



REGULATORY IMPACT STATEMENT

FOR

**THE FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION)
REGULATIONS, 2023**

JUNE 2023

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

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CHAPTER 1: INTRODUCTION AND BACKGROUND

1.1 Introduction

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

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

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

1.2 Requirements of the Statutory Instruments Act

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

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

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

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

1.3 What is a Regulatory Impact Statement

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

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

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

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

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

CHAPTER 2: OBJECTS OF THE FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Section 15(2) (a) of the Films and Stage Plays Act in accordance with Section 35 of the Act. The specific objectives are to provide the procedures for the licensing of film distributors and exhibitors in Kenya.

Specifically, the Regulations intend to:

- a) Make provision for the application process of a film distribution and exhibition license;
- b) Make provision for the specific provisions of the film distribution and exhibition licenses;
and
- c) Create the form for use to meet the requirements of the Act through the Regulations.

CHAPTER 3: BACKGROUND AND CONTEXT

3.1 History of the Film Regulation in Kenya

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

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

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

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

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

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

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

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

3.2 Existing Scenario

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

3.3 Paradigm Shift

The Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023 seek to prescribe the standards and procedure for the licensing of film distributors and exhibitors. The regulations

further have amended and provided clarity on the fees charged to film distributors and exhibitors to the current constitutional and statutory dispensation.

3.2 Statutory Dispensation

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

Section 15 (2)(a) of the Act further provides for the functions of the Board, which include, inter alia, to license and issue certificates to distributors and exhibitors of film.

CHAPTER 4: EVALUATION OF THE PROBLEM

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

4.1 Identified Challenges

a) Regulatory Inconsistencies

There were no codified Regulations prescribed for the licensing of film distributors and exhibitors in accordance with the mandate conferred to the Board under Section 15(2) (a) and Section 35(1) of the Act. Further, the fees levied on the film distributors and exhibitors were provided for in different subsidiary legislation under the Act (Film Censorship Regulations).

b) Emerging film distribution and exhibition platforms

Although technology has revolutionized film content exhibition and distribution, the potential to cause harm remains a major concern. The introduction of over-the-top and video on demand and exhibition platforms like video games and virtual reality where children spent most of their time needs to be regulated through specific provisions. Further, The Act and fee schedule had not contemplated various forms of film distribution and exhibition occasioned by the advent of technology and the dynamics of the same.

CHAPTER 5: LEGAL FRAMEWORK FOR THE PROPOSED FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION) REGULATIONS, 2023

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

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

5.1 The Constitution of Kenya, 2010

5.1.1 Application of National Values and Principles of Governance

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

5.1.2 Right to information

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

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

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

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

5.2 Films and Stage Plays Act

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

5.3 Statutory Instruments Act

The Statutory instruments Act provides for the overarching framework for development of statutory instruments in Kenya. Specifically, Section 3 of the Act provides that every statutory instrument made directly or indirectly under any Act of parliament or under written legislation should conform to the Act. Further the Act, provides a comprehensive regime for the making, scrutiny, publication, and operation of the statutory instruments.

CHAPTER 6: PUBLIC CONSULTATIONS

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

6.1 Legal Requirements relating to Public Participation and Consultation

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

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

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

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

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

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

6.2 Participation of the Stakeholders

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

1. Crimson Multimedia Limited;
2. Matatu Owners Association;
3. Anga Cinemas;
4. Sky Entertainment;

5. Digital Broadcasters Association;
6. Safaricom Baze;
7. Netflix;
8. Multichoice Media (K) Limited;
9. Standard Group;
10. Nation Media Group;
11. Royal Media Services;
12. Hope TV;
13. Kenya Law Reform Commission;

6.3 Approach and Methodologies

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

- I. A Public Notice on the KFCB website
- II. Public Notice on the Standard Newspaper, 28th March, 2023
- III. Public Fora in different regions of the country

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

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

Further, stakeholders were invited, through letter and email, to submit their written submissions within the specified time. Lastly, stakeholders were invited to attend stakeholder consultation

meetings between 2nd and 31st May 2023 in different regions. The table below indicates the stakeholders who attended the various stakeholder consultation fora.

It is a constitutional requirement to carry out public participation whenever a state or public officer enacts any law or makes or implements a public policy. This requirement is based on Article 1 of the Constitution on the sovereignty principle which vests all sovereign power to the people of Kenya. This power entitles the people access to the process of making public decisions through their involvement. Public participation ought to be inclusive, transparent and accountable.

