge receipt of the complaint within 7 (seven) days; and
  - (b) inform the applicant in writing of the outcome of the investigation of the complaint within 30 (thirty) days.
- (3) Should the FPB establish after investigation that there is merit in the

complaint and/or that the prohibited content or content being hosted or distributed using the internet constitutes prohibited content in terms of the Act or has not been submitted for examination and classification as required in terms of section 16, 18, 18C or 18D, the FPB may subject to due process of law –

- (a) compel the internet service provider concerned to furnish the FPB or a member of the SAPS with information of the identity of the person who published the prohibited content; and
  - (b) in the case of either a non-commercial online distributor or internet service provider, issue a take-down notice in accordance with the procedure in section 77 of the Electronic Communications and Transactions, 2002 (Act No. 25 of 2002).
- (4) Should the FPB establish after investigation that there is merit in the complaint, the FPB may subject to due process of law compel the internet service provider concerned to furnish the FPB or a member of the SAPS with information of the identity of the person who published the private sexual photograph or film, or a film or photograph depicting sexual assault and violence against children.
- (5) A non-commercial online distributor or internet service provider that receives either a notice to compel the provision of information of the identity of the person who published the private sexual photograph or film, or a film or photograph depicting sexual assault and violence against children in terms of sub-regulation 31(3)(a) and 31(4) of Schedule 1 respectively, or a take-down notice in terms of sub-regulation 31(3)(b) of Schedule 1 shall be provided with an opportunity to respond to the complaint before being required to either furnish information or comply with the take-down notice.
- (6) In the event that the certified content analyst of the FPB confirms that

content, which is hosted outside the Republic, contains child pornography, the complaint report shall be submitted to the Chief Executive Officer of the FPB who shall hand a copy of the report to the SAPS or the law enforcement officials in the country concerned.

## PART 13

### GENERAL PROVISIONS

**32. Version of a publication, film or game submitted for classification. – (1)**

Where a publication or film is not, in all respects, the same as that which was first classified in terms of the Act, these Regulations and Classification Guidelines of the FPB, a copy of the publication or film, incorporating any changes made since it was first classified, must be submitted with the application form.

(2) Where a game is not, in all respects, the same as that which was first classified in terms of the Act, these Regulations and Classification Guidelines of the FPB, a brief report which accurately describes the game and its respective classifiable elements as prescribed in the Classification Guidelines of the FPB coupled with recordings of the game which illustrates how classifiable elements as prescribed in the Classification Guidelines of the FPB are presented, must be submitted with the application form.

**33. Application for authorisation to screen trailers with higher ratings in same screening with films with non-restrictive ratings. – (1)**

An application for approval to exhibit in public, during the same screening session, or to distribute on the same film, an advertisement or a trailer of a film with a more restrictive classification than the featured film shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by the proof of payment of the prescribed fee.

**34. Application for copy of classification decision. – (1)**

copy of any classification decision of a classification committee shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by the proof of payment of the prescribed fee.

**35. Application for list of films classified by FPB.** – (1) An application for a list of all films classified by the FPB shall be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website and accompanied by the proof of payment of the prescribed fee.

**36. Notice of contravention.** – (1) A Compliance Officer may issue a notice of contravention on a Form provided by the FPB, to any person or entity that is found to have been in contravention of provisions of the Act.

(2) The notice of contravention contemplated in sub-regulation (1) must contain the following information –

- (a) The date of contravention;
- (b) the provision/s of the Act contravened;
- (c) a statement explaining –
  - (i) the steps taken to determine that there is a contravention of the Act;
  - (ii) the evidence collected that established the contravention;
  - (iii) the analysis of the evidence against the relevant provisions of the Act contravened; and
  - (iv) the date of a follow-up inspection.



**37. Notice to remove from display.** – (1) A notice to remove non-compliant publications, films and games must be on a Form provided by the FPB or electronically accessible on its website and must contain the following information:

- (a) the name and physical address or URL of the online platform of the person or entity;
- (b) the date of the notice;
- (c) the section of the Act contravened;
- (d) the number and list of titles of publications, films and games to be removed;
- (e) the conditions of such removal; and
- (f) a statement of the right to object to the notice of removal.

