



## **CONSULTATION PAPER ON CO-REGULATION FRAMEWORK FOR AUDIO-VISUAL CONTENT CLASSIFICATION FOR BROADCAST AND OVER THE TO (OTT)/VIDEO ON DEMAND (VOD) SERVICES**

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### **1. Introduction**

The Kenya Film Classification Board (KFCB) is a regulatory agency established under the Films and Stage Plays Act Cap222. The KFCB is mandated to regulate the creation, broadcasting, possession, distribution and exhibition of films and broadcast content in the country with the aim ensuring that content conforms to the Kenyan culture, national values and aspirations, as well as to protect children from exposure to inappropriate content. Section 12 (2) of the Act states that: No film or class of film shall be distributed, exhibited or broadcast, either publicly or privately, unless the Board has examined it and issued a certificate of approval in respect thereof. Further, the Board is empowered by the Kenya Information and Communications Act (KICA), Cap 411A, and through the Kenya Communication (Broadcasting) regulations 2009 Section 34 (1) (a), to ensure that content which contains scenes or language intended for adult audience is not aired during the watershed period (5AM to 10PM).

In addition, Section 46 (1) of the (KICA) requires that all films be submitted to KFCB to be classified in line with by the Films and Stage Plays Act Cap 222, before being exhibited.

Part 1 (Section 2) of the Films and Stage Plays Act Cap 222 defines Film as a cinematographic film, recorded video cassette film, recorded video discs, any recorded audio-visual medium, and includes any commentary (whether spoken and whether the person speaking appears in the film or not), as well as any music or other sound effect, associated with the film or any other part of a film.

### **2. Background**

In 2015, Kenya underwent a complete migration from analogue to digital broadcast transmission in compliance with the global deadline that was set for June 2015. To this effect, the migration has seen rapid growth in the number of broadcast stations across the country. Furthermore, the country has witnessed a rapid increase in penetration of the internet with levels rising from 16.4% in 2014 to 45.7% in 2018, resulting in an unprecedented increase in content production and content distribution platforms.

This paper, therefore, seeks to assess the regulatory framework of the broadcast and Over The Top (OTT) as well as the Video on Demand (VOD) in the country with a view to implement a co-regulation framework. The objective is to try and ease our regulatory work while creating a conducive regulatory environment for broadcasters in the country.

The rapid changing consumer preference to distribution, exhibition and possession of audio-visual content in the digital world has shift to portable devises such as laptops, Tablets and smartphones, prompting content creators to tailor-make their audio-visual content to suit the current digital advancement.

The mandate to classify audio-visual content as envisage in the Film and Stage Plays Act Cap 222 empowers the Board to set content classification guidelines to guide the examination and classification of content for age appropriateness. The Board, guided by the establishing law and its content classification guidelines, as envisioned in Section 12 of Cap222, continues to receive large volumes of content for examination and classification before being exhibited to the Kenyan public. As such, the Board has found it right to adopt a co-regulation framework with relevant content creators.

Part 2.0 of the Film Classification Guidelines spells out the thematic areas considered during the examination and classification of content. These areas include:

- (a) Violence and Crime;
- (b) Sex, Obscenity and Nudity
- (c) Occult and Horror;
- (d) Drugs, Alcohol and other Harmful Substances;
- (e) Religion and Community; and
- (f) Propaganda for War, Hate Speech and Incitement.

The Board is expected to examine at least 3,600 movies and over 18,000 television shows within a 24-hour turnaround period, thus causing a big challenge. In order to accomplish this, the Board has benchmarked with other jurisdictions globally and has established that several countries facing a similar challenge have adopted various forms of media regulation models to complement the already existing method of working. These models include but are not limited to:

- ✓ State Regulation
- ✓ Co-Regulation; and
- ✓ Self-Regulation.

The most popular form of regulation, especially in countries with advanced media landscapes, however, is co-regulation, with countries such as Australia, South Africa and Britain embracing this as their preferred model.