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

Table 1: List of Stakeholders

NO.	STAKEHOLDER	NO. OF PARTICIPANTS	DATE AND VENUE	TIME
Cluster 1	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups from Mombasa Kwale, Taita Taveta, Kilifi	25	2 nd May 2023 at the Kenya School of Government in Mombasa	9.00am-4.00pm
Cluster 2	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups from Kisumu, Siaya, Homa Bay and Migori	33	5 th May at the Kisumu Hotel, Kisumu	9.00am-4.00pm
Cluster 3	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	31	9 th May 2023 at the Kenya School of Government, Embu	9.00am-4.00pm
Cluster 4	Film Producers, Film Makers, Distributors/ Theatre owners and Broadcasters (Guilds and Associations) Religious groups	30	30 th and 31 st May 2023 at the College of Insurance	9.00am-4.00pm

The consultative forums were engaging with stakeholders making submissions with regard to the Self- Classification Regulations, whose comments have been incorporated into the same.

CHAPTER 7: OVERVIEW OF THE PROPOSED FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION) REGULATIONS, 2023

The general objective of these Regulations is to give effect to Section 15(2) (a) of the Films and Stage Plays Act in accordance with Section 35 of the Act. The specific objectives are to provide the procedures for the licensing of film distributors and exhibitors in Kenya.

Specifically, the Regulations intend to:

1. Make provision for the application process of a film distribution and exhibition license;
2. Make provision for the specific provisions of the film distribution and exhibition licenses;
and
3. Prescribe form for use to meet the requirements of the Act through the Regulations.

CHAPTER 8: COST- BENEFIT ANALYSIS

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

8.1 Benefits of the Regulations

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

1. Enhanced operationalization of the provisions of the Act with respect to regulation of new channels of distribution and exhibition facilitated by technology.
2. Enhanced compliance by industry players
3. Increased support for the industry players in a burgeoning sector

8.2 Financial Costs

Implementation of the proposed set of Regulations is estimated at Kshs. 36,596,981.00 annually. This cost will be borne by the Board to, among other things, enhance the capacity of the current staff and training of the distributors, exhibitors, and law enforcement agencies under these Regulations.

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

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

CHAPTER 9: CONSIDERATION OF ALTERNATIVES TO THE REGULATIONS

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

9.1 Option 1: Maintenance of the Status-Quo

The Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023 are responsive to the current legislative requirements. In the absence of these Regulation, issues such as arbitral licensing procedures of film distributors and exhibitors will not be curtailed.

By maintaining the status quo, the legal requirements under Section 15(2) (a) as read with Section 35 of the Films and Stage Plays Act will not be fulfilled. In addition, the potential to cause harm occasioned by lack of monitoring following licensing, a key objective of providing the provisions in a statutory instrument, will continue to persist.

9.2 Option 2: Administrative Measures

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

9.3 Option 3: Formulation of the Regulations

The Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023 will yield the following benefits: Enhanced operationalization of the provisions of the Act with respect to regulation of new channels of distribution and exhibition facilitated by technology, enhanced compliance by industry players and increased support for the industry players in a burgeoning sector.

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

9.4 Impact Analysis of the Options

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

Table 2: Impact Analysis of the three options

Impact on Sectors	Option One: Maintaining the Status Quo	Option Two: Administrative Measures	Option Three: Formulating the proposed Films and Stage Plays (Film Distribution and Exhibition) Regulations, 20233
	This entails doing nothing and retaining the current state of affairs	This entails putting in place administrative measures to ensure implementation of the provisions of licensing film distributors and exhibitors under the Films and Stage Plays Act	This entails providing forms to be used and fees to be charged under the Act; the procedure for licensing film distributors and exhibitors.
Impact on public sector	The public sector will be accused of inaction in providing for the procedure for licensing film distributors and exhibitors within the country	It is unlikely that administrative processes without the force of the law will effectively address emerging realities in the licensing of film distributors and exhibitors.	<ul style="list-style-type: none"> • The regulations ensure expeditious, efficient, lawful, reasonable and procedurally fair administration of actions by the government with respect to licensing of film distributors and exhibitors.
Impact on the private sector	The actions of the private sector will not be guided thereby resulting in conflicts.	Administrative measures offer short term relief to addressing the issues raised with respect to licensing film distributors and exhibitors in the private sector	<ul style="list-style-type: none"> • The regulations will provide guidelines and standards for issuing licenses to film distributors and exhibitors providing clarity and will result in ease of doing business. • Development of controls in the standardization will result in reduced conflicts in the private sector.
Socio-economic impact	There will be no framework to ensure that socio-economic rights as provided for under Chapter 4 of the Constitution are upheld.	Administrative measures do not provide for a structure that ensures accountability hence socio-economic rights under Chapter 4 of the Constitution may not be met.	<ul style="list-style-type: none"> • The Regulations support socio-economic rights provided for under Chapter 4 of the Constitution including the consumer rights and right to information. • The proposed regulatory instruments will facilitate the full enjoyment of consumer rights, the right to information as well as rights to fair administrative action. • The proposed regulatory instruments neither impose, waive nor vary any tax or

