



Discussion Document on the Review of the Classification Guidelines

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Film and Publication Board™

Head Office:

Eco Glades 2, 420 Witch Hazel Avenue,
Eco Park, Centurion, 0169
Private Bag X31, Highveld Park, 0169
Tel: +27 12 003 1400 Fax: +27 12 661 0074
Email: clientsupport@fpb.org.za



FPBZA



@FPB_ZA



@fpbza

We inform. You choose.

www.fpb.org.za

Cape Town:

301H - 9 Long Street, Cape Town, 8000 Tel: +27 21 418 3083 Fax: +27 21 418 2376

Durban:

Suite 4, Silver Oaks, 36 Silverton Road, Durban, 4001 Tel: +27 31 201 2509 Fax: +27 31 201 2158

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GLOSSARY

2D	2 Dimension
3D	3 Dimension
BBFC	British Board of Film Classification
CARA	Classification and Rating Administration
CBFC	Central Board of Film Certification
DVD	Digital Versatile Disc
ESRB	Entertainment Software Rating Board
FPB	Film and Publications Board
FTC	Federal Trade Commission
Inxeba	Inxeba – The Wound Film
JHB	Johannesburg
KFCB	Kenya Film and Classification Board
LFN	Low Frequency Noise
LSN	Language, Sex and Nudity
MOU	Memorandum of Understanding
PEGI	Pan European Game Information
PG	Parental Guidance
PPI Act	Protection of Personal Information Act 4 of 2013
Sexual Offences Act	Sexual Offences and Related Matters Act
SV	Sexual Violence
The Act	Film and Publications Act No. 65 of 1996
The Register	National Register for Sex Offenders
UK	United Kingdom
V	Violence
VHS	Video Home System
VSC	Video Standards Council
X18 Rating	Restricted Distribution
YRU	Youth Research Unit

1 EXECUTIVE SUMMARY

1.1 FPB Context

The purpose of the Film and Publication Board (“FPB”) is to *inter alia* provide consumer advice to enable adults to make informed viewing, reading and gaming choices for both themselves and the children in their care. Furthermore, the FPB is mandated to protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences. It was created to implement the objectives of the Films and Publications Act, as amended (Act No. 65 of 1996) (“the Act”) to regulate the distribution of films, games and certain publications. This is done by means of classification of content, by assigning age restrictions and providing consumer advice.

To this end, the FPB classifies films, interactive computer games and certain publications using Classification Guidelines that are approved by the Council of the FPB in consultation with the Minister of Communications (“Minister”). This is done pursuant to the provisions of section 4A (1) (a) of the Films and Publications Act 65 of 1996, as amended (“FP Act or the Act”) (“Classification Guidelines” or “Guidelines”). The Classification Guidelines that are currently in force were last reviewed in 2012 and subsequently published in October 2014. The FPB has commenced with the review of the Classification Guidelines; in undertaking this task, the Film and Publication Board is tasked with the important and complex responsibility of balancing the Constitution of South Africa, legal developments within South Africa, technological developments in the fast-changing media and publication space and international best practice against the views of citizens.

1.2 Research and Analysis

Over the years the FPB has conducted and commissioned extensive research, including annual Convergence Surveys, which test levels of convergence between the classification decisions of the Board and the expectations of members of the public in terms of societal values, norms and tolerance levels; and a study of the Impact of Media Content on South African children. It has furthermore conducted assessments of consumer complaints that it has received or noted in the public and has analysed the Appeals Tribunal rulings. In addition, the FPB has conducted desktop research on contemporary thinking in the fields of child development psychology, media studies, law and regulation.

This Discussion Document on the Review of the Classification Guidelines (“Discussion Document”) consolidates the above mentioned research and analysis that has been conducted, providing sound reflective guidance to the Films and Publications Board on the guideline review process. The purpose of this baseline document is to analyse and review the legislative and regulatory parameters, together with the research that has been conducted by the Film and Publications Board; against the current Classification Guidelines. This review is carried out in terms of the Board resolution to review the guidelines periodically, ensuring that the Classification Guidelines adhere to the prevailing legislation, regulations and the moral values of South African civil society. This is in line with a key part of the FPB’s mandate which is to carry out a national review of the Guidelines, to ensure that these are reflective of the moral values and tolerance levels of civil society.

This Discussion Document therefore:

- substantively analyses the relevant legislation and regulatory frameworks, including all complementary legislation and legal precedents and principles.
- extensively analyses the vast body of knowledge from which the FPB draws insights including FPB commissioned qualitative and quantitative research, Convergence Surveys, and media and informal public inputs
- Considers key foundational aspects that influence the classification framework including psychosocial child development theories and international benchmarking and best practice.

Taking into account the above, the report makes initial recommendations on the guideline review process going forward.

1.3 Summary of Findings

This Discussion Document finds high levels of convergence between the FPB’s classification decisions and societal norms, values, and tolerance levels during the review period. On the strength of this research, it is argued that there is no major justification for a major shift in approach in the current FPB Classification Guidelines as these are consistent with the mandate of the Film and Publications Act as well as the expectations of civil society. However, there are some pertinent questions that need to be considered to see if minor adjustments to the Guidelines need to be effected to keep them relevant and effective.

The Discussion Document identifies key questions arising from the research conducted which centre around issues of:

- Whether “blasphemy” and “imitable acts and techniques” should become mandatory advice instead of voluntary advice;
- Whether there is a need to highlight gender based violence or whether “Sexual Violence” and “Violence” adequately address the issues related to gender based violence;
- Whether a more stringent approach to the classification of violence and sexual conduct is needed;
- Whether the current age categories are clear, sufficient and correlate with the developmental models;
- How to better apply classification to cultural representation: and
- Whether the current age categories used by the FPB are reflective of society and development stages. Specifically looking at the 7-9 age category.

2 REPORT STRUCTURE

This Discussion Document starts with the overview of the report, i.e. its structure and objectives (Section 2 and Section 3), the envisaged public consultation process (Section 4) and the background and context for this study (section 5).

Given that this Discussion Document uses the current classification framework as the context for discussions going forward, Section 6 of this report provides an overview of the Classification Guidelines. Section 7 discusses the legal and regulatory context for the current and any future Classification Guidelines. Section 8 provides insight on FPB decisions taken in terms of the Guidelines by analysing them through the lens of the Appeals Tribunal and the public as demonstrated through formal complaints. These are instructive in informing the FPB on the interpretation and relevance of the Guidelines.

The analysis of FPB decisions is followed by an overview of key qualitative and quantitative research conducted on amongst others the impact of media on children, and recommendations arising therefrom. The research and Convergence Surveys conducted during the period since the Classification Guidelines were published provide an understanding of local views and attitudes. It is important to note that this Discussion Document has also considered research conducted to inform the previous review.

Section 10 provides some international benchmarks on approaches the classification from countries with similar and divergent approaches. Finally, all of the perspectives presented in sections 7 to 10 are consolidated in section 11 which sets out key issues arising from the

research and identifies key questions to be asked and considerations to be had in reviewing the Guidelines. This final section identifies areas where there are gaps, where the classification regime is lacking or where it requires strengthening or changing.

3 REPORT OBJECTIVES

This Discussion Document has several key objectives. It seeks to determine:

- (1) the **level of awareness** of the South African public regarding the Classification Guidelines and ascertain the extent to which the public agrees with the specified guidelines as well as assess the extent to which the public comply with the Classification Guidelines.
- (2) the **extent to which the guidelines set by the FPB regarding media content are reflective of the public's values and expectations.**
- (3) the extent to which the public is aware of the age ratings attributed to media content, and **the degree to which they adopt and apply the age ratings when making decisions relating to media consumption.**¹

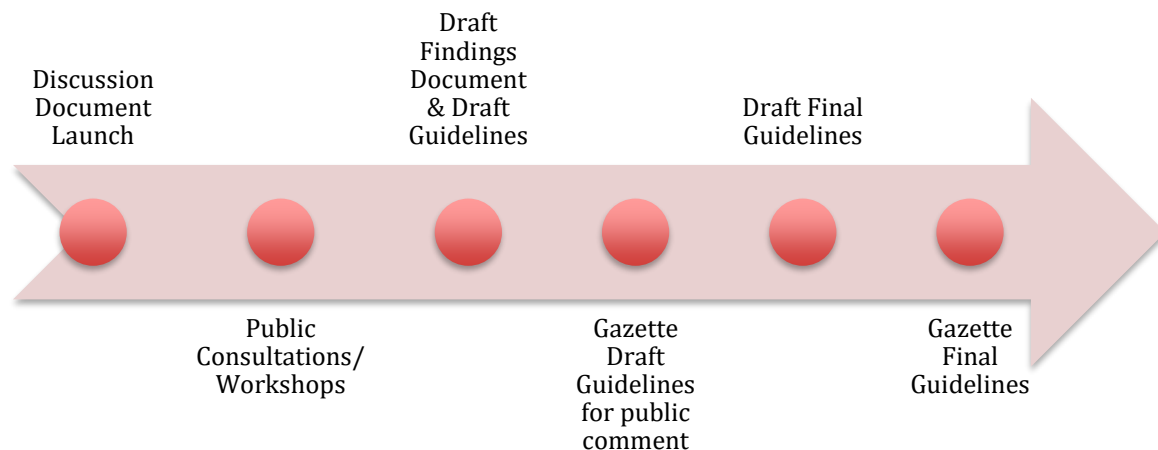
4 OUTLINE OF THE PUBLIC CONSULTATION PROCESS

Crucially, the process of revising the Guidelines is centred on public input. Being a public service entity, the Film and Publication Board takes seriously the need to involve all key stakeholders in matters that affect them as a direct result of our interventions. This includes ordinary members of society as well as key stakeholders in the media creation and distribution sector in South Africa.

The FPB reviews the Classification Guidelines periodically, and at least every 5 (five) years and requires the input of the public in order to perform this task adequately. Public consultations are central to this process – firstly to educate members of the public of the mandate of the FPB, and crucially to educate the public on the purpose of classifications (why the FPB classifies content and select elements and age advisories for this) and the meaning of classifiable elements (expanding on the research pertaining to impact).

¹ Convergence Report 2014 p4.

As members of the public are the primary beneficiaries of the Classification Guidelines, it is therefore of utmost importance that the public will be granted the opportunity to give input to the regulation of media content. Input will be received by the FPB, in writing, in response to this Discussion Document by the 27th of March 2018. The Consultation process is highlighted in the diagram below; the dates of regional consultations have also been broken down below:



Province	City/Town	Dates
Gauteng	Rosebank JHB	15 February 2018
Eastern Cape	Grahamstown	20 February 2018
Western Cape	Cape Town	21 February 2018
Northern Cape	Kimberly	22 February 2018
Free State	Bloemfontein	23 February 2018
Mpumalanga	Nelspruit	27 February 2018
North West	Rustenburg	06 March 2018
Limpopo	Polokwane	08 March 2018
Kwa-Zulu Natal	Durban	13 March 2018

After the inputs received have been consolidated and considered, the final draft of the Classification Guidelines will be compiled. It will incorporate the relevant aspects of submissions received from members of the public. A final draft of the Classification Guidelines will be submitted to the Council of the FPB and then to the Minister of Communications for approval.

