



LEGAL NOTICE.....

THE FILMS AND STAGE PLAYS ACT
(Cap. 222)

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

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—Interpretation
- 3—Objective of the Regulations
- 4—Scope of the Regulations
- 5—Board to issue self-classification certificate
- 6—Application for self-classification certificate
- 7—Self-classification certificate
- 8—Withdrawal or reclassification of a film
- 9—Applicable entity to display film rating
- 10—Applicable entity to establish complaints resolution mechanism
- 11—Board to conduct random reviews
- 12—Annual report by applicable entities
- 13—Offences and penalties

THE FILMS AND STAGE PLAYS ACT

(Cap. 222)

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

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

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

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

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

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

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

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

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

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

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

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

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

Scope of the Regulations.

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

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

Board to issue self-classification certificates.

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

Application for self-classification certificate.

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

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

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

Self-classification certificate.

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

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

(3) A self-classification certificate shall specify—

- (a) the name and registered business address in Kenya of the applicable entity;
- (b) the name and address of the authorized officer of the applicable entity in Kenya;

- (c) the date the certificate was issued;
- (d) the date on which the certificate shall lapse;
- (e) the nature of the business of, or the service provided by, the applicable entity; and
- (f) the conditions, if any, imposed by the Board on the applicable entity.

Applicable entity to grant Board access to film library

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

Validity of Rating and Re-classification

9. (1) The rating assigned to the title by an applicable entity shall be valid for a period of five years.

(2) Upon expiry of the period, the applicable entity, where a film is still available in their catalogue, will review and assign the appropriate classification rating.

Withdrawal or reclassification of a film.

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

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

(2) A direction by the Board under sub-regulation (1) shall be in writing and shall specify the period within which and the manner that the applicable entity shall comply with that direction.

Applicable entity to display film rating.

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

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

Applicable entity to establish complaints resolution mechanism.

12. (1) Each applicable entity that applies for a self-classification license under these Regulations shall establish a complaints-resolution mechanism to receive and resolve complaints in respect of films the applicable entity intends to broadcast, distribute or exhibit in Kenya.

(2) The applicable entity shall, when applying for a self-classification certificate, submit as part of the applicable entity's application a description of the complaints resolution mechanism to the Board for approval.

(3) The applicable entity shall, where the Board so directs, modify the complaints resolution process for the purposes of achieving the objectives of these Regulations.

(4) The purpose of a complaints resolution mechanism shall be to receive and resolve complaints from viewers or subscribers regarding the classification rating applied by an applicable entity in respect of a film that is broadcast, distributed or exhibited in Kenya by the applicable entity.

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

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

(6) The applicable entity shall resolve a complaint made under sub-regulation (4) within seven days after receiving the complaint.

(7) A complainant who is dissatisfied with the manner in which a complaint has been resolved by the applicable entity, may, within seven days after the expiry of the period specified under sub-regulation (6), notify the Board, in writing, of the complaint and the unsatisfactory way that the complaint was resolved.

(8) The Board shall, within seven days after receiving a notification under sub-regulation (7), consider the information provided under sub-regulation (5) and—

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

(9) The applicable entity shall, within three days of being directed by the Board under sub-regulation (8)(b)—

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

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

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

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

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

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

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

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

Board to
conduct random
reviews.

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

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

(a) direct the applicable entity in writing to apply the new classification rating; or

(b) direct the applicable entity to prevent any further broadcast, distribution or exhibition of the film, as the case may be

(3) The provisions of regulation 11 (7), (8), (9), (10), (11) and (12) shall apply, with necessary modification, to a direction by the Board under sub-regulation (2).

Annual report
by applicable
entities.

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

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

Offences and
penalties.

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

**FIRST SCHEDULE
[Regulation 7]**

SELF-CLASSIFICATION CERTIFICATE

Certificate Number.....

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

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

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

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

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

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

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

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

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

2. Fee Schedule for Broadcasters

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

Made on the, 2023

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