			fees imposed under any law in Kenya. Indeed the instrument seeks to accommodate the various modes of film distributors
Impact on existing legal frameworks	The legal requirement under Section 15(2) (a) as read with Section 35 of the Films and Stage Plays Act will not be met.	Administrative measures without the force of the law may be challenged, leading to slow/ halted service delivery.	<ul style="list-style-type: none"> • Fulfills the legal requirement under Section 15(2) (a) as read with Section 35 of the Films and Stage Plays Act. • The proposed Regulations do not impose any new legal requirement under the existing framework, therefore do not conflict or have any negative effect on any such existing legislation.
Impact on environment	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.	The proposed Regulations have no effect on the environment.

CHAPTER 10: COMPLIANCE AND IMPLEMENTATION

It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect and design responsive implementation strategies that make the best use of them. The implementation and enforcement of these regulations will be undertaken through the existing institutional framework at national level (Ministry of Youth Affairs, the Arts and Sports and the county level (county governments)).

CHAPTER 11: CONCLUSION

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

11.1 Recommendation

Considering the above conclusion, it is recommended that the Films and Stage Plays (Film Distribution and Exhibition) Regulations, 2023 be adopted.

ANNEXURES

1. Regulations



LEGAL NOTICE.....

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

THE FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION) REGULATIONS, 2023

ARRANGEMENT OF REGULATIONS

Regulation

- 1—Citation
- 2—Interpretation
- 3—Objective of the Regulations
- 4—Scope of the Regulations
- 5—Board to issue film distribution and exhibition license
- 6— Film distribution and exhibition licence
- 7— Offences and penalties

THE FILMS AND STAGE PLAYS ACT
(Cap. 222)

**THE FILMS AND STAGE PLAYS (FILM DISTRIBUTION AND EXHIBITION)
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 (FILM DISTRIBUTION AND
EXHIBITION) REGULATIONS, 2023**

Citation. **1.** These Regulations may be cited as the Films and Stage Plays (Exhibition and Distribution) Regulations, 2023.

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

CAP 222 “Act” means the Films and Stage Plays Act;

No. 2 of 1998. “broadcaster” shall have the meaning assigned to it under the Kenya Information and Communications Act, 1998

“classification label” means a symbol that is either printed on a film poster, affixed onto a physical film medium, or a visual imagery on a film being exhibited;

“distribution” means selling, supplying or letting for hire, offering or agreeing to sell, supply or let for hire or causing or permitting to be sold, supplied to or hired within Kenya;

“exhibition” shall have the meaning assigned to it under Section 2 of the Films and Stage Plays Act;

“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 licensing of distributors and exhibitors of films in accordance with the Act.

Scope of the Regulations.

4. These Regulations shall apply to distributors and exhibitors of films that are accessible in Kenya.

Board to issue film distribution and exhibition licence.

5. (1) An application for film distribution or exhibition licence shall be made to the Board in the prescribed form and prescribed fee.

(2) The film distribution or exhibition applicant shall provide, upon request by the Board, a list of all films offered for sale, hire, distribution or exhibition.

Film distribution and exhibition licence.

6. (1) A film distribution or exhibition licence shall be valid for a period of one year from the date that it is issued by the Board.

(2) The licence shall specify —

- (a) the name and registered business address in Kenya of the film distributor or exhibitor;
- (b) the date the licence was issued; and
- (c) the conditions, if any, imposed by the Board.

Board to issue Compliance Certificate

7. (1) The Board shall issue a Compliance Certificate to film distributors and exhibitors upon request in the prescribed form.

(2) The Certificate shall specify —

- (a) the name and registered business address in Kenya of the film distributor or exhibitor;
- (c) the date the certificate was issued;
- (d) the period of validity; and
- (e) the conditions, if any, imposed by the Board.

**FIRST SCHEDULE
[Regulation 6]**

FORM 1

FILM DISTRIBUTION/ EXHIBITION LICENCE

Date of Issue Licence No.....

This is to certify that (Company Name/Name of Licensee) of (Postal Address) to operate a (Business Type) under the name (Name of Licensee) within..... (County) for a period of one year from the date of issue.

Nearest Police Station.....

Special provisions (where applicable

.....