5 BACKGROUND AND INTRODUCTION

The Film and Publication Board was created to implement the objectives of the Films and Publications Act, as amended (Act No. 65 of 1996) (“the Act”) to regulate the distribution of films, games and certain publications. This is done by means of classification of content, by assigning age restrictions and through providing consumer advice.

The FPB seeks to provide consumer advice to enable adults to make informed viewing, reading and gaming choices for both themselves and the children in their care. Furthermore, the FPB is mandated to protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences.

A key tool used by the FPB in executing its mandate is the Classification Guidelines. The Guidelines are informed by the Film and Publications Act, as amended, as well as the Film and Publication regulations of 2014 which have three principal objectives, i.e. to:

- provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care;
- protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and
- make the use of children in and the exposure of children to pornography punishable.

The Classification Guidelines which were last reviewed in 2012 and subsequently published in October 2014 aim to ensure:

- the consistent classification of material;
- that no content that is prohibited in terms of the Act is classified;
- that content created through the commission of a criminal offence is appropriately channelled to the relevant authorities by the FPB;
- that classification of material reflects public opinion;
- that material does not cause any moral harm in the category in which it was classified.

Although the legislation and regulations are not platform-specific, the FPB’s compliance and classification activities have, over the years, focused more on physical platforms and less on the online space, although recently this position has changed.

In making their decisions, the FPB’s classification committees seek to consistently apply the principle that in all matters concerning children, **the best interests of children are paramount** and therefore aim to strike a reasonable balance between the competing interests

and the protection of children from potentially disturbing, harmful and age-inappropriate material.

Historically, the Classification Guidelines have been reviewed every 2 (two) years and revised as deemed necessary. In 2013 the FPB Council resolved to extend the period of review from 2 (two) to 5 (five) years in order to allow for a period where the Board could assess whether there had been substantive changes in the values and norms of the South African civil society.

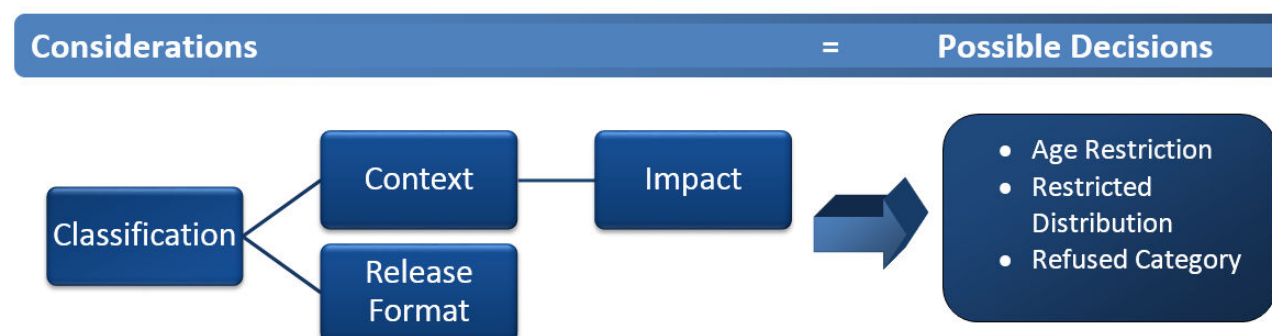
6 CLASSIFICATION GUIDELINES

This section of the Discussion Document considers the current Classification Guidelines and the classifiable elements set out therein, breaking down what each element is, what it means and the parameters within which it is applied. This is done to enable the public to understand the classifiable elements, which are fundamental to the Guidelines, in simple terms. By first outlining key elements of the Guidelines, this section provides context for the classifiable elements, bringing together the entire classification process. The classification Guidelines and classifiable elements frame the understanding for the research which is unpacked in the subsequent sections.

6.1 Current Classification Guidelines

6.1.1 Overview

The Guidelines require classifiers to determine an appropriate classification and assign appropriate consumer advice (if required) for various forms of material. The process set out in the Guidelines can be summarised as per the diagram below. It is furthermore unpacked in the remainder of this section.



Source: Pygma Consulting

6.1.2 Principles

The guiding principles of the Classification Guidelines currently in place are:

- All classification decisions must consider the context, impact and release format of the material;
- When considering context, the following factors should be taken into account:
 - The expectations of the public in general and the target market of the material;
 - The theme of the material
 - The manner in which an issue is presented
 - The literary, artistic, dramatic or educational merit of the film;
 - The apparent intention of the filmmaker, as reflected in its effect.

6.2 Classifiable Elements

Classifiable elements are indicated by alphabetic symbols or words and alert the public to particular elements which are noteworthy and may be potentially disturbing, harmful or inappropriate for children below a specified age or certain sensitive consumers.

Consumer advice should be indicated together with classification information on the outside of all material as applicable:

“B” provides a warning to consumers that are religiously sensitive;

- Blasphemy is not treated as a classifiable element determining age restrictions, but as a matter of appropriate consumer information if it has a moderate, strong, very strong and extreme impact. Within the context, the taking of God's name in vain, in any religion, may amount to blasphemy. The sensitivities of certain religions, especially with regard to precepts and practices which may be unique to certain religions, should be noted appropriately.
- An expression which does not amount to blasphemy, but which may constitute religious prejudice is a classifiable element and must be considered in the allocation of an appropriate age-restriction.
- Any advocacy of hatred and constituting incitement to cause harm towards any recognized religion is not regarded as blasphemy but prejudice; it is a classifiable element and must be regarded as having a very strong impact and may be subject to a distribution restriction or be considered as refused material.

“Competitive Intensity,” which is applied in the context of gaming, alerts the public to the degree to which a player gets personally involved and the level of excitement created by the rivalry to obtain rewards:

- The level of competitive intensity in a game, to the extent that it is linked to violence, must be treated as a classifiable element to determine age restrictions when appropriate.

- Higher levels of competitiveness of games involving violence may result in very high aggression levels than less competitive games involving violence and is therefore a factor that must be considered in the determination of an age restriction.

- Competitive intensity is heightened by the degree of interactivity of a game.

“Criminal Techniques” alerts to instructional details of illegal or dangerous acts;

- Criminal techniques and instructional details of illegal or dangerous acts must be treated as a classifiable element to determine age restrictions and may require very high age restrictions depending on the context

“D” alerts to scenes of substance (drugs and alcohol) abuse;

- Any scenes of substance abuse are classifiable elements and must be considered in the allocation of an appropriate age-restriction.
- Regardless of the level of age-restriction, the public must be alerted to the occurrence of substance abuse of a moderate, strong or very strong impact where applicable.

“H” alerts that there are scenes of horror;

- Any scenes of horror of a moderate, very strong and extreme nature are classifiable elements and must be considered in the allocation of an appropriate age-restriction.

“Imitable² Acts and Techniques”

- Imitable acts and techniques may be treated as a classifiable element to determine age restrictions where there is a reasonable likelihood that such acts or techniques may be copied or imitated, especially by children;
- Imitable acts and techniques may be voluntarily indicated and is not mandatory advice.

“L” alerts that there is use of strong language;

- The use of strong language is a classifiable element and must be considered in the allocation of an appropriate age-restriction.
- Regardless of the level of age-restriction, the public must be alerted of the occurrence of strong language of a moderate, strong or very strong impact where applicable.

“N” warns that there are scenes of nudity;

- Regardless of the level of age-restriction, the public must be alerted to the occurrence of nudity of a mild, moderate, strong or very strong nature where applicable;
- Nudity in natural non-sexual contexts, such as breast-feeding, and bona fide cultural traditions are not considered in the allocation of age-restrictions but must be advised if it is of a mild, moderate, strong or very strong impact;

² The legislation inadvertently refers to imitative acts instead of imitable acts – it is the intention of the FPB to correct the terminology.

- The deliberate flaunting of a person's sexuality or the undue exposure of intimate parts is a classifiable element and must be considered in the allocation of an appropriate age-restriction based on the impact.

“P” warns of scenes or language that is biased or prejudiced with regard to race, ethnicity, gender, religion, sexual orientation or other group-identifiable characteristics;

- Any scenes or language of prejudice are classifiable elements and must be considered in the allocation of an appropriate age-restriction;
- Any advocacy of hatred and constituting incitement to cause harm based on prejudice, must be regarded as refused material. Regard must be had on the community tolerance levels in the use of words such as “Nigger” or “Kaffir” etc. particularly sensitive viewers.

“S” indicates scenes involving sexual conduct;

- Any mild, moderate, strong, very strong or extreme impact scenes of sexual activity or consensual sexual conduct are classifiable elements and must be considered in the allocation of an appropriate age-restriction or be subjected to a distribution restriction;
- Any scenes of consensual explicit sexual conduct must be regarded as having a very strong or extreme impact and classified appropriately;
- Any scenes of non-consensual sexual conduct must be subject to restricted distribution (extreme impact) or regarded as refused material.

“SV” indicates scenes involving sexual violence;

- Any scenes of sexual violence are classifiable elements and must be considered in the allocation of an appropriate age-restriction;
- Any scenes involving implied sexual violence must be regarded as having a moderate, strong or very strong impact where applicable and must be classified appropriately;
- Any scenes involving actual sexual violence must be subject to restricted distribution (extreme impact) or be regarded as refused material.

“V” warns of violent scenes;

- Regardless of the level of age-restriction, the public must be alerted to the occurrence of violence of a moderate, strong or very strong impact;
- Any scenes of extreme violence must be regarded as having a moderate, strong or very strong impact where applicable and must be classified appropriately;

“PPS” warns of Photo or Pattern Sensitivity, motion sickness and reactions to low frequency sound;

- It is recognised that the exact nature the stimulus or stimuli that triggers seizures of flicker vertigo for photo or pattern sensitivity varies from one person to another, as does the nature of the effect, therefore it is not treated as a classifiable element determining

age restrictions but as a matter for appropriate consumer information provided on a voluntary basis.

- As a general guide, the patterns are usually very high in luminance contrast (bright flashes of light alternating with darkness, or white bars against a black background) and flash more than 3 times in any 1 second.
- Motion sickness occurs when motion is detected by the visual system and hence the motion is seen, but no motion or little motion is sensed by the vestibular system (i.e. bouncing-camera movies). Similar to motion sickness is simulation sickness, or simulator sickness but is caused by playing computer/simulation/video games (i.e. first-person-perspective games and virtual reality setups). It is recognized that it may be identified subjectively and is not treated as a classifiable element determining age restrictions but as a matter for appropriate consumer information provided on a voluntary basis.
- Low frequency noise (LFN) is generally taken to mean noise below a frequency of about 100 to 150 hertz. It is recognized that a low-frequency signal can go from being barely audible to annoying with a relatively small change in pressure level and that it may be identified subjectively and is not treated as a classifiable element determining age restrictions but as a matter for appropriate consumer information provided on a voluntary basis;
- Photo or pattern sensitivity, motion sickness and reactions to low frequency sound may be indicated voluntarily and is not mandatory advice.