### **Justification for Co-Regulation**

Research has revealed that leading broadcasters in the country exhibit an average of 700 minutes of content daily. Further, at any given time, an average of 3,600 movies and 18,000 TV shows are posted on Netflix, one of the country's most popular VOD platforms.

Currently, the Board has eight (8) internal film examination officers as well as ten (10) co-opted ones, tasked with the responsibility of classifying films. In this kind of context, the Board, in optimal operation, can only examine and classify a maximum of 720 minutes of content per day, which translates to an average of six films of feature length. This is a minute percentage compared to the huge amount of content aired across the airwaves daily.

In light of the foregoing, it is evident that the Board may not be in apposition to examine and classify all broadcast and VOD content effectively, thus creates the need to develop a realistic and pragmatic regulatory framework to enhance compliance.

As the sole content Regulator in the country, the Board seeks to create a facilitative regulatory environment if the film and broadcast industry are to thrive to the maximum. The aim is to create a collaborative working relationship between the Board and the relevant industry players. Consequently, this will enhance compliance and encourage growth in the film and broadcast industry.

It is, therefore, imperative that the Board re-considers its regulatory approach to foster compliance and ease the process of examination and classification for broadcasters in light of the rapidly evolving market and technological dynamics.

### **3. Overview of the Proposed Co-Regulation Framework**

- a) The Procedures for Co-Regulation shall be aligned to the Board's Film Classification Guidelines and implemented as follows:
  - i. A random sample and selection of 30% of Audio-visual content from Broadcasters program line-up by the Board. The Broadcaster shall submit the selected content that shall include all foreign content, music videos and commercials to the Board for Classification. The remaining 70% of the audio-visual content shall be self-classified by the applicable entity.

Before issuing the broadcasters with the Film Classification Guidelines, the Board shall train all the broadcasters on the classification procedures at a fee of Ksh5,000 per trainee or a corporate rate of Ksh50,000 for applicable entities as defined in the Proposed Co-Regulation Framework.

- b) The Board proposes a three-tier structure:
  - i. Level I – Self Classification Panel constituted by the Broadcaster;

- ii. Level II – A joint Co-Regulation Classification Panel constituted by the Broadcaster and the Board; and
- iii. Level III – KFCB Classification Panel constituted by the Board.

#### **4. Invitation of input/comments on the Proposed Content Co- Regulation Framework**

The Board has put out the proposed Co-Regulation framework for public participation, seeking input/comments on the proposed Audio-Visual Content Co-Regulation Framework that seeks to set the procedure for classification of audio-visual content prior to exhibition in the country on various content exhibition platforms, including broadcasting services, Video on Demand and Over the Top services.

#### **Invitation for Comments:**

##### **1. General**

The Kenya Film Classification Board invites comments on the key changes in the proposed Audio-Visual Content Classification as annexed herein:

##### **2. Stakeholder and Public Consultations**

The purpose of this consultative paper is to give stakeholders an opportunity to comment on the proposed Co-Regulation Framework with the goal of enhancing the provision of responsible services to the Kenyan public and the exhibition of audio-visual content that is rated appropriately. The proposed review is also meant to enhance consumer protection and public interest in exhibition of audio-visual content.

The public and stakeholders are invited to review and submit their specific inputs and views on the proposed Audio-Visual Content Co-Regulation framework to the address indicated below on or before 4<sup>th</sup> April 2022 by close of the day. The consultation document can be accessed on <https://kfcg.go.ke/policies>.

Stakeholders including members of the public, consumer organizations, agencies dealing with media and broadcast issues, film exhibition and distribution licensees and incorporated bodies are requested to submit their written inputs and views indicating their specific proposals to the address below:

**The Ag. Chief Executive Officer  
Kenya Film Classification Board  
Uchumi House 15th Floor  
P.O Box 44226-00100, Nairobi  
<https://www.kfcg.go.ke>**

**Email: [info@kfcg.go.ke](mailto:info@kfcg.go.ke)**

**Telephone contact: 0711 222 204/ 0777 753 355 or 020 22 50600**