Chief Executive Officer

FORM 2

CERTIFICATE OF COMPLIANCE

Date of Issue..... Certificate Number.....

This is to certify that..... of Post Office Boxhas complied with the provisions of Films and Stage Plays Act, Cap 222 and the Terms and Conditions of the referenced Certificate.

This certificate is valid forfrom the date of issue.

.....

Chief Executive Officer

**SECOND SCHEDULE
(Regulation 5 (1))**

	Category	License Fees (Annual) in KShs
1.	Cinema Theatres	1 Screen - 10,000 per premise 2-3 Screens- 25,000 per premise 4-5 Screens- 40,000 per premise 6 -10 Screens- 50,000 per premise Above 10 screens- 8,000 per screen per premise
2.	Outdoor Screening	20,000 per screen
3.	Virtual Reality	10,000 per premise
4.	Mobile Cinema/Screening	10,000 per screen
5.	Video Game Shop/Movie shop/Cinema Distributors	5,000 per premise
6.	Over the Top/ Video on Demand/ Service (Local)	100,000
7.	Over the Top/ Video on Demand/ Service (Foreign)	500,000
8.	Video Game Show	1-3 Screens- 3,000 per premise 4 and above Screens- 5,000 per premise
9.	Video Show	3,000 per premise
10.	Public Service Vehicle Video Exhibitors	3,000 per vehicle
11.	Other Public Exhibitors	3,000 per premise
12.	Classification labels	10 per label
13.	Compliance Certificate	Nil

Made on the, 2023

ABABU NAMWAMBA, EGH
*Cabinet Secretary for Youth Affairs,
the Arts and Sports*

2. Stakeholder Report

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

JUNE 2023



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

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PART 1: INTRODUCTION

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

VISION

To be a world class film and broadcast film regulator

MISSION

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

CORE VALUES

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

PART 2: FILMS AND STAGE PLAYS REGULATIONS AND GUIDELINES

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

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

Table 1: Regulations and Guidelines

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

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

2.1 RATIONALE FOR REVIEW FOR REVIEW AND DEVELOPMENT

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

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

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

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

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

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

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

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

The review of the fees is informed by the following:

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

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

a) Film

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

b) Posters, Trailers and Commercials

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

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

a) Fees for Foreign Filmmakers

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

b) Fees for Local Filmmakers

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

c) Banding of Fees

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

d) Daily Filming Fees

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

e) Filming Fees Increase for Commercials/Advertisements

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

2.2 PUBLIC PARTICIPATION

2.2.1 PUBLIC NOTICE(Annex 1)

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

All written submissions were forwarded through regulations@kfcg.go.ke or the Boards postal address.

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

2.2.2 STAKEHOLDER ENGAGEMENT FORUMS

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

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

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

ANNEX I: PUBLIC NOTICE



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

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

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

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

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

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

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

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

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

All written submissions should be forwarded through regulations@kfcg.go.ke or the address provided below, not later than **Friday, 21st April 2023**.

The Chief Executive Officer

Kenya Film Classification Board

P.O. Box 44226- 00100 Nairobi Tel:

020 225 0600

Mobile: 0711 222 204/0773 753 355

Website: www.kfcg.go.ke

28th March 2023

Hon. Ababu Namwamba, EGH

Cabinet Secretary

ANNEX II: STAKEHOLDER SUBMISSIONS MATRIX

No.	PROVISION/ CLAUSE	PROPOSAL	KFCB RECOMMENDATIO N	REGION
1	1.2	Conditions should include validity legitimacy of content license to avoid piracy c. License fee schedule	The legitimacy of content is under the purview of the Kenya Copyright Board.	NAIROBI
	7.2 e			
	SECOND SCHEDULE (Regulation 5 (1))	Review and make concessions due to exigencies occasioned by the Covid pandemic on cinema businesses	The proposed fees have been revised downwards in consideration of the industry players.	
	SECOND SCHEDULE (Regulation 5 (1))	Proposal to maintain 3,000/- as previous to help recover from the adverse effects of Covid. The per film fee continues to be paid for every film release. Approximately 40 films a year volume	The last review of the fee schedule under the regulation was done in 2009. Since then the administrative and operational costs have increased.	
SECOND SCHEDULE (Regulation 5 (1))	License should be reduced. The local Industry needs support to sustain and grow. High fees will restrict growth of platforms that help Local film	Where entities onboard onto the Self-Classification Regulations, this fee does not apply.		