6.3 Classifiable Categories

The impact of classifiable elements may increase in intensity according to frequency of occurrence, realism, detail, techniques used, and nature of theme, bona fide status, verbal references or visual presentation of sexually-related activity, sexual conduct or violence.

Impact may be assessed in terms of the following categories:

- No (A) – there are no classifiable elements in the film that justify a restrictive age classification.
- Low (PG):
 - No significant single or cumulative occurrences of classifiable elements;
 - Classifiable elements are not realistic;
 - Limited accentuation techniques such as lighting, perspective and resolution;
 - The material is not threatening, disturbing or harmful;
 - The theme causes no moral harm.

- Mild (7-9 PG and 10)
 - Limited occurrences of significant classifiable elements;
 - Classifiable elements may be realistic;
 - Limited accentuation techniques such as lighting, perspective, and resolution;
 - The material is not threatening, disturbing or harmful;
 - The theme causes no moral harm.
- Moderate (10 – 12 PG and 13)
 - Single or cumulative occurrences of classifiable elements;
 - Occurrences of significant classifiable elements may be realistic;
 - May contain accentuation techniques such as lighting, perspective and resolution;
 - The material maybe threatening, disturbing or harmful to children aged 13 or younger
 - The theme causes no moral harm to children aged 13 or older;
 - Verbal reference, but no visual presentation of certain classifiable elements such as sexually-related activity, sexual conduct or violence with no noticeable effect;
 - Classifiable elements form part of a bona fide story line.
- Strong (16)
 - Single or cumulative occurrences of significant classifiable elements;
 - Occurrences of classifiable elements may be realistic;
 - May contain details, close-ups or slow motion of sexually-related activity, sexual conduct or violence;
 - May contain accentuation techniques such as lighting, perspective and resolution of sexually-related activity, sexual conduct or violence;
 - The material maybe threatening, disturbing or harmful to children of 16 and younger;
 - The theme may not cause moral harm to children of 16 and older;
 - Verbal reference or visual presentation of certain classifiable elements such as sexually-related activity, sexual conduct or violence which may have an impact;
 - Classifiable elements form part of a bona fide story line.
- Very strong (18)
 - Single or cumulative occurrences of classifiable elements;
 - Occurrences of classifiable elements may be realistic;
 - May contain graphic details, close-ups or slow motion of sexually-related activity, sexual conduct or violence;
 - May use accentuation techniques such as lighting, perspective and resolution;

- The material may be threatening, disturbing or harmful to children;
 - The theme may cause moral harm to children;
 - Verbal reference to or visual presentation of certain classifiable elements such as sexually-related activity, sexual conduct or violence, but not explicit sexual violence
 - Classifiable elements do not necessarily form part of a bona fide story line.
- Presumptively harmful:
 - Contains elements listed under refused classification, XX or X18.

The release format of the material, including online content, must be considered based on its impact and with regard to the following:

- The ability to replay scenes;
- The likelihood that certain scenes will be viewed out of context;
- The clarity of images;
- Interactivity with an unknown third person; and
- The impact of technology such as 3D.

The above summarises the Classification Guidelines and Classifiable Elements as they are currently implemented. Readers are encouraged to refer to the Classification Guidelines at <http://www.fpb.org.za/wp-content/uploads/2016/10/Classification-Guidelines.pdf> for further detail. The summary in this section merely provides context to the analysis in the section below which focuses on the legal and regulatory implementation.

6.4 History of FPB Classification Decisions

This section of the Discussion Document provides an overview of the outcomes of the application of Classification Guidelines thus providing regulatory context to the legislative review and the research conducted.

During the 2015/16 financial year, FPB classified a total of 2 306 (two thousand three hundred and six) pieces of classifiable material for distribution in the South African market. This number dropped slightly in 2016/17 financial year with the FPB classifying a total of 1 869 (one thousand eight hundred and sixty-nine) titles. Of this material submitted in 2016/17, 62 titles were rejected for non-compliance.

This report considers 2015/16 data given that it is the year for which the largest sample size of classifiable material is available during the period under review. Based on an analysis of the content that was classified in 2015/16, the following classifiable elements were identified:

- **Violence** – Twenty-two percent (22%) of the titles that were considered contained scenes of violence. The levels of violence varied according to age categories. According to the FPB Classification Guidelines, scenes containing elements of violence or any classifiable elements cannot be provided with an A rating.
- **Language** - Language tends to be the second most prevalent classifiable element identified in movies classified by the FPB. Language accounted for 20.7% of the classifiable elements identified in 2016/17. Like violence, it is not permissible on A rated movies as such content is deemed to have no classifiable elements and is suitable for all viewer. Language is permitted in PG rated movies progressing outward, the FPB guidelines do however stipulate the levels of intensity permissible for each age category.
- **Sexual violence** - The incidences of sexual violence identified in movies classified were fairly low in comparison to sex and nudity, with the total percentage standing at 5.5% from the total number of materials submitted at FPB in 2016 and 2017. Sexual violence is a fairly new element that was introduced further to the 2012 Classification Guidelines review conducted by FPB. The element was included as a recognition that sexual scenes that are accompanied by force or coercion (actual or threatened) or those that induce fear or psychological trauma on a victim may have a different impact from scenes that portray sexual activity, sexual conduct or explicit sex. It is important to note that material where sexual violence is provided as consumer advisories means the sexual violence is *implied*. Any scenes showing *actual* sexual violence would result in an X18 rating (restricted distribution) or refused classification, as would be the case with child pornography.
- **Sexual Conduct** - In 2015/16, nearly 6 percent (5.7%) of the consumer advisories issued was of scenes containing sexual conduct. Sex as a classifiable element indicates to consumers that a movie may contain scenes which include sexual conduct. 'A' rated movies should not contain any scenes that include sexual conduct, with PG rated content containing scenes with low intensity. The intensity progresses upward, dependent on the age rating.
- **Nudity** - In the year of focus, the level of nudity identified was relatively low and nudity accounted for about three percent (2.8%) of consumer advisories allocated by the FPB. As with all classifiable elements, the rating for the level (in this case, of nudity) within a movie is largely dependent on the level of intensity a particular scene may contain. The

Guidelines specify that nudity in natural forms such as breastfeeding and cultural traditions is not considered when applying this classification decision.

7 LEGISLATIVE AND REGULATORY ANALYSIS

7.1 Legislation informing the Current Classification Guidelines

There is a vast amount of legislation that governs and has an impact on the FPB in general and the Classification Guidelines in specific both directly and indirectly. It is important to understand that legislation reflects society's norms and values in the specific provisions for two main reasons:

- The first is to ensure that there is harmonisation between the Guidelines and the various pieces of legislation.
- Secondly, it is a more formal reflection of some of the views of citizens. Due to the nature of the legislative process, which according to the fair administration of justice requires a public comment process and often public hearings, it reflects to some extent the views of interested parties, representing the public.

During the previous review of the Guidelines, the following pieces of legislation were considered to inform the drafting and content:

- Constitution of the Republic of South Africa Act 108 of 1996, as discussed above
- Promotion of Access to Information Act 2 of 2000;
- Promotion of Administrative Justice Act 3 of 2000;
- Protection of Personal Information Act 4 of 2013;
- Children's Act 38 of 2005;
- Commission of Gender Equality Act 39 of 1996;
- Animals Protection Act 71 of 1962;
- Animals Matters Amendment Act 42 of 1993;
- The Performing Animals Protection Act 24 of 1935;
- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000;
- Consumer Protection Act 68 of 2008;
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 38 of 2007;
- Electronic Communications Act 36 of 2005
- Electronic Communications and Transactions Act 25 of 2002
- Prevention and Treatment of Substance Abuse Act 70 of 2008
- Civil Union Act 17 of 2006

- Films and Publications Act 65 of 1996
- Films and Publications Amendment Act 34 of 1999
- Films and Publications Amendment Act 18 of 2004
- Films and Publications Amendment Act 3 of 2009.

7.1.1 Films and Publications Act

The Film and Publication Board is guided by the Films and Publications Act, regulations issued in terms thereof and in particular the Classification Guidelines, which require that all films, games and publications be classified by the Film and Publication Board's Classification Committee before they are distributed either for sale, hire, exhibition, or publication in South Africa. Once classified, the distribution of this material is subject to the conditions as may be imposed by the FPB from time to time.

7.1.2 The Constitution

The Classification Guidelines seek to balance the following Constitutional rights:

- Access to information;
- Freedom of expression;
- Freedom and security;
- Freedom of association;
- Right to human dignity;
- Equality; and
- The protection of children, specifically from exposure to potentially disturbing, harmful, and inappropriate material; and from sexual exploitation both in published and audio-visual content.

Importantly, consideration of section 36 of the Constitution is critical for the FPB to effectively perform its mandate, as it supports the responsible exercising of the rights listed above. It provides for the limitation of rights where appropriate and entitles the FPB to take certain decisions to restrict distribution or to refuse classification.

7.1.3 Relevant legislation revealing trends and shifts in society's views

In addition to providing the legal context for the Guidelines, the legislative review is critical in informing the FPB of the trends regarding society's views, as captured in law, over the last few years. Accordingly, the legislation considered in the previous review raised a number of pertinent issues that revealed a definitive shift in society's views over the preceding years. From a legal analysis it is clear that South African society has become more open and more

tolerant of various personal and lifestyle options. The legal framework is human rights based and enables people to elect to live their lives in a manner that deviates from what is considered tradition, for example this is reflected by the recognition of same gender marriage set out in the Civil Union Act.

Another societal shift that is revealed through the legal analysis is that there is a growing consciousness of the realities of our times to the extent that substance abuse (the Prevention and Treatment of Substance Abuse Act 70 of 2008) and child pornography (the Children's Act 35 of 2005, Electronic Communications and Transactions Act 25 of 2002) are critical issues of concern in modern society. These are not only South African specific concerns, but globally countries are grappling with the challenges of substance abuse and child pornography. In particular, since substance abusers are getting younger and younger, with reports of primary school addicts, recent legislation makes specific provision on how to deal with children abusing substances such as drugs and alcohol.

Child pornography, which falls within the category of child abuse is another area of concern reflected in the drafting of legislation that has moved to prominence. The Children's Act includes explicit provisions to protect children from abuse with measures such as the creation of the National Child Protection Register. Legislation such as the Electronic Communications and Transactions Act, as an example, also recognize that the fight against child pornography should be fought at various levels. For that reason, certain requirements are placed on internet service providers to report instances of child pornography that are found on the services and platforms that they host.