**38. Conditions for publications, films and games removed from display.** –

(1) Publications, films and games removed from display must –

- (a) be sealed in a marked seal bag and seal numbers recorded in the notice;
- (b) be stored in safe storage within the premises; and
- (c) not be displayed until the distributor complies with the Act.

## **SCHEDULE 2**

### **PART 1**

**1. Definitions.** – In this Schedule, any word or expression to which a meaning has been assigned by the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

“**answer**” means a document as described in regulation 12 of Schedule 2 and filed by a respondent;

“**appeal**” means a matter initiated by section 20 (1) of the Act;

“**appellant**” means a party who initiates an appeal in terms of section 20 (1) of the Act;

“**applicant**” means a person who files an application in terms of regulation 10(1);

“**application**” means a request submitted in terms of regulation 10(1);

“**certified copy**” means a copy of a document certified by a Commissioner of Oaths;

“**chairperson**” means the officer of the Appeal Tribunal appointed in terms of section 20 (2) of the Act;

“**deliver**” depending on the context, means to serve, or to file, a document;

“**Enforcement Committee**”, depending on the context, means either –

- (a) the body established by section 3 of the Act;
- (b) a panel of the enforcement committee convened in terms of section 6B (1) of the Act; or
- (c) the registrar of the Enforcement Committee;

“**file**”, when used as a verb, means to deposit with the registrar;

**“initiating document”** means the application to bring a matter before the Appeal Tribunal;

**“initiating party”** means the applicant or the appellant, as the case may be;

**“intervenor”** means any person who has been granted standing to participate in particular proceedings before the Appeal Tribunal;

**“member”** means a person appointed to the Appeal Tribunal;

**“Notice of Appeal”** means an initiating document as described in regulation 10(1);

**“public holiday”** means a public holiday referred to in section 1 of the Public Holidays Act, 1994 (Act 36 of 1994);

**“registrar”** means the officer of the Appeal Tribunal appointed in terms of regulation 4 and includes any acting or assistant registrar;

**“reply”** means a document as described in regulation 13 and filed by a respondent;

**“respondent”** means in respect of an appeal, the FPB;

**“regulation”** includes any footnote to a regulation, and any table included within or referred to in a regulation; and

**“serve”** means to deliver a document to a person other than the registrar.

## PART 2

### APPEAL TRIBUNAL OFFICE FUNCTIONS

**2. Office hours and address of Appeal Tribunal.** – (1) The offices of the Appeal Tribunal are seated at the Head Office of the FPB and are open to the public every Monday to Friday, excluding public holidays, from 09h00 to 16h00.

(2) Despite sub-regulation 2(1) in exceptional circumstances the Appeal Tribunal may accept documents for filing on any day and at any time.

(3) Subject to regulations 5 and 6 any communication to the Appeal Tribunal, or to a member of the staff of the FPB assigned to assist the Appeal Tribunal, may be –

(a) delivered by hand at –

**The Film and Publication Board  
Eco Glade 2  
420 Witch Hazel Street  
Eco Park  
Centurion  
0169**

(b) addressed by post to –

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

(c) communicated by telephone on **+27 012 003 1400**;

(d) transmitted by Fax on **+27 012 661 0074**; or

(d) transmitted by electronic mail to **information@fpb.org.za**.

- 3. Condonation of time limits.** – (1) On good cause shown, the Chairperson of the Appeal Tribunal may condone late performance of an act in respect of which these regulations prescribe a time limit, other than a time limit that is binding on the Appeal Tribunal itself.

(2) The Chairperson of the Appeal Tribunal may have regard to the following:

- (a) The nature and extent of the delay;
- (b) the reason for the failure to act or make a submission timeously;
- (c) the nature and extent of any prejudice in not granting condonation; and
- (d) whether it would be in the public interest that the appeal be allowed.

- 3. Registrar.** – The Chairperson of the Appeal Tribunal must appoint a suitably qualified person in terms of section 11 of the Act to act as registrar of the Appeal Tribunal, with the authority to carry out the functions of that office in terms of these regulations.

## DELIVERY OF DOCUMENTS

- 4. Delivery of Documents.** – (1) A notice or document may be delivered in any manner set out herein in the table below.