		<p>exposure. Suggest 10,000/- or a waiver to incentivize the growth of local ecosystem.</p>		
		<p>Censorship rates whether physical or self-assessment for fairness to all parties</p>	<p>The fees proposed on self classification are based on the number of titles (volumes) and not running time. The proposed fees have distinguished local and foreign content and local content fees levied are 15% lower than foreign content.</p>	
2	New Definitions	<p>Internet Service Provider means a person who provides another with the service of transmitting information through the means of a communication network Online Intermediary means an Internet Service Provider or an over-the-top service provider or a person who merely provides to another person an internet-enabled service such as the storage, hosting, routing, caching, search and retrieval, transmission It is vital to take into</p>	<p>Not adopted. Terms not used in the document</p>	

		account the fundamentally different roles played by different online service providers and platforms. It is critical to avoid an overly broad and indiscriminate approach. For example, what makes sense for contentsharing platforms may not be appropriate or technically feasible for a search engine or for a platform that hosts mobile apps. Video-sharing platforms are a type of or other form of data and information processing service with respect to a film or such other content where such service provider does not exercise editorial control over the content. User-generated content means an image, video, text, audio or such other material that is provided through		
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		an over-the-top service provided by another person, known as an Online Intermediary, where the person providing the material exercises editorial control over the material.		
	Insert paragraph 5	An online intermediary (a).shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and Exclude an online intermediary from the definition of	This Proposal is not adopted – It is an attempt to indemnify the platform from obligation/responsibility as per the provisions of the Film and Stage Plays Act.	NAIROBI

		owner, creator, maker, distributor or exhibitor of a film (b) does not have a general obligation monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity		
	Insert paragraph 6	6. An online intermediary is not liable for any wrong relating to user-generated content on its platform on condition that:	This Proposal is not adopted – This is an attempt to indemnify the platform from obligation/responsibility as per the provisions of the Film and Stage Plays Act.	
	a) the provider has not received valid notice of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or			
	b) the provider, upon obtaining valid notice from a court order, acts expeditiously to remove or to disable access to			

		the information; or		
		c) the provider, upon obtaining valid notice from a source other than court order, acts expeditiously to remove or to disable access to the information where it is manifestly unlawful.		
		d) A physical or electronic signature of a person authorised to act on their behalf, includes information reasonably sufficient to permit the online intermediary to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;		

		<p>e) Identification of the content at issue by the internet address of the content or other unique identifier and the segment of the film Protect online intermediaries from liability for user-generated content subject to a robust system of notice and takedown. Intermediary Protection or Safe harbors have allowed online intermediaries to enable the free flow of information, free expression, educational opportunities, media pluralism, culture, creativity, and economic growth. Studies have shown that safe harbor protections have fostered innovation and economic growth, and that online intermediaries' contributions to the economy would not be</p>		
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		possible at the current level without these protections. They have enabled the diffusion of knowledge and know-how, contributing to reductions in global divides. that is considered violative.		
		f) A clear statement of the basis of the legal claim and supporting rationale; and		
		g) A sworn statement attesting to the good faith and validity of the claim and that the complaining party has legal standing to make the claim, or is an agent acting on behalf of such a complainant.		
3	Clauses 5,6,7:	The conditions referred to should be clearly provided in the draft Regulations to provide clarity and guidance to distributors and exhibitors of films.	This proposal is not adopted – the T& Cs are administrative in nature and are provided for during application	
	Definition - New	Include the following definitions of	This proposal is not adopted – it is not necessary to include the	

		<p>terms: Internet Service Provider means a person who provides another with the service of transmitting information through the means of a communication network</p>	<p>suggested definitions because the scope of the regulations does not cover User Generated Content</p>	
		<p>Online Intermediary means an Internet Service Provider or an over-the-top service provider or a person who merely provides to another person an internet-enabled service such as the storage, hosting, routing, caching, search and retrieval, transmission or other form of data and information processing service with respect to a film or such other content where such service provider does not exercise editorial control over the content.</p>		

		<p>User-generated content means an image, video, text, audio or such other material that is provided through an over-the-top service provided by another person, known as an Online Intermediary, where the person providing the material exercises editorial control over the material</p>		
		<p>Exclude an online intermediary: from the definition of owner, creator, maker, distributor or exhibitor of a film</p>		
	<p>Insert a new paragraph 5</p>	<p>An online intermediary: (a).shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is</p>	<p>This proposal is not adopted – it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content</p>	<p>ONLINE</p>

		transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and (b) does not have a general obligation monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity		
	Insert a new paragraph 6	An online intermediary is not liable for any wrong relating to user-generated content on its platform on condition that: (a) the provider has not received valid notice of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or (b) the provider, upon obtaining valid notice from a court order, acts expeditiously to remove or to	This proposal is not adopted – it is not necessary to include the suggested definitions because the scope of the regulations does not cover User Generated Content	