Other vulnerable persons such as persons with disabilities and in particular persons with mental and cognitive disabilities are also recognized by legislation. The needs of this segment of the population are addressed in legislation such as the Children's Act, the Consumer Protection Act, the Sexual Offences and Related Matters Act as well as the Promotion of Equality and Prevention of Unfair Discrimination Act.

The Sexual Offences and Related Matters Act, as amended and Children's Act, as amended function together and aim to support each other in the areas of protection of children and vulnerable members of society. Of critical importance during the formulation of the current Guidelines is that the 2007 amendment created statutory recognition and clear definitions of concepts such as rape, and sexual assault. The two Acts also place a duty to report child abuse, sexual offences, and acts of family violence against children and persons with psychological disabilities. The Sexual Offences and Related Matters Act deals with sexual

abuse against children and persons with psychological disabilities. Under the Sexual Offences and Related Matters Act a person who has knowledge that a sexual offence has been committed against a child or a person who is psychologically disabled must report such knowledge immediately to a police official. Failure to report in terms of the Act amounts to a criminal offence and the convicted person may be liable to a fine or imprisonment.

Since the FPB's last review of the Classification Guidelines, a critical amendment was made in Sexual Offences and Related Matters Act, No. 5 of 2015. This amendment is discussed in the section on legal developments since the current Guidelines were published, below in section 7.2.

7.2 Legal developments since the publication of the Guidelines

This section considers the legal context provided in section 7.1, wherein the legislation informing the current Guidelines is set out, and highlights developments since the current Guidelines were published which may inform this review. It discusses:

- Relevant legislative amendments since 2012.
- Relevant judgements that may have implications on the review of the current guidelines.
- Insights arising from an analysis of the history of Classification Decisions (2015/16), which highlights the period's most classified elements.
- the manner in which legislation and regulations have been implemented, in comparison to citizen and industry views and expectations.
- relevant research which has informed the FPB on consumer and industry behaviour and how this research has translated its findings in the Tribunal Judgements. The analysis delves into the various factors on which reviews are premised, such as release format and classifiable elements.

7.2.1 Sexual Offences and Related Matters Amendment Act

As previously mentioned in section 3.3 on the legislation informing the Classification Guidelines, during the period of existence of the Guidelines, a critical amendment was made in the Sexual Offences and Related Matters Amendment which actioned two Constitutional Court judgements namely the Teddy Bear Clinic case and the Case of S v J.

Teddy Bear Clinic Case

In the Teddy Bear Clinic case, the Constitutional Court found that sections 15 and 16 of the Sexual Offences and Related Matters Act ("Sexual Offences Act") were inconsistent with the Constitution and therefore unconstitutional. The primary objective of sections 15 and 16 of the

Sexual Offences Act was to protect children between the ages of 12 and 16 against predatory adults, and this remained unchanged by the Constitutional Court judgement. However, the Court found that where children in this age group engaged in consensual sexual activities (penetrative or non-penetrative) with each other, this should not be criminalised.

It is important to note that the age of consent remains unaffected by the Constitutional Court judgement and that the Sexual Offences Act still prevents children under 12 from consenting to sexual acts at all. The finding relates simply to criminalisation, i.e. consensual activity in this age group would not be criminalised.

S v J case

Hitherto, the names of all convicted sex offenders have been automatically included in the National Register for Sex Offenders. In the case of S v J, J was a child who had been convicted of sexual offences against other children. In terms of the Sexual Offences Act, his name was supposed to be automatically included in the National Register for Sex Offenders (“the Register”); however, the High Court, when reviewing the case, questioned the automatic inclusion if the offender was a child when the offence was committed, and the Constitutional Court later found the provision to be unconstitutional in that instance. As a result of the judgment, automatic inclusion should not happen, and a child offender should be permitted to address the Court on whether the particulars should be included in the Register. In addition, provisions were included to expunge the criminal records of children already convicted whose names were in the Register.³

These developments arising from the Teddy Bear Case and the S v J case represent a broadening of the approach to considering sexual offenses involving children. They recognise the notion of consensual sex between minors. They also recognise that a minor having non-consensual sex with another minor is conducting an offence but does not need to automatically carry the burden (i.e. the inclusion on the National Register for Sex Offenders) for their adult lives. Thus, weighing the balance between protecting children as victims and as offenders.

7.2.2 Protection of Personal Information Act

Since the previous review, the Protection of Personal Information Act 4 of 2013 (“PPI Act”), was promulgated, although it is not fully in effect yet. This legislation promotes the protection of personal information by public and private bodies. The PPI Act is particularly relevant to the Online Content Regulation Policy published by the FPB⁴ as it relates to user generated

³ <http://www.justice.gov.za/legislation/acts/2007-032.pdf>

⁴ <http://www.fpb.org.za/wp-content/uploads/2016/08/online-content-regulation-policy-2016.pdf>

content, and this requires further engagement between the FPB and the Information Regulator that has been established in terms of section 39 of that Act. The PPI Act furthermore reflects the trend in terms of legislation making, of exercising more control over and access to information. It is clear that society values its right to access to information and it is a right that is also written into the Promotion of Access to Information Act, Consumer Protection Act, Electronic Communications and Transactions Act, Electronic Communications Act, Prevention and Treatment of Substance Abuse Act, Civil Union Act and the Films and Publications Act. Legislative developments point towards a society that is concerned with the way in which access to information would influence their decision-making process.

7.3 Legal and Regulatory Review Findings

Since the current Guidelines were published, the review of legislation has revealed that the main shifts that have been observed that are relevant to the FPB's work relate to:

- The treatment of children involved in consensual sex, which has been de-criminalized;
- The treatment of children who are found guilty of sexual offenses against other children – this change could indicate a shift in the perceptions of sex, violence and the treatment of minors, especially children aged 13 to 16; and
- The confirmation that society values its right to access information, although legislation is taking more control over such access.

8 ANALYSIS OF FPB DECISIONS BASED ON THE CURRENT GUIDELINES

8.1 Appeal Tribunal Judgements

To guide the review of the Classification Guidelines, the FPB draws insights from the Appeal Tribunal judgements. The broad mandate of the Appeal Tribunal is to hear appeals against classification decisions made by the classification committees in respect of publications, films and games. The Appeal Tribunal determines whether, on the merits, the correct decision has been made by an FPB classification committee. It adjudicates over appeals against the classification decisions of the Board lodged by members of the public through the Minister and by distributors and exhibitors directly to the Board should they not be satisfied with a classification decision allocated. The Appeal Tribunal is an independent quasi judiciary body which executes its mandate in terms of section 5 (3) and (4) of the Act. It is required by the Films and Publications Act to be independent and to carry out its functions without any bias. The decisions of the Appeal Tribunal are made in terms of section 20 (5) of the Films and Publications Act and are considered decisions of the FPB – they are thus final.

Over the years the Tribunal has given insight in respect of the interpretation of the Classification Guidelines and the Act within the wider context of the Constitutional principles of administrative justice. The number of appeals can be used to gauge industry satisfaction with the FPB Classification decisions.

The Appeal Tribunal rulings for the period 2012 to 2016 provide legal precedents, principles and valuable insights in respect of the interpretation and application of the Act and the Guidelines within the broader context of the constitutional principles of administrative justice. Furthermore, this has contributed to deeper insights in terms of establishing societal norms and values through adducing expert evidence on child development and the impact of specific content on children. The appeals that have been upheld are a critical gauge in assessing the credibility, consistency, validity and reliability of the interpretation and application of the Guidelines by classifiers in the classification decisions of the FPB Board.

During the period that the current Classification Guidelines have been in place, 12 (twelve) appeals were lodged. In these judgements, it was confirmed that

"The Guidelines, as the term suggests are meant to guide and structure the exercise of the discretion of the classifiers. In order to ensure consistency, it is important that the guidelines be abided by and applied in a sagacious manner." Accordingly, classification decisions made must be objectively justifiable.

Individual Content Considered	Classifications retained	Classifications adjusted upwards	Classifications adjusted downwards
12	3	1	8

Of the 12 (twelve) appeals, in only 3 (three) cases were the classifications retained, in the majority (8) the classifications were adjusted downwards. In the 2016/17 financial year only two appeals were lodged with the Appeal Tribunal; this constant decline in the number of appeals lodged could largely be attributed to the broad acceptance of the FPB's classification guidelines and the improved implementation thereof.

The appeals provide the following useful guidance to the FPB regarding the improvement of classification decisions focusing on (1) the classification approach and (2) release formats (3) particular classifiable elements such as violence (4) nudity (5) sexual violence and (6) child pornography. Each is discussed in turn below.

8.1.1 Classification Approach

Based on the outcomes of the various appeals, the following can be deduced:

- The classification to be assigned must be the least restrictive one to protect children in the relevant age group.⁵
- The test is whether the intensity and frequency of the classifiable element is such that it could be disturbing or harmful to children of a particular age group or prematurely expose them to adult experiences.⁶
- Classification committees must conduct due inquiry before assigning a restrictive rating in a two-step process: firstly, establish if the content is reasonably likely to be harmful or disturbing to children; and secondly, if deemed so, consider the appropriate classification to prevent harm.
- It was recommended that FPB conduct empirical research in South Africa and make available international research findings on establishing jurisdictional harm to children in specific developmental ages in terms of the objectives of the Act so that Appeal Tribunal and the Board are able to ensure decisions made within this context are objectively justifiable and are not an intuitive reaction based purely on subjective experiences.
- In the case of the classification of games, in terms of section 18(4) of the Act, the classification committee is legally obliged to examine any games that it classifies itself and not assign a rating only to the trailer of a few minutes. This is because a brief trailer may be innocuous while the actual full-length game, which could constitute over 200 hours of interactive game play is different. It is not legally permissible for the FPB to examine the trailer and classify the game without in any way engaging with it.⁷
- The importance of using context was highlighted as critical as an un-contextual approach could render the outcomes and conclusions different from a contextual analysis. The context provides the prism through which the various scenes are assessed. Context must be assessed taken into account the expectation of the public in general, target market, manner in which issue is presented, bona fide merit of film, intention of filmmaker as reflected in the effect.⁸

⁵ SAFE HOUSE (Film - 2012)

⁶ Supra

⁷ THE SECRET WORLD – GAME (2012)

⁸ SKYFALL –FILM (2012)

- Themes are only relevant if they are disturbing, harmful, upsetting or inappropriate for children. Whether the harm in themes of returning to homeland, solidarity, courage and loyalty would be upsetting, harmful or disturbing to children, could not be determined by the Tribunal. In fact, such themes (in the particular film) if properly analysed could be inspirational and could be positively beneficial and reaffirming to children. Classifiers must engage a more involved inquiry to conclude if such themes are harmful.⁹
- “It is apparent that in terms of the 2012 Guidelines, regard must be had to a triad of assessments; context, impact, and the release format of the material. It is the cumulative assessment of all three categories that will result in a fair and appropriate outcome.¹⁰