Method of Delivery	Date and Time of Deemed delivery
By sending the notice or a copy of the document by electronic mail, if the person has an address for receiving electronic mail; or	On the date and at the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.

By sending the notice or a copy of the document by registered post to the person's last-known address; or	On the 7 <sup>th</sup> day following the day on which the notice or document was posted as recorded by a post office, unless there is conclusive evidence that it was delivered on a different day.
If the person is a participant in any proceedings of the Tribunal, and is represented by a representative, by delivering the notice, or handing a copy of the document to that representative; or	On the date and at the time recorded on a receipt for the delivery.
By any other means authorised by the Appeal Tribunal.	In accordance with the order of the Appeal Tribunal.

- (2) Subject to sub-regulation (4) a document delivered by a method listed in the second column of the Table referred to in sub-regulation (1) will be deemed to have been delivered to the intended recipient on the date and at the time shown opposite that method, in the second column of that table.
- (3) If, in a particular matter, it proves impossible to deliver a document in any manner provided for in these regulations, the person concerned may apply to the Appeal Tribunal for an order of substituted service.
- (4) Subject to sub-regulation (2), if the date and time for the delivery of a document referred to in the table is outside of the office hours of the Appeal Tribunal as set out in sub-regulation 2(1), that document will be deemed to have been delivered on the next day.
- (5) A document that is transmitted by electronic mail must accompany a cover message, in either case setting out –
- (a) the name, address, and telephone number of the sender;

- (b) the name of the person to whom it is addressed, and the name of that person's representative, if it is being sent to the representative of a person;
- (c) the date and time of the transmission;
- (d) the total number of pages sent, including the cover page; and
- (e) the name and telephone number of the person to contact if the transmission appears to be incomplete or otherwise unsuccessful.

**5. Filing documents.** – (1) The Appeal Tribunal must assign distinctive case numbers to each appeal lodged.

- (2) The Appeal Tribunal must ensure that every document subsequently filed in respect of the same proceedings is marked with the same case number.
- (3) The Appeal Tribunal may refuse to accept a document subsequently filed in respect of the same proceedings that is not properly marked with the assigned case number.
- (4) Any document to be filed in terms of the Act or these regulations must contain the following information –
  - (a) legal name;
  - (b) address for service;
  - (c) telephone number;
  - (d) if available, email address; and

- (e) if the person is not an individual, the name of the individual authorised to deal with the Appeal Tribunal on behalf of the person filing the document.

**6. Fees.** – (1) The prescribed fee for filing an initiating document is set out in the FPB Tariffs.

**7. Form of notices and applications.** – (1) An appeal against a decision contemplated in section 6B (1)(a), section 16 (1) and section 20 (1) of the Act must be made on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website, and accompanied by the proof of payment of the prescribed fee, and submitted to the Appeal Tribunal within 30 (thirty) days from the date on which the applicant was notified of the decision of the Enforcement Committee or the FPB respectively.

- (2) The relevant Form shall be signed by the appellant in person or by his or her legal representative and shall be accompanied by a statement from the appellant setting out the detailed grounds for appeal and the relief sought.

- (3) The Appeal Tribunal may, at its discretion, require that the film, advertisement, trailer or game which the subject of the appeal be re-screened at the expense of the applicant, unless a copy of the video or disc, or video or disc version of the film, advertisement or trailer, had already been provided to the FPB and there have since been no changes to the film, advertisement, trailer or game.

**8. Access to information.** – (1) Any person, upon payment of the prescribed fee, may inspect or copy any Appeal Tribunal record –

- (a) if it is not restricted information; or
- (b) if it is restricted information, to the extent permitted, and subject to any conditions imposed, by –



- (i) this regulation; or
- (ii) an order of the Appeal Tribunal.