		<p>disable access to the information; or</p> <p>(c) the provider, upon obtaining valid notice from a source other than court order, acts expeditiously to remove or to disable access to the information where it is manifestly unlawful.</p> <p>(d).A physical or electronic signature of a person authorised to act on their behalf, includes information reasonably sufficient to permit the online intermediary to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;</p> <p>(e).Identification of the content at issue by the internet address of the content or other unique</p>		
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		<p>identifier and the segment of the film that is considered violative.</p> <p>f).A clear statement of the basis of the legal claim and supporting rationale; and</p> <p>(g).A sworn statement attesting to the good faith and validity of the claim and that the complaining party has legal standing to make the claim, or is an agent acting on behalf of such a complainant.</p>		
4	Regulation 2 on Interpretation	<p>Include the definition of the Act as below. “the Act means the Films and Stage Plays Act CAP 222</p>	Adopt change.	ONLINE
	Regulation 2 on Interpretation	<p>Include the definition of a film library as below. “Film library means a collection of films, motion pictures, videodiscs, videocassettes, and any other materials stored on film.”</p>	Adopt change.	

	Regulation 4 on Scope of regulation	Amend by including the below. These Regulations shall apply to distributors and exhibitors of films that are accessible in Kenya and not licensed under the Kenya Information and Communications Act.	This proposal is not adopted – These regulations are made to operationalize the Films and Stage Plays Act and not KICA
	Regulation 6 on film distribution and exhibition license	A film distribution or exhibition licence which shall also serve a compliance certificate shall be valid for a period of one year from the date that it is issued by the Board	This proposal is not adopted – The Film Distribution and Exhibition certificate is different from a compliance certificate
	Regulation 7 on Board to issue compliance certificate	Propose deletion as follows. 7. (1) The Board shall issue a Compliance Certificate to film distributors and exhibitors upon request in the prescribed form. (2) The Certificate shall specify — (a) the name and registered business address in Kenya of the film distributor	This proposal is not adopted - The Film Distribution and Exhibition certificate is different from a compliance certificate. A Film Distribution and Exhibition certificate is mandatory but a compliance certificate is optional.

		or exhibitor; (b) where applicable, the name and address of the authorized person of the film distributor or exhibitor; (c) the date the certificate was issued; (d) the period of validity; and (e) the conditions, if any, imposed by the Board.		
	First Schedule (Compliance Certificate)	Propose deletion of form 2	This proposal is not adopted - The Film Distribution and Exhibition certificate is different from a compliance certificate	
5	Paragraph 2: Interpretation	Include the following definitions of terms: Internet Service Provider means a person who provides another with the service of transmitting information through the means of a communication network.	Not adopted. This is a term not referred to in the Regulations	

		<p>Online Intermediary means an Internet Service Provider or an Over-the-Top Service Provider or a person who merely provides to another person an internet-enabled service such as the storage, hosting, routing, caching, search and retrieval, transmission or other form of data and information processing service with respect to a film or such other content where such service provider does not exercise editorial control over the content. User-generated content means an image, video, text, audio or such other material that is provided through an over-the-top service provided by another person, known as an Online Intermediary, where the person providing the</p>		
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		<p>material exercises editorial control over the material</p>		
		<p>Exclude an online intermediary from the definition of owner, creator, maker, distributor or exhibitor of a film Insert a new paragraph 5: 5. An online intermediary (a).shall not be deemed to be the owner, creator, maker, distributor, broadcaster, exhibitor or possessor of such a film and does not have a general obligation to monitor the information which is transmitted or stored, hosted, routed, cached, searched and retrieved on its platform; and (b) does not have a general</p>		

		<p>obligation to monitor the content on the platform or to actively seek facts or circumstances indicating illegal activity. Protect online intermediaries from liability for user-generated content Insert a new paragraph 6:</p>		
		<p>5. An online intermediary is not liable for any wrong relating to user-generated content on its platform on condition that: (a) the provider has not received valid notice of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or (b) the provider, upon obtaining valid notice from a court order, acts expeditiously to remove or to disable access to the information;</p>		<p>ONLINE</p>