8.1.2 Release Format

With respect to release format, the appeals undertaken in the period, produced one major finding which relates to content presented in a 3D format. The Appeals Tribunal concluded must that 3D content must be assessed separately from the same content in a 2D format as follows:

- There must be a clear appreciation that films in 3D format can have much greater impact than 2D films; and this factor must be taken into account, together with context and impact, to determine the appropriate classification. The reason for the release of a film in 3D format is to ensure ***a heightened impact and a more interactive experience***. The only way in which the full impact of a 3D film can be assessed is if the film is viewed in 3D format. If a film is only viewed in 2D format, a full and proper assessment of the release format cannot be made in respect of the 3D version of the film. The practice of viewing, assessing, and classifying the 2D version of a film and then automatically assigning that classification to 3D versions of the film appears to be contrary to the 2012 Guidelines.¹¹

8.1.3 Violence

The judgments on violence stated that in relation to violence and children, the explicitness of the portrayal is key; and the test should be a ‘typical’ child, as set out below:

- (The FPB should) assess individually and cumulatively if scenes of violence or any other classifiable element may be disturbing and harmful to children under the assigned age in justifying the rating assigned.¹²
- “The explicitness of the portrayal of the violence and its consequences and effect will have a direct bearing on the classification assigned. If the scenes anticipate impending

⁹ THE HOBBIT – AN UNEXPECTED JOURNEY 2D FILM

¹⁰ Supra

¹¹ THE HOBBIT – AN UNEXPECTED JOURNEY 3 D VERSION FILM (2012)

¹² SAFE HOUSE (Film - 2012)

violence, but the violence is not actually portrayed – or the aftermath of the violence, without bloody detail is depicted then different considerations apply. Filming techniques are used to convey the message that violence has occurred or is about to occur without depicting the violence itself. If the violence is not explicit, or if the consequences are not clearly portrayed and there is no gore and no blood, then the scenes must be assessed in the light of the context of the film as a whole, before a determination is made.¹³ In the case of the film to which this comment is applied, the film was not considered violent in terms of the definition provided in the Guidelines.

- The classification cannot be based on what a sensitive child or a fastidious adult would find intolerable, but rather on what a typical child of that age could tolerate. Classifiers cannot deny a typical child the opportunity to see (this) film simply because a sensitive child of the same age group may be offended or may find some of the scenes intolerable.¹⁴ Thus, in this particular case, classifiers submission that there was a possibility that these scenes where violence is portrayed as fantastical and unrealistic would be disturbing and harmful to “sensitive viewers” is not the correct test.

8.1.4 Nudity

An analysis of the findings on the appeals related to nudity highlights that nudity in relation to children cannot be looked at using a blanket approach, as follows:

- It is not sufficient to conclude that nudity is presumptively harmful to children as bona fide works of art will in that case be restricted to children. “A more nuanced test must be adopted, requiring a conclusion based on reasonable grounds that it is more probable than not that (the painting) would be disturbing or harmful to children. The mere fact that nudity may possibly be age-inappropriate will not succeed, and neither can it be assumed that that any nudity in art will be disturbing and harmful to children.” Hence on a balance of probabilities reasonable grounds must exist for such conclusions.¹⁵

8.1.5 Sexual Conduct

On sexual conduct, the appeals during the period under review considered two issues, namely (1) that sexual conduct must appeal to erotic or prurient interests, and (2) that in some cases, an appropriate advisory together with adult presence would be sufficient to deal with concerns about a scene:

- In defining pornography and child pornography the legal precedent set in the *De Reuck v Director of Public Prosecutions* (WLD) 2004 (1) SA 406 (CC) must be used. In the Act,

¹³ SKYFALL –FILM (2012)

¹⁴ THE HOBBIT – AN UNEXPECTED JOURNEY 2D FILM

¹⁵ THE SPEAR (Painting and Publication) (2012)

sexual conduct is defined to include, inter alia, the undue display of genitals. Therefore, the primary meaning of sexual conduct must be had before deeming an image as undue display of genitalia. “*..the Court concludes that the primary meaning involved the stimulation of erotic feelings rather than aesthetic feelings.*”¹⁶ To deem an image amounting to sexual conduct, regard must be had to whether it appeals to the erotic or prurient interests. If it does not, then it is not sexual conduct.

- A brief scene of sexual acts was implied and assessed in context of the particular film as a whole – in this particular case, the scene was of low impact and this was also the assessment of the classifiers. The Appeal Tribunal concluded that an appropriate advisory together with adult presence would be sufficient to deal with concern about the scene as far as 10-year olds are concerned. The use of the advisory ‘S’ indicating low impact sexual activity would enable parents to make informed choices about whether to take 10-year olds in their custody to the film.¹⁷

8.1.6 Child Pornography

The Appeals Tribunal found the following in relation to child pornography, stressing the importance of (1) the person depicted being under the age of eighteen and (2) the distinction between presentation in a manner that is intended to be aesthetic versus erotic:

- The image or description must be of a person, real or simulated, who is, or is described as being, under the age of eighteen. The image will not be child pornography unless one or more of the four prohibited acts listed below is depicted for this purpose. The prohibited acts are:
 - a child engaged in sexual conduct;
 - a child engaged in a display of genitals which amounts to sexual exploitation or in such manner that it is capable of being used for the purpose of exploitation;
 - a child participating in sexual conduct;
 - a child assisting another person to engage in sexual conduct.”¹⁸
- The issue of whether a film or scene is child pornography must be decided in conjunction with the legal principles in *De Reuck*. In *De Reuck* the court held that the use of the word “includes” in the definition of the Act is suggestive that the list extends the meaning of the child pornography as defined, and the true meaning therefore has to be determined from the context in which it is used. Additionally, the court held that the primary meaning related

¹⁶ Supra

¹⁷ SPUD 2 - THE MADNESS CONTINUES - FILM

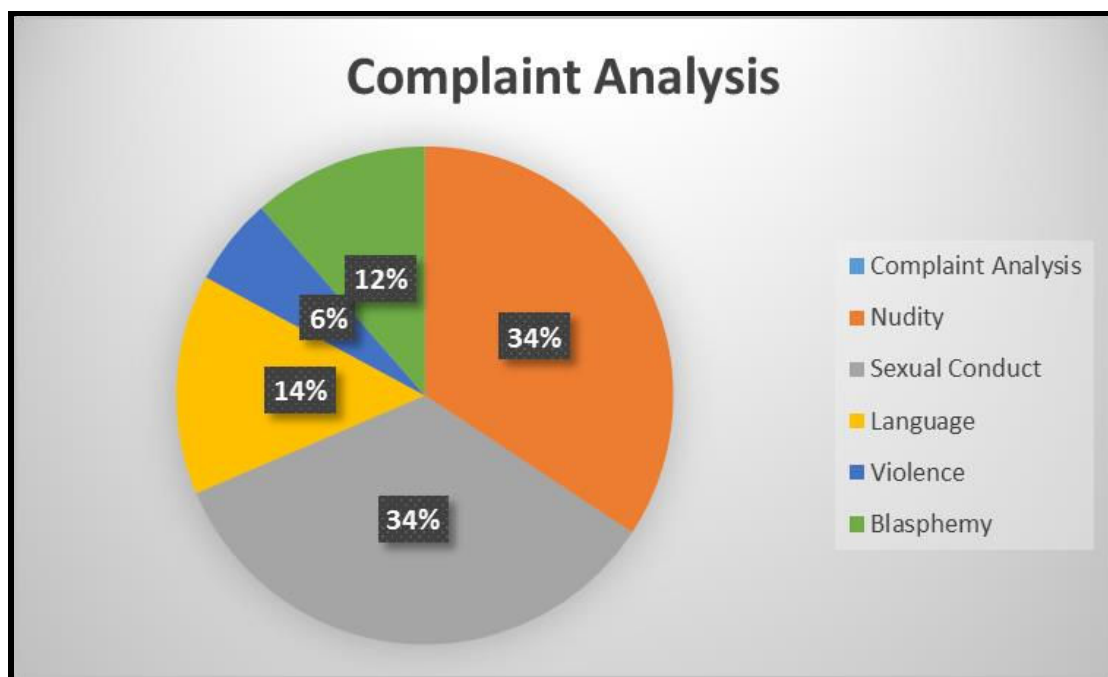
¹⁸ Supra

to pornography or child pornography is that in determining it as such it must be presented in a manner that intended to stimulate erotic rather than aesthetic feelings in the target audience. It further held that *“it is not possible to determine whether an image as a whole amounts to child pornography without regard to context.”*¹⁹

- The above was reinforced in the ruling of the same film which provided that:“(t)he issue is whether a reasonable viewer would deem the purpose of the film or publication to stimulate erotic rather than aesthetic feeling. The more sexually explicit the image or scene, the more likely it is to be deemed to appeal to erotic as opposed to aesthetic sensibilities.”²⁰

8.2 Public Complaints

In the period of implementation several complaints were received from members of the public on the FPB’s decisions. These complaints provide insight into the consistency in the application of the Guidelines, and the expectations of the public, particularly in respect of societal norms and values. The analysis suggests that sexual conduct, nudity, blasphemy and classification of material where the release format is games are areas for further consideration.



Film and Publication Board

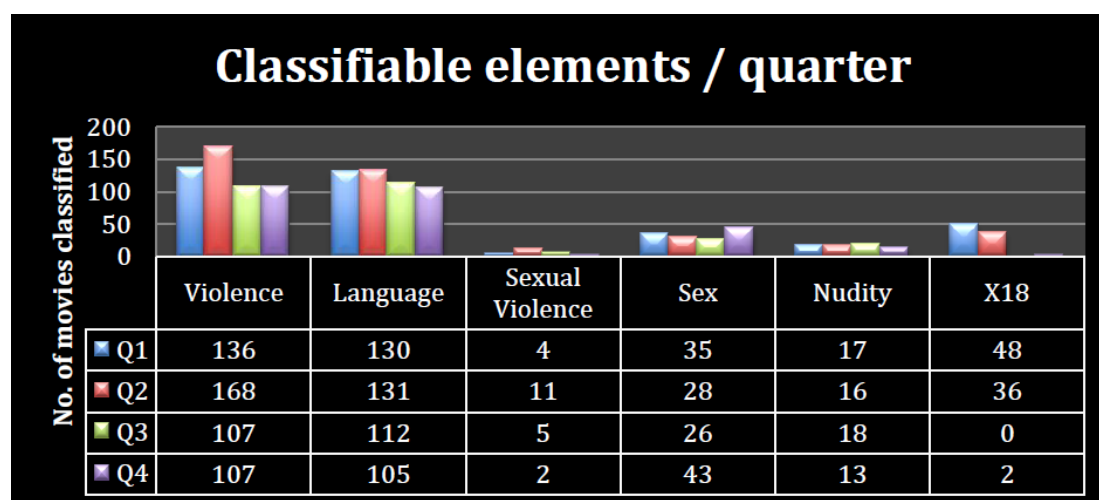
¹⁹ OF GOOD REPORT- FILM (2013)

²⁰ OF GOOD REPORT- FILM (2013)

Utilising public complaints as an indication of whether the classification approach is in line with societal norms, it appears from an analysis of the complaints received that the public is particularly sensitive towards sexual conduct and nudity, which constitute collectively about 68% of complaints.