## APPEAL TRIBUNAL PROCEDURES

**9. Initiating appeal proceedings.** – (1) An appeal may be filed within a period of 30 (thirty) days from the date on which he or she was notified of the decision or could reasonably be deemed to be aware of the decision, in the prescribed manner to the Appeal Tribunal –

- (a) by any person who lodged a complaint with the FPB regarding any publication which was referred to a classification committee for a decision and classification in terms of section 16 of the Act;
  - (b) any person who applied for the classification of a film, trailer of a film, or game to the FPB in terms of section 18 of the Act;
  - (c) the publisher or distributor of a publication which formed the subject of any complaint or submission in terms of section 16;
  - (d) by any person who has lodged an application to appear before the FPB or the classification committee, to adduce oral or written evidence and, to address the FPB or the classification committee in terms of section 19 of the Act; or
  - (e) any person where the Enforcement Committee has made findings in terms of section 6B (1)(b) of the Act.
- (2) If, in respect of a particular matter, more than one-person files an appeal in terms of sub-regulation (1), the registrar must combine those referrals under a common case number.

(3) The person who files an appeal must serve a copy of it within one (1) day after filing on –

(a) the respondent; and

(b) on each other person who has previously filed a Complaint Referral in that matter.

**10. Form of appeal.** – (1) An appeal proceeding in respect of a decision of the classification committee for a publication may be initiated only by filing an appeal on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website as required by regulation 10(1)(a) or 10(1)(c).

(2) An appeal proceeding in respect of a decision of the classification committee for a film, advertisement, trailer or game may be initiated only by filing an appeal on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website as required by regulation 10(1)(b).

(3) An appeal proceeding in respect of a finding of the FPB or classification committee in terms of section 19 of the Act may be initiated only by filing an appeal on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website as required by regulation 10(1)(d).

(4) An appeal proceeding in respect of a finding of the Enforcement Committee may be initiated only by filing an appeal on the relevant Form provided by the FPB or submitted through an electronic system accessible on its website as required by regulation 10(1)(e).

(5) The relevant Form must be signed by the appellant in person or by his or her legal representative and shall be supported by a statement setting out in numbered paragraphs –

(a) a concise statement setting out the detailed grounds for appeal; and

- (b) the relief sought.

**11. Answer.** – (1) Within fifteen (15) days after being served with an appeal filed, a respondent who wishes to oppose the Appeal Referral must –

- (a) serve a copy of their answer on the Appeal Tribunal, on the person who filed the Appeal Referral, and on each other person who has previously filed an Appeal Referral in that matter; and
  - (b) subject to sub-regulation (3) , file the answer with proof of service.
- (2) An answer that raises only a point of law must set out the question of law to be resolved.
- (3) Any other answer must set out in numbered paragraphs –
- (a) a concise statement of the grounds on which the appeal is opposed;
  - (b) the material facts or points of law on which the respondent relies; and
  - (c) an admission or denial of each ground and of each material fact relevant to each ground set out in the appeal.
- (4) An allegation of fact set out in the appeal that is not specifically denied or admitted in an answer will be deemed to have been admitted.
- (5) In an answer, the respondent must qualify or explain a denial of an allegation, if necessary, in the circumstances.

**12. Reply.** – (1) Within ten (10) days after being served with an answer that raises issues not addressed in the appeal, other than a point of law alone, the person who filed the appeal may –

- (a) serve a reply on the respondent and on each other person who filed an Appeal Referral in the matter; and
    - (b) file a copy of the reply and proof of service.
  - (2) A reply must be in a statement form, setting out in numbered paragraphs—
    - (a) an admission or denial of each new ground or material fact raised in the answer; and
    - (b) the position of the replying party on any point of law raised in the answer.
  - (3) If a person who filed an appeal does not file a reply, they will be deemed to have denied each new issue raised in the answer, and each allegation of fact relevant to each of those issues.
- 13. Amending documents.** – (1) The person who filed an appeal may apply to the Appeal Tribunal by notice at any time prior to the end of the hearing of that complaint for an order authorising them to amend their relevant Form, as filed.
- (2) If the Appeal Tribunal allows the amendment, it must allow any other party affected by the amendment to file additional documents consequential to those amendments within a time period allowed by the Appeal Tribunal.
- 14. Completion of complaint file.** – (1) Subject to any order made in terms of regulation 14 or regulation 27, the filing of documents is complete when an appeal or answer has not been responded to within the time allowed.
- 15. Pre-hearing conferences.** – (1) Within 10 (ten) days after the filing of documents is completed, a member of the Appeal Tribunal assigned by the Chairperson may

convene a pre-hearing conference on a date and at a time determined by that member with –