		<p>or (c) the provider, upon obtaining valid notice from a source other than court order, acts expeditiously to remove or to disable access to the information where it is manifestly unlawful. (d).A physical or electronic signature of a person authorised to act on their behalf, includes information reasonably sufficient to permit the online intermediary to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;</p> <p>(e).Identification of the content at issue by the internet address of the content or other unique identifier and the segment of the film that is</p>		
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		considered violative. (f).A clear statement of the basis of the legal claim and supporting rationale; and (g).A sworn statement attesting to the good faith and validity of the claim and that the complaining party has legal standing to make the claim, or is an agent acting on behalf of such a complainant.		
	Clause 2	Define and exclude user generated content and videography. The scope should be to cinematography in line with the scope of the Act.	Not adopted.	
	Clauses 5:	Include provision for continued updating of the list of films. This is to cater for new films to be scouted in the course of the year.	Not adopted. The license issued does not limit the number of films to be exhibited and distributed. Films to be exhibited or distributed are subjected to classification under this Act prior to exhibition or distribution.	
	Clause 6(2) (b)	Allow for continued updating list of authorized persons by local	The application to be a film distributor or exhibitor can only be made once the applicant	

		distributors. Production may not be simultaneously accessible throughout the country, particularly for local films.	has determined such details.	
	Clause 7(2) (b)	International bodies to be mandated to use local distributors. This is to align the entire film value chain requirements for international players	The Board cannot determine and prescribe the business model that the film distributor / exhibitor may use.	
6	Applicability of the draft Regulations	The application of the Regulations to be amended to read as:	This is not adopted. This proposal is in contravention of the provisions of the Films and Stage Plays Act.	
		“The Regulations are applicable to distributors and exhibitors of films that are accessible targeted to an audience in Kenya”.	Accessibility regardless of intent is irrelevant.	ONLINE
	Form 2	The Board to provide clarity on the conditions being referred to in the draft Regulations in relation to distributors and exhibitors of films	This is adopted and will be included in the Regulations.	
7	Second Schedule	1-2 Screens Ksh 15000 per premise, (<i>is it</i>	The proposed schedule provides for the cost	ONLINE

		<i>premise or premises? And is this cost for 2 screens in one premises or 2 screens owned by one distributor?</i>	based on the number of screens per premise.	
		Again, the costing is not friendly especially since the business is not exempt from the usual taxes.	The proposed Regulations have revised the fees downwards.	
	Second Schedule	The Board should expound on the required Ksh.20,000 for outdoor Screening.	The outdoor exhibition license is valid for a period of one year from the date of issue regardless of the number of screenings. However, all content exhibited MUST be classified by the Board and a certificate of approval is issued thereof.	
		100,000 for video on demand above the usual taxes	The proposal is unclear.	
8	Clause 6(2) (d)	The lack of clarity on the conditions that the Board can impose on license holders could also lead to abuse of power.	Section 29 of the Act provides for an appeal mechanism	ONLINE
	Second Schedule	There is potential for high licensing fees for certain categories, such as virtual reality, mobile cinema, and video game	The proposed fees have been reduced by 15% and have been banded to allow or market entry.	

		shops, which could discourage smaller businesses from entering the market.		
		Provide clarity on the Regulations will enforce foreign entities that offer films to Kenyan viewers over the internet.	The Films and Stage Plays Act obligates all exhibitors and distributors to comply with the provisions.	
	General Comments	The Regulations do not address the issue of piracy, which is a significant problem in the industry.	The aspect of piracy is within the purview of the Kenya Copyright Board under the Copyright Act. The Board shall however endeavour to escalate the issues raised to the Copyright Board.	ONLINE
		Streamline the licensing process to reduce the regulatory burden on filmmakers and distributors by reducing number of forms and allowing online applications and payments.	The forms have been enhanced to streamline the application processes. Further, as an administrative measure, the Board has developed an online portal for ease of doing business for the stakeholders.	
		Allow flexibility of the Regulations in terms of types of films to be distributed and exhibited for diversity.	The Board cannot prescribe the types of films. The mandate is to ensure that these types of films are aligned with the provisions of the Films and Stage Plays Act and any other applicable law.	

		Encourage growth of local content by providing incentives for the production and distribution of local content through tax breaks/ other financial incentives.	This is a mandate undertaken by the Kenya Film Commission. The Board shall however endeavour to escalate the issues raised to the Copyright Board.	
9		The Board's requirement to pay twice for screening if you don't want a screen for your film to be clarified.	This submission is not clear	KISUMU
10		The Board to expound on the applicability of Ksh.2000 exhibition license fee charged for a movie show. Whether it applies to one screen or multiple screens.	This fee is applicable per premise	KISUMU
11		KFCB to come out clear if it issues licenses to movie downloading sites.	The Board licenses all exhibitors and distributors	
12		KFCB to clarify if filmmakers are required to pay for screens during film premiers.	The exhibitor is responsible for complying with the provisions of the Act.	KISUMU