Blasphemy, which features quite prominently as a complaint by consumers, does not seem to have been indicated in the 2 306 movie titles considered. It should be noted that in terms of the Guidelines “blasphemy” is not treated as a classifiable element which determines age restrictions, but rather as a matter of appropriate consumer information if it has a moderate, strong, very strong and extreme impact.

In addition, it appears that technology and animation (Games and Animation films) create expectations for lower ratings, which is not often true. They are expected to have a lower rating due to the assumed target audience being children; however, this is not the case as is demonstrated by the Tribunal Judgements summarised above pertaining to gaming. The FPB has found that contrary to what was assumed, there has been a need to give these types of publications a higher rating as they have found sensitive content in the material.



Source: Film and Publication Board, 2015/16

9 RESEARCH AND CONVERGENCE SURVEYS CONDUCTED

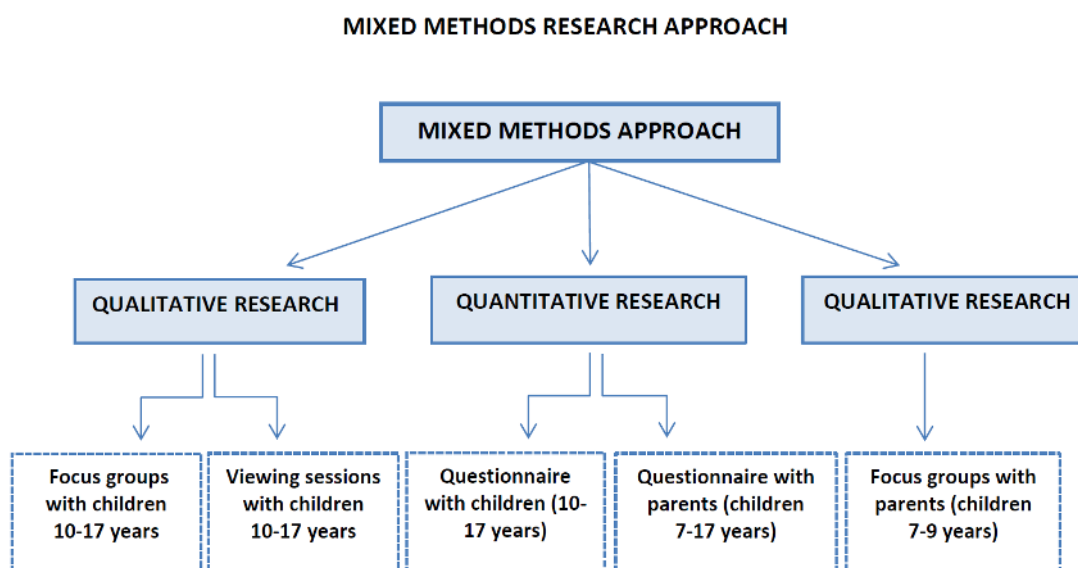
9.1 Methodology and Approach

In addition to assessing legal and regulatory implementation, and the responses to its decisions through formal channels, the FPB has conducted qualitative and quantitative research to arrive at its findings and recommendations in relation to the effectiveness of the

Classification Guidelines during the course of their implementation. The key reference documents that the FPB has used in its analysis include:

- The Impact of Media Content on Children in South Africa - the FPB has collaborated with the Youth Research Unit (YRU), part of the Bureau of Market Research College of Economic and Management Sciences of the University of South Africa, to research the impact of media content on children in South Africa
- Public perceptions on the Film Classifications information provided by the Film and Publications Board: A Gauteng study
- Convergence Survey Report 2014
- Convergence Surveys Report 2016

The research has been used to inform the FPB's views on the impact of media content on children to ensure that the Classification Guidelines, and in particular, the age restrictions, are aligned with the development stages of South African children, as set out in the diagram below.²¹



9.2 Development Theories

Protecting children from potentially harmful media content is central to the FPB's work. As is commonly known, the media is amongst the most powerful forces influencing children's lives today. Media in the form of television, movies and games forms a fundamental part of entertainment for children²².

²¹ The focus groups were held in Limpopo and Gauteng; as the research sought cover urban and peri-urban audiences

²² Impact of Media Material on Children – Unisa and FPB 2016

Children go through different developmental stages, characterised by various developmental milestones. Consequently, many different developmental theories that focus on aspects such as physical, emotional and moral development have been developed. The FPB age advisories are based on an appraisal of a range of expert knowledge garnered through research, sourced both externally and that generated internally.

Media effects on children may broadly be categorized into cognitive, emotional, social, and health-related outcomes. A significant amount of the available research focuses on negative outcomes of media on children such as fear, aggression, materialism, and obesity; however, media may have positive effects on children as well such as learning and prosocial attitudes, hence the important role of the FPB in this regard. Each of the major developmental theories recognizes that at different ages, children are affected by media in different ways, hence the FPB's approach to age-based classification. Likewise, the most successful strategies for mitigating negative outcomes vary with children's ages. The FPB has conducted extensive research on the various development theories, a summary of which is contained in Annex A.

Global theories have been considered alongside local research on the impact of media on children in South Africa. The research found that:

- Violence, horror and sexual movie content have the greatest impact on children.
- The impact of movie content on children between 7 to 17 years of age is manifested in emotional and behavioural reactions such as the imitating of actions.
- for both passive viewing (television and film) and interactive viewing (video and computer games), there seems to be consistent evidence of an association between younger children watching media violence and showing more aggressive play and behaviour, although this is mainly short-term²³. However, this does not imply that older children (12 to 17 years) are less likely to be affected. Based on the cognitive development theory (Piaget), it can be inferred that children before 12 years lack cognitive ability due to development. After 12 years, however, they gain stronger cognitive ability but are strongly influenced by emotional development within the adolescent phase.

Subsequently, it can be concluded that all children are affected in some way by media content, but the effects depend on an individual's cognitive appraisal as well as family, social and cultural environment.

²³ Findings supported by the findings of Brown and Hamilton-Giachritsis (2005) who

9.3 Research on Convergence level: Alignment of Guidelines to Societal Values and Norms

Research conducted in 2014 with a combined sample size of 9000 found that of those surveyed, 91% indicated that they were aware of the Classification Guidelines; 74% of the sample agreed with the need to regulate content in the media; and when asked if the FPB Classification Guidelines are aligned societal values and norms, 49% agreed, whilst 18% strongly agreed. This means in 2014 there was a 67% convergence level.

The results indicate that those members of the public who consume content that fall within the mandate of the FPB (DVD shops and cinema goers), there seemed to be awareness of the role and importance of the FPB classification rating. Secondly, a 67% convergence level shows that 67% of respondents agree with the classification decisions of the FPB. The convergence levels always vary between 65% and 72%.

In 2016, the FPB commissioned surveys throughout the country to test nationwide convergence levels soliciting inputs from 9000 respondents, the biggest sample to date that the FPB has surveyed. The 2016 convergence study concluded again that most South Africans (91% of the sample) are familiar with the FPB's Classification Guidelines. Of those that are not familiar with the Guidelines, only 20% were disinterested in learning about them. The Films and Publication's Act was cited most widely as the source of knowledge regarding the Classification Guidelines. Although the majority of the respondents cited this Act as their source of awareness, it was not clear how the respondents came across the Act, and whether they had actually read the Act or heard about it. The age ratings communicated on the media formats such as DVDs, games and music were also identified as a source of awareness of the FPB's Classification Guidelines. This was identified as a knowledge source for 35.8% of the respondents.

Although South Africans generally agree with the need to regulate content that may be considered harmful to sensitive viewers, more than a third of South Africans feel that the Classification Guidelines are not aligned with the values of the society within which they exist. This suggests that the age ratings may be either too lenient or too rigid. This is evident in the strong assertion that is made that the age ratings need to be revised. A third of the respondents felt that the age ratings were in need of revision. An understanding of the impact of this finding on the review of the Classification Guidelines is critical and will need to be informed by responses to this consultation as well as potential further research.

The demographic reflections into these perceptions revealed that younger age groups were less inclined to follow the Classification Guidelines. In the same vein, the younger age groups had a higher proportion of respondents that disagreed that the age ratings were aligned with societal values, as compared to the older age categories. It remains to be known whether the opinions of the younger generations are likely to change with age, or if they are symptoms of evolving value systems. Nevertheless, such observations reinforce the necessity of ongoing research and dialogue in order to maintain consistency between the FPB's classification standards, and the expectations of society.

The race of the respondents was also seen to have an influence on their opinions regarding the need for regulation, as well as the current satisfaction with the classification standards. Asian respondents had the highest proportion of respondents that agreed that the age ratings were aligned with their societal values, however this ethnic group also had the lowest percentage of respondents that actually followed the Guidelines. The White population on the other hand had a high percentage of respondents that disagreed that the Classification Guidelines reflected their values (63%), yet 77% of them follow the Guidelines when applicable.

Looking at the supply side, the revelation of the Smart Shopper survey conducted in 2014 revealed that media distributors do not take the responsibility of restricting the sale of harmful content to viewers – this is of significant concern. The physical survey revealed that only 15% of businesses felt that the Classification Guidelines have an effect on their business. The Smart Shopper survey confirmed that businesses are not subjecting themselves to the risk of losing sales, and this is possibly why they are not impacted.²⁴

9.4 Research and Recommendations on Impact of Media on Children

The qualitative research study which consisted of focus groups and interviews provides empirical research information about children's media environment and the impact of media content on feelings, thoughts and behaviour. This section summarises key findings and recommendations in relation to three areas that came out strongly in the research: namely enforcement of the Guidelines, their impact, and the classification of games.

9.4.1 Enforcement of Guidelines

Most participants in the focus groups conducted, both parents and children, mentioned that they have seen the age restrictions and Classification Guidelines on television, at the back of

²⁴ Convergence Study 2014 p24

the DVD boxes or at the cinema. However, participants only had a general understanding of age restrictions and Classification Guidelines for movies, and there is still room for improvement. It was additionally established that age restrictions and Classification Guidelines play a secondary role when choosing movies. The movie viewing environment at home is characterised by unrestricted viewing and lack of parental guidance, and in particular, children aged 7 to 17 years make their own movie choices.

Parents confirmed statements by children, that children are the main decision makers with regard to the DVD's they watch at home and confirmed that children have been exposed to age inappropriate media. Additionally, parental involvement and control becomes more limited as children get older. This lends itself to the question of how to enforce classification on children that are not being monitored by adults, particularly in the home.