- (a) each complainant who has filed an appeal;
  - (b) interveners; and
  - (c) the respondent.
- (2) If a point of law has been raised, and it appears to the assigned member of the Appeal Tribunal at a pre-hearing conference to be practical to resolve that question before proceeding with the pre-hearing conference, the member may –
- (a) direct the registrar to set only that question down for hearing by the Appeal Tribunal; and
  - (b) may adjourn the pre-hearing conference pending the resolution of that question by the Appeal Tribunal.
- (3) The assigned member of the Appeal Tribunal may adjourn a pre-hearing conference from time to time.
- (4) Pre-hearing conferences may be conducted in person or by telephone or both, need not follow formal regulations of procedure, and are not open to the public.

**16. Other powers of member at pre-hearing conference.** – (1) At a pre-hearing conference, the assigned member of the Appeal Tribunal may give directions in respect of –

- (a) technical or formal amendments to correct errors in any documents filed in the matter;

- (b) clarifying and simplifying the issues;
  - (c) obtaining admissions of particular facts or documents;
  - (d) the production and discovery of documents whether formal or informal;
  - (e) witnesses to be called by the Appeal Tribunal at the hearing, the questioning of witnesses and the language in which each witness will testify;
  - (f) a timetable for –
    - (i) the exchange of summaries of expert opinions or other evidence that will be presented at the hearing; and
    - (ii) any other pre-hearing obligations of the parties;
    - (iii) determine the procedure to be followed at the hearing, and its expected duration;
    - (iv) a date, time and schedule for the hearing; or
    - (v) any other matters that may aid in resolving the appeal.
- (2) At a pre-hearing conference, the assigned member of the Appeal Tribunal may require each participant to submit at a date to be determined, but before the hearing, a written statement summarising its argument, if any, with respect to the appeal, and identifying what it believes are the major unresolved issues.
- (3) After concluding a pre-hearing conference, the assigned member of the Appeal Tribunal must issue an order recording any agreements or rulings arising from matters considered at the pre-hearing conference.

- (4) A member of the Appeal Tribunal assigned by the Chairperson may schedule a further pre-hearing conference on their own motion, and the provisions of this regulation apply to such a conference.

**17. Settlement conference.** – At any time before the Appeal Tribunal makes a final order in a complaint proceeding, the Appeal Tribunal, on its own initiative or at the request of the participants, may order an adjournment of the proceedings to allow the participants to attempt to reach agreement on any outstanding issue.

**18. Appeal record.** – The FPB must file a record of the decision or finding which is the subject of the appeal within 5 (five) days after being served with a copy of the appeal.

**19. Heads of argument.** – (1) No later than 15 (fifteen) days before the date set for hearing the appeal, the appellant must –

- (a) serve a copy of the appellant's heads of argument on each respondent; and

- (b) file those heads of argument and proof of service.

(2) No later than 10 (ten) days before the date set for hearing the appeal, each respondent must –

- (a) serve a copy of their heads of argument on the appellant; and

- (b) file those heads of argument and proof of service.

**20. Appeal hearing.** – (1) Upon receiving an appeal, the registrar must –

- (a) set down a date and time for the hearing of the appeal; and

- (b) serve a Notice of Set-Down on the appellant and each respondent.
- (2) The final decision of the Appeal Tribunal shall be pronounced in open proceedings immediately after the conclusion of the hearing.
- (3) The written reasons for the final decision shall be given to the parties or their representatives without undue delay but no later than 15 (fifteen) days after the conclusion of the hearing.
- (4) After issuing written reasons for its decision, the Registrar of the Appeal Tribunal must publish a notice of its decision on the website of the FPB.

**21. Urgent appeals.** – (1) A person may file an appeal and indicate in its statement for the appeal to be heard on an urgent basis.

- (2) In deciding whether, or not, to allow an urgent application for appeal, the Chairperson of the Appeal Tribunal shall have regard to the following factors –
  - (a) Whether failure to do so would cause serious financial or other prejudice to the appellant;
  - (b) the impact of such an order on other interested persons; and
  - (c) whether it is in the public interest, specifically whether it is in the best interests of the child, and whether that interest would adversely be affected or protected by such a decision.
- (3) An urgent appeal shall be heard within 3 (three) days from date of receipt of such application.