13		Section of the law that mandates the Board to regulate matatu business in Kenya	The Board does not regulate the matatu business, it only licenses public exhibition of content as per the provisions of The Films and Stage Plays Act	EMBU
14		Fees clarification on whether outdoor screening attract/need a license	The Films and Stage Plays Act obligates all exhibitors to obtain a license.	EMBU
15	Film Distributors and Exhibitions Regulations	Concern on obscene content on Public Service Vehicles	The Act requires that all Content exhibited in the country be classified for age suitability. The Board carries random inspections to ensure content being exhibited is compliant. However members of the public are encourage to report incidences of inappropriate content.	MOMBAS A
16	Film Distributors and Exhibitions Regulations	The Board to clarify if there are any license fees changes on movie shops	Yes, the second schedule proposes an increase of Ksh 2,000	MOMBAS A
17	Film Distributors and Exhibitions Regulations	The Board should review fees charged to Cinema Theatre owners. They are exorbitant.	Cinema theatres are commercial entities whose operations fall outside the purview of the Board mandate.	MOMBAS A
		Proposal for the Board to aid filmmakers when launching films as the cinema charges are deemed to be	Cinema theatres are commercial entities whose operations fall outside the purview of the Board mandate.	

		high for filmmakers		
18	Film Distributors and Exhibitions Regulations	Proposal to have the fee reduced to 7,500. There are concerns on the exhibition screens in theatres from 10,000 to 15000 per screen.	The proposed fee of Ksh 25,000 will be for 2-3 screens. We shall retain the fee of Kshs 10,000 for one screen	MOMBAS A
		Proposal to reduce the annual theatre license	The proposed annual license fees have been reduced	
19		KFCB is inconsistent with its fees. Ksh.2000 and 5000	This submission is not clear	NAIROBI
20		Provide a mechanism of supporting movie shops since they small entities and any additional fees would cripple the industry.	The proposed regulations have taken into consideration this concern	NAIROBI
		Fees charged by KFCB are punitive. They should be reduced.	The proposed regulations have taken into consideration this concern	
21		Provide an update on the Regulations that address the evolving landscape of film distribution, streaming services, and online content. Pushing stickers on us is unfair.	The proposed regulations have taken into consideration this concern	NAIROBI

22		KFCB should not Censor businesses. Audiences should be given the freedom to choose what they wish to watch.	The mandate of Board is to ensure that all provisions of the Act are adhered to. Further freedom of expression of expression is not an absolute right.	NAIROBI
23		Restricting films locally but being accessible on platforms like Netflix is not favorable to cinema theatres. Impact on Commercial Viability: of cinemas is affected.	The Board takes note of this and will address the same to ensure compliance	NAIROBI
24		Covid recovery support by KFCB should be instituted because other sectors were supported but not Cinemas.	This is submission is well noted and will be escalated to the relevant authorities	NAIROBI
25		The Board to provide clarify on the place of stickers in the present technological era since they are outdated and should not be forced on us.	The proposed regulations have taken into consideration this concern	NAIROBI
26		The Charges on cinema screens are high and should be revised to support recovery of the industry.	The proposed fees seek to reduce the cost. For example, currently, it costs Ksh.20,000 for 2 screens but the proposed regulations will charge ksh.15,000.	NAIROBI

ANNEX III: PICTORIALS

1. Mombasa



2. Kisumu

REGULATORY IMPACT STATEMENT ON FILM DISTRIBUTION & EXHIBITION REGULATIONS, 2023



3. Embu



4. Nairobi

REGULATORY IMPACT STATEMENT ON FILM DISTRIBUTION & EXHIBITION REGULATIONS, 2023



REGULATORY IMPACT STATEMENT ON FILM DISTRIBUTION & EXHIBITION REGULATIONS, 2023

3. Comprehensive financial implications of the Regulations.

Implementation of the proposed set of Regulations will be Kshs. 36,596,981.00 annually. This cost will be borne by the Board to among other things, enhance the capacity of the current staff in nine(9) regional offices across the country and configuration of the system. Further, the costs will cater for stakeholder and public awareness coupled with continuous monitoring and inspection in order to enhance compliance with the Act.

Film Distribution & Exhibition		
No.	Item	Amount
1	Staff Awareness Programme	2,156,000
2	System Configuration	2,500,000
3	Monitoring & Inspections	2,095,000
4	Public Sens. Programmes	3,194,789
5	Daily Subsistence Allowances	11,503,096
7	Cost of Running Regional Off	2,645,000
8	Internet Services	1,000,000
9	Daily Subsistence Allowances	11,503,096
Total		36,596,981