With regard to viewing films at the cinema, parents confirmed that it remains a popular activity among children. They confirmed that they do accompany their children to the cinema and mostly children make a decision about the movie they want to watch before they go to the cinema. They mostly obtain information related to movies on the Internet, and the enforcement of age restrictions and Classification Guidelines are stricter within the cinema environment in comparison to the home environment. This was mostly ascribed to the cinema staff's attentiveness of age restrictions and enforcement thereof.

Recommendations: On this issue, the qualitative and quantitative research recommends innovation with regards to access to information on the classification of material and classification decisions. The FPB is encouraged to use new technology and innovative platforms to reach parents and children with information regarding age restrictions and classification guidelines. Furthermore, it is recommended that an animation be developed for younger children in order to educate them on the age restrictions and classification guidelines and in the possible impact of exposure.

9.4.2 Impact of Content on Children

Based on the research findings of the current study, the FPB Classification Guidelines seem to be aligned with the developmental levels of children although the classification decisions are mostly seen as inappropriate and inconsistent among both children and parents of younger children.

The impact of movie content on children between 7 to 17 years of age is manifested in emotional and behavioural reactions such as the imitating of actions. Violence, horror and

sexual movie content were found to have the greatest impact on children. Moreover, the cinema environment intensifies the impact of movie content on children.

The FPB established findings on impact through, amongst others viewing sessions conducted with the children aged 10 to 17 years, who participated in the focus group discussions. For the viewing sessions, age-appropriate movies were selected by the FPB which contained movie scenes including classifiable elements such as, violence, sexual content, bad language, horror, substance abuse, blasphemy and prejudice. As indicated above, the impact of movie content on children aged 10 to 17 years old was found to be profound. Furthermore, the children are aware of the impact on an individual, family and community level. The children's focus groups and viewing sessions suggest that:

- Sexual content, nudity and violence seem to have the greatest impact on children aged 10 to 17 years. Children aged 10 to 17 years old have had repeated exposure to violence and bad language since a very young age. Consequently, it seems that they are desensitised towards violence and bad language in movies due to this continuous exposure.
- Although it is clear that elements of horror have a significant impact on children, they tend to become desensitised towards these elements due to continuous viewing of more extreme horror movies.

It is interesting to note that children aged 10 to 17 years old do not notice all of the possible classifiable elements in movies. More abstract or subtle themes such as blasphemy and prejudice are less noticeable in comparison to more prominent elements such as sexual content and violence.

The impact of classifiable elements in movies may depend on how vulnerable a child is due to his or her personal circumstances. Personal feelings or sympathy with a character in a movie can overrule certain classifiable elements in a movie such as bad language.

In addition, focus groups were conducted with parents:

- Parents' main concern with regard to movie content that children watch on DVD is violent content.
- They felt that the impact of movies and DVD's are noticeable as children sometimes imitate behaviour observed in movies.
- The impact of content at the cinema is also perceived by parents to be higher due to sound and images.

- FPB classification decisions are too lenient and need to be stricter especially when classifiable content includes violence, sexual content and horror.

Recommendation: Overall, the opinion was shared by children engaged in the focus groups that the current age restrictions are not appropriate. In most instances, age restrictions were perceived to be too lenient especially those concerning movie elements such as violence, horror and sexual content.

9.4.3 Games

Gaming is an extremely popular activity amongst children, according to parents. Children mostly obtain games from their parents.

In as far as games are concerned, the focus groups revealed that in most instances, children between 7 to 17 years of age have limited awareness of age restrictions and Classification Guidelines for games. When compared to movie content, the content in games is perceived to have a minimal effect on children due to the fact that games are animated and not real. Parents that were surveyed did not notice any behavioural change among their children due to gaming.

Although children underestimate the impact of gaming on their emotions and behaviour, it was found that gaming does have a behavioural impact on children aged 10 to 17 years old. The impact of media content on children aged 10 to 17 years old can be long-term including nightmares, feelings of anxiety and paranoia.

Recommendation: In summary, the qualitative and quantitative research finds that gaming is currently a major activity among children and limited attention of given to the age restrictions and classification guidelines for games. The studies conducted advise that the FPB actively educate parents and children about the potential dangers of gaming and prolonged periods spent playing games.

9.5 Media Reports and Public Issues

This section highlights an important aspect of the Guidelines Review Process. While primarily focused on content regulation, this process is also an opportunity to engage the public about issues important to the general wellbeing of society. Two main issues arise for consideration in the review of the Guidelines based on public discourse – (1) the treatment by the FPB of gender-based violence; and (2) the FPB's treatment of cultural representation. These are discussed in turn in this section.

9.5.1 Gender-based Violence

The recent calls for public dialogues on violence against women and children by, amongst others, the Minister of Women in the Presidency, require that views on gender-based violence be canvassed. According to Anderson (2003), psychological processes that allow media violence to affect children, are present in every child. Anderson also concedes that children are affected differently by media violence therefore it is important to look at other factors that may determine the level at which children may be affected. Certain characteristics of viewers (e.g., identification with aggressive characters), social environments (e.g., parental influences), media content (e.g., attractiveness of the perpetrator), gender, Class, Masculinity can influence the degree to which media violence affects aggression (Anderson, 2003). Research also suggests some avenues for preventive intervention (e.g., parental supervision, interpretation, and control of children's media use), hence the role of the FPB.

Studies conducted in the United States (Eron et al., 1972) found that there is a stronger relationship between media violence and aggression for boys than for girls. More recent studies that show similar findings are the ones conducted by Eron et al. (1995) and Heusmann et al. (2003). The reason why boys display more aggressive behaviour, according to Anderson, is because of the way boys are depicted in mass media (the kind of aggression displayed by the superhero characters that they watch in the media), the acceptability of violence amongst women in the media and the ideology of masculinity in society.

A quest to prove masculinity also exacerbates violence against women in a form of rape. South Africa is known for its high rape rate which continues to increase, 2017 (Statistics South Africa). A study was conducted in South Africa (2009) with men under the age of 30 years in rural Eastern Cape and Kwa-Zulu. More than 70% of the men admitted to rape and more than half (46%) admitted to having raped more than one woman. Media Violence promotes this type of violence by normalizing it and depicting characteristics of masculinity related to using a gun and forced sex.

Several studies have found that viewing sexually aggressive films negatively affected viewers' attitudes towards women (Linz et al: 1989; Malamuth & Check 1981). Men repeatedly exposed to such film content tend to view women victims as enjoying such an activity (the so-called rape myth) and are less likely to be sympathetic to rape victims in films and are more likely to accept cultural stereotypes about women (Weiz, M.G & Earls, C.M.:1995).

Social learning theory by Bandura (1969) puts the above fact into perspective. It states that children who identify with aggressive characters are likely to also behave aggressively themselves, imitate the character and adapt the beliefs and attitudes related to the aggressive character.

The Weinstein Effect: American Case Study

On October 5, 2017, The New York Times and The New Yorker reported on decades of sexual misconduct claims against film producer Harvey Weinstein, who was dismissed from The Weinstein Company shortly thereafter. This seemingly commonplace event, however resulted in what has become known as the “Weinstein effect”, that now even has its own page on Wikipedia. Weinstein had previously suppressed these cases through confidential financial settlements and nondisclosure agreements, as was common for celebrity sexual harassment cases, before journalists aired the story. On Twitter, the Me Too hashtag campaign encouraged hundreds of thousands of individuals to share their stories, and by November 25, 2017, it was reported that the Los Angeles Police Department was investigating 28 open sex crime cases involving Hollywood and media figures. The #MeToo campaign became #BalanceTonPorc ("expose your pig") in France and #QuellaVoltaChe ("that one time that") in Italy.

On 9 October 2017, the New York Times reported that in Silicon Valley, some male investors have declined one-on-one meetings with women, or rescheduled them from restaurants to conference rooms. On Wall Street, certain senior men have tried to avoid closed-door meetings with junior women. And in TV news, some male executives have scrupulously minded their words in conversations with female talent. The newspaper also reports that in some cases, the heightened awareness has improved people’s behavior. “People are more sensitive to how they conduct themselves, because they’ve seen what can happen,” said a male executive in the news and entertainment industry, who spoke anonymously because of the same heightened caution over the topic that is in the air in some workplaces. “That’s presented a better working environment.”

What this tells us about society, is that there remains a lot of work to be done to change perceptions about acceptable behaviour. An article that provides quite an interesting perspective, following the Weinstein debacle was also published in the New York Times (15 November 2017) entitled “What the Weinstein Effect Can Teach Us About Campus Sexual Assault”. It considered, how the dynamics of sexual immaturity at colleges have also blurred

the lines slightly. It also highlighted, that students have varying amounts of sex education and were more likely to learn what they know from pornography or other media that perpetuate America's toxic gender norms — the kind that may teach a boy to push an unwilling girl as hard as he can in the bedroom because that's how a real man has sex.

Although this is stated as toxic gender norms from America, it has universal application, perhaps because of the circle of influence of American content, which constitutes a significant proportion of content available across the globe, perhaps because it is a global consequence of patriarchy.

Recommendation: The issue of gender-based violence is relevant in South Africa given the public discourse on the issue. However, the evidence for a classification to describe gender-based violence is specific does not seem to be warranted. The classifications for “Violence”, “Sexual conduct” and “Sexual violence” may be sufficient to describe such content.

9.5.2 Cultural Representation

The development and growth of the South African film industry has produced excellent pieces of art, some of which are representations of South African ethnicity and culture. This has been globally well received, however the FPB have been faced the prospect of a new classifiable element which comes from this genre of film. The cultural representation has been a contentious issue amongst the South African public and should not be confused with misrepresentation which can be argued at poetic license in the arts.

The most recent case of cultural representation has arisen from the much publicised, and globally acclaimed film called “Inxeba – The Wound” (“Inxeba”) which explores the complexities of homosexuality against the backdrop of male initiation, the cultural rite of passage of the Xhosa men. Inxeba is an intersectional story of three men told in the setting of the Eastern Cape mountains during a period of the Xhosa male initiation. The story explores the complexities and stigmas of sexuality, in particular gay men, in the context of culture and sacred rituals.

The FPB has rated the movie 16, advising that it contains scenes with strong Language, Sex, and Nudity (16 LSN). The public have called for the limitation of the film's distribution on the basis of the manner in which culture is represented. The complexity with this type of classification is its subjective nature and fluidity of culture as a social practice; yet also as a sensitive and sacred practice within ethnicities. At the crux of the debate is whether human

rights, freedom of expression, and freedom from gender oppression and inequality which are protected by the Constitution, are violated in terms of the film.

The Guidelines do not deal with cultural representation, and this recent issue has led to calls in the media and amongst the public for FPB intervention which would require same. The call for the restricted distribution also makes clear that the public does not understand the Guidelines fully, in particular they do not understand the notion that refused classification means content was found containing hate speech, propaganda for war, incitement of violence and child pornography – none of which are alleged in the public discourse on Inxeba.