## **REPRESENTATION OF PARTIES, INTERVENORS, WITNESSES, AND INTERPRETERS**



**22. Representation of parties.** – (1) A representative acting on behalf of any person in any proceedings must notify the registrar and every other party, advising them of the following particulars –

- (a) the representative's name;
  - (b) the postal address and place of employment or business; and
  - (c) if a telephone number and email address are available, those details.
- (2) A person who terminates their representative's authority to act in any proceedings, and then acts in person or appoints another representative, must notify the registrar and every other party of that termination, and of the appointment of another representative, if any, and include that representative's particulars, as set out in sub-regulation 23 (1) of Schedule 2.
- (3) On receipt of a notice in terms of sub-regulation 23 (1) or 23 (2) of Schedule 2, the address of the representative or the party, as the case may be, will become the address of record for notices to and for service on that party of all documents in the proceedings.
- (4) Despite sub-regulation 23 (3) of Schedule 2, a person who, before receiving a notice in terms of sub-regulation 23 (1) or 23 (2) of Schedule 2, has sent a notice to, or effected service on, a party somewhere other than at the address of record will be deemed to have validly served that item, unless the Appeal Tribunal orders otherwise.
- (5) A representative in any proceedings who ceases to act for a party must deliver a notice to that effect to that party and every other party concerned.
- (6) A notice delivered in terms of sub-regulation 23 (5) of Schedule 2 must state the names and addresses of each party who is being notified.

- (7) After receiving a notice referred to in sub-regulation 23 (5) of Schedule 2, the address of the party formerly represented becomes the address for notices to, and for service on, that party of all documents in the proceedings, unless a new address is furnished for that purpose.

**23. Joinder or substitution of parties.** – (1) The Appeal Tribunal, or the assigned member, as the case may be, may combine any number of persons, whether jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their respective rights to relief depend on the determination of substantially the same question of law or facts.

- (2) If a party to any proceedings has been incorrectly or defectively cited, the Appeal Tribunal or the assigned member, as the case may be, on application and on notice to the party concerned, may correct the error or defect.
- (3) If in any proceedings it becomes necessary to substitute a person for an existing party, any party to those proceedings, on application and on notice to every other party, may apply to the Appeal Tribunal or the assigned member, as the case may be, for an order substituting that party for an existing party, and the Appeal Tribunal or the assigned member, as the case may be, may make an order, or give directions as to the further procedure in the proceedings.
- (4) An application to join any person as a party to proceedings, or to be substituted for an existing party, must be accompanied by copies of all documents previously delivered, unless the person concerned or that person's representative is already in possession of those documents.
- (5) No joinder or substitution in terms of this regulation will affect any prior steps taken in the proceedings.

#### **WITHDRAWALS, POSTPONEMENTS, SET-DOWN AND MATTERS STRUCK-OFF**

**24. Withdrawals and postponements.** – (1) At any time before the Appeal Tribunal has heard a matter, the initiating party may withdraw all or part of the matter by –

- (a) serving a Notice of Withdrawal on each party; and
  - (b) filing the Notice of Withdrawal with proof of service.
- (2) If the parties agree to postpone a hearing, the initiating party must notify the registrar as soon as possible.

**25. Set down of matters.** – (1) If a matter has been postponed to a date to be determined in the future, any party to the matter may apply to the registrar for it to be re-enrolled, but no preference may be given to that matter on the roll, unless the Chairperson decides otherwise.

- (2) The registrar must allocate a time, date and place for the hearing and send a Notice of Set Down to each party.
- (3) If a matter is postponed to a specific date, the registrar need not send a Notice of Set Down to the parties.

**26. Matters struck-off.** – (1) The Appeal Tribunal member presiding at a hearing may strike a matter off the roll if the initiating party is not present.

- (2) If a matter is struck off the roll, the matter may not be re-enrolled unless –
- (a) that party concerned files a statement setting out a satisfactory explanation for the failure to attend the hearing; and
  - (b) a member of the Appeal Tribunal assigned by the Chairperson, on considering the explanation offered, orders the matter to be re-enrolled.

**27. Default orders.** – (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order sought issued against that person by the Appeal Tribunal.

(2) On an application in terms of sub-regulation 28 (1) of Schedule 2, the Appeal Tribunal may make an appropriate order –

(a) after it has heard any required evidence concerning the motion; and

(b) if it is satisfied that the initiating document was adequately served.

(3) Upon an order being made in terms of sub-regulation 28 (2) of Schedule 2, the registrar must serve the order on the person described in sub-regulation 28 (1) of Schedule 2 and on every other party.

## **PROCEDURES GENERALLY**

**28. Late filing, extension and reduction of time.** – (1) A party to any matter may apply to the Appeal Tribunal to condone late filing of a document, or to request an extension or reduction of the time for filing a document, by filing a request.

(2) Upon receiving a request in terms of sub-regulation (1) the registrar, after consulting the parties to the matter, must set the matter down for hearing at the earliest convenient date.

**29. Conduct of hearings.** – (1) If, in the course of proceedings, a person is uncertain as to the practice and procedure to be followed, the member of the Appeal Tribunal presiding over a matter may give directions on how to proceed.

(2) Subject to these regulations, the member of the Appeal Tribunal presiding over a matter may determine the time and place for the hearing before the Appeal Tribunal.

(3) The Appeal Tribunal may condone any technical irregularities arising in any of its proceedings.

**30. Guidelines.** – (1) The Appeal Tribunal, by notice published in the Government Gazette, may issue guidelines or requirements concerning the form and style of any documents provided for in these Regulations.

**31. Record of hearing.** – (1) The registrar must compile a record of any proceeding in which a hearing has been held including –

- (a) the initiating document;
- (b) the notice of any hearing;
- (c) any interlocutory orders made by the Appeal Tribunal or a member;
- (d) all documentary evidence filed with the Appeal Tribunal;
- (e) the transcript, if any, of the oral evidence given at the hearing; and
- (f) the final decision of the Appeal Tribunal and the reasons.

**32. Pending matters.** – (1) Any matter pending before the Appeal Tribunal under the Act and Regulations published in Government Gazette No. R. 184 of 20 March 2014, before the effective date of the Regulation and not fully addressed at that time, must be concluded by the Appeal Tribunal in terms of such Act and Regulations, despite its repeal or amendment.

### **SCHEDULE 3**

#### **PART 1**

**1. Definitions.** – In this Schedule any word or expression to which a meaning has been assigned in the Act, shall have the meaning so assigned and, unless the context otherwise indicates –

“**general effective date**” means the date on which these Regulation came into operation;  
and

## PART 2

### REPEAL OF REGULATIONS AND SHORT TITLE

- 2. Repeal of Regulations.** – The Regulations published in Government Gazette No. R. 184 of 20 March 2014 are hereby repealed.
- 3. Short title.** – These Regulations are called the Films and Publications Regulations, 2022.

## PART 3

### TRANSITIONAL ARRANGEMENTS

- 4. Continuation of pre-existing online distribution agreements.** – (1) As of the general effective date, every pre-existing online distribution agreement that was, immediately before that date, entered into in terms of section 22 of the Act, continues to exist, as if it had been entered into in terms of the Act.
- (2) If, as a consequence of the coming into effect of these Regulations and the repeal of the Regulations published in Government Gazette No. R. 184 of 20 March 2014, a conflict, dispute or doubt arises within the duration of the online distribution agreement after the effective date, the provisions of the online distribution agreement prevails.

**5. General preservation of regulations, rights, duties, notices and other instruments.**

– (1) Any right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the Regulations published in Government Gazette No. R. 184 of 20 March 2014 that had not been spent or fulfilled immediately before the effective date is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of these Regulations, as from the date that the right, entitlement or obligation first arose, subject to the provisions of these Regulations.

(2) A notice given by the FPB to another person in terms of any provision of the Regulations published in Government Gazette No. R. 184 of 20 March 2014 must be considered as notice given in terms of any comparable provision of these Regulations, as from the date that the notice was given under the Regulations published in Government Gazette No. R. 184 of 20 March 2014.

(3) An application that, before the effective date, had been filed in accordance with the Regulations published in Government Gazette No. R. 184 of 20 March 2014 must be regarded as having been satisfactorily filed for any comparable purpose of these Regulations.

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