10 INTERNATIONAL BENCHMARKING

As part of the previous project to review the Classification Guidelines the FPB benchmarked (2011) its approach against the United Kingdom (UK), United States, Tanzania, China, Nigeria, India, Kenya and Germany. This analysis has since been reviewed and updated.

10.1 China, Tanzania (and Kenya): Censorship

In the benchmark study it was found that China, Tanzania and Kenya impose strict censorship and do not have a comparable classification system in place, this position has not changed significantly over the past five years. It should be noted that Kenya published revised classification guidelines in 2012 and has undergone an exchange programme with the Film and Publication Board of South Africa to broaden its approach on classification of material. This has led to a shift in the classification approaches of the Kenya Film and Classification Board, however this shift has not been enacted into law.²⁵ The current publicised classification guidelines still state that “the Board shall not approve any film or poster which in its opinion tend to prejudice the maintenance of public order and may offend decency or any other reason deemed undesirable in the public interest.”

10.2 Nigeria, India, (and Kenya): Moderate

At the time it was found that Nigeria and India took a more moderate approach although their respective classification systems also use a censorship approach. For example: in Nigeria, the classification committee must ensure that content “does not induce or reinforce the corruption of private or public morality; does not undermine national security, does not

²⁵ http://kfcb.co.ke/wp-content/uploads/2016/08/Film_Classification_Guidelines.pdf accessed on 23 November 2017.

promote blasphemy or obscenity or depict any matter likely to encourage public disorder or crime or is undesirable in the public interest.”²⁶

It is said that the CBFC (Central Board of Film Certification) in India, is facing drastic changes in terms of their classification approach and will going forward have a two-fold role according to reports regarding planned amendments to the Cinematograph Act of 1952. There will be a separate Monitoring Committee and Revising Committee, both of which will remain independent of each other. Every film has to separately get its clearances from each committee. Since the Act will itself undergo massive changes, there will be a new set of guidelines for the CBFC to follow.²⁷

Kenya is included as a moderate state as well, as there has been recent shift in the Classification approaches from the Kenya Film and Classification Board (“KFCB”). The board in 2016, conducted a successful exchange programme with the Film and Publication Board in South Africa which has resulted in Kenya adopting and contextualising some of the FPB’s Classification approaches. Furthermore, the KFCB has reviewed its legislation in order to align to the new classification support, this forms a part of the CAPS222 review of 2017; the outcomes of this have not been publicised as yet. Since the working relationship with the FPB and the subsequent MOU; the KFCB has resolved to ban only material that would be a threat to national security. Other material that fell out of the ‘banned category’ would be classified accordingly²⁸.

10.3 United Kingdom and Germany: Liberal

The United Kingdom (UK) and Germany have classification systems in place which could be categorized as “liberal” when compared with the approaches followed by the other benchmarked countries. This study finds that of the study countries, the approaches taken in the United Kingdom (UK) and Germany are most comparable to that in South Africa.

The South African classification system and approach compares exceptionally well with those of the UK and Germany. In its implementation, it considers similar overarching factors, including context, tone and impact and medium of release. In terms of categorization, similar consideration is given to issues such as drugs, discrimination (prejudice), violence, nudity, sex and language whilst all countries have some additional considerations. In South Africa blasphemy is an additional consideration/ category as well as photo or pattern sensitivity,

²⁶ <http://www.nfvcb.gov.ng/faqs/> accessed on 23 November 2017

²⁷ <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/64-year-old-Cinematograph-Act-to-be-amended/articleshow/53684921.cms> accessed on 23 November 2017.

²⁸ <http://kfcg.co.ke/wp-content/uploads/2017/06/KFCB-Child-Online-Safety-Report.pdf>

motion sickness and reactions to low frequency sound may be considered during the classification process (although it is primarily the responsibility of the producer of the film), which also occurs in the UK. A noteworthy distinction is however, that “Titles” of a specific nature may be changed by the classification authority in the UK under certain circumstances, i.e. if it may cause offence.

The German approach is slightly more conservative on certain issues, presumably due to its history. Accordingly, some films may be indexed (restricted) based on certain levels of incitement of racial discrimination, and violence. It also has very strict requirements on classifiers (examiners) and requires the following:

- knowledge of the social diversification and internal dynamics of juvenile groups; and
- knowledge of the general psychological development of children and adolescents.

In terms of age categorization, Germany has an additional age group of 6 years which is quite unique in terms of approach.

The 2014 UK’s BBFC guidelines²⁹ include specific guidance regarding “threat”. It provides that where films are targeted at a younger audience, classification decisions will take into account factors such as the frequency, length and detail of scary or otherwise unsettling scenes as well as factors such as the impact of music and sound, and whether there is a swift and reassuring outcome.

It requires the classification of threat and horror will take account of the general tone, impact, realism and supernatural elements of a work as well as the level of detail in individual scenes, whilst regarding fantasy settings as a mitigating factor.

It also lists useful considerations that would justify higher classifications, taking into account the degree and nature of violence in a work, and:

- portrayal of violence as a normal solution to problem
- heroes who inflict pain and injury
- callousness towards victims
- the encouragement of aggressive attitudes
- characters taking pleasure in pain or humiliation
- the glorification or glamorisation of violence
- Sadistic or sexual violence is likely to receive a higher classification. Any depiction of sadistic or sexual violence which is likely to pose a harm risk will be subject to intervention through classification, cuts or even, as a last resort, a refusal to classify.

²⁹ http://www.bbfc.co.uk/sites/default/files/attachments/BBFC%20Classification%20Guidelines%202014_5.pdf

It also explicitly states that they may refuse to classify content which makes sexual or sadistic violence look appealing or acceptable, reinforces the suggestion that victims enjoy sexual violence, or invites viewer complicity in sexual violence or other harmful violent activities. Lastly, they indicate that they are unlikely to classify content which is so demeaning or degrading to human dignity (for example, it consists of strong abuse, torture or death without any significant mitigating factors) that it may pose a harm risk.

In the UK, all content to be supplied for sale or hire in the UK must be submitted for classification, unless it is exempt under the terms of the Act. They have however made changes to the exemption criteria, require suppliers of content for sale or hire that may have previously been exempt from classification to consider whether the content may be unsuitable for those under 12 years old, in which case it must now be classified³⁰.

From 30 July 2012, and with a few limited exceptions, the responsibility for classifying video games changed to the Video Standards Council Rating Board ("VSC"), applying the PEGI system. The BBFC continues to classify all games featuring strong pornographic (R18-level) content and ancillary games attached to a wider, primarily linear submission. The BBFC also continues to classify all non-game linear content on a game disc, such as trailers and featurettes.³¹ By way of background, PEGI is used and recognised throughout Europe and has the enthusiastic support of the European Commission. It is considered to be a model of European harmonisation in the field of the protection of children.³²

A noteworthy comment regarding the German approach is that each film or play program submitted to the FSK (Freiwillige Selbstkontrolle der Filmwirtschaft) to be released in cinemas, on DVD, Blu-ray, VHS etc. is viewed by the Juvenile Examination Board. The members evaluate each film with respect to its potential effects on children and adolescents. After discussing their results, the Examination Board takes a vote on the final rating of each film. Decisions are based upon simple majorities.³³ Due to the significant number of resources available in Germany, they are also in a position to approach game classification very differently from South Africa. They employ 8 permanent staff, use 6 voluntary game testers and over 50 child protection experts. Germany has the strictest statutory rules in the world for the classification and sale of computer games. Pursuant to the German Children and Young Persons Protection Act, the age rating of computer games is the responsibility of the Ministries

³⁰ <http://www.bbfc.co.uk/industry-services/video/submission-guide> accessed on 19 November 2017

³¹ <http://www.bbfc.co.uk/industry-services/video/submission-guide> accessed on 19 November 2017

³² <http://www.pegi.info/en/index/id/23> accessed on 23 November 2017

³³ <https://www.spio-fsk.de/?seitid=1287&tid=480> accessed on 23 November 2017

of the Federal States with jurisdiction of young persons' affairs. The Entertainment Software Self-Regulation Body is an internationally recognised classification institute instigated by the computer games industry in order to carry out the necessary classification process. In terms of the German approach to games, they similar to films use age categories of 6, 12, 16 and 18 and explicitly states the types of games included into each category. They also place emphasis on knowledge of the various game genres as a requirement to gain an understanding of which computer games are played. Computer and video games are subdivided into genres in a similar way to books, music, film and television.

10.4 United States: Voluntary classifications, Industry driven

In the USA, the Motion Picture Association of America, has implemented a voluntary classification system. The Classification and Rating Administration ("CARA") issues ratings for motion pictures exhibited and distributed commercially to the public in the United States, with the intent to provide parents information concerning the content of those motion pictures, to aid them in determining the suitability of individual motion pictures for viewing by their children.³⁴ The ratings system was established by the MPAA in 1968. CARA hosts the rating board made up of an independent group of parents.

A separate body, the Entertainment Software Rating Board (ESRB), is responsible for rating video games and apps³⁵. ESRB ratings have three parts:

- Rating Categories suggest age appropriateness
- Content Descriptors indicate content that may have triggered a particular rating and/or may be of interest or concern
- Interactive Elements inform about interactive aspects of a product, including the users' ability to interact, the sharing of users' location with others, if in-app purchases of digital goods are completed, and/or if unrestricted internet access is provided.

CARA and the ESRB use completely different and incomparable rating approaches. It is interesting to note the following statement:

"Self-regulation, such as that done by the Entertainment Software Rating Board for video games, is an effective way for companies to modify their behaviour to protect consumers where the government could or should not act ...The electronic game industry continues to have the strongest self-regulatory code and enforcement of restrictions on marketing, advertising and selling mature-rated games to younger audiences." - FTC Commissioner Maureen K. Ohlhausen at the Better Business Bureau (BBB) Self-Regulation Conference in Washington, DC [June 24, 2014].

³⁴ <https://www.mpa.org/film-ratings/> accessed on 23 November 2017

³⁵ http://www.esrb.org/ratings/ratings_guide.aspx accessed on 23 November 2017

11 CONSOLIDATION OF PERSPECTIVES

Upon considering the legislative review, the research and convergence surveys, development theories and impact study, tribunal decisions and international benchmarking, the Classification Guidelines seem to meet the needs of the FPB and the public, thus there is no justification for a major shift in approach. However, there is a need to carefully assess the enforcement and implementation of the Guidelines – by both FPB and the public. In addition, some common themes emerged as summarised below.

11.1 Blasphemy

Blasphemy is amongst the areas which feature quite prominently as a complaint by consumers, although it does not seem to have been indicated in the 2306 movie titles considered in the period under review. This is not surprising as in terms of the Guidelines blasphemy is not considered as a classifiable element determining age restrictions but as a matter of appropriate consumer information if it has a moderate, strong, very strong and extreme impact.

Should blasphemy become mandatory advice instead of voluntary advice?
Is there room to expand the scope of blasphemy beyond religion to include cultural practices and spiritual representation?

11.2 Gender Based Violence

By most accounts South Africa has among the highest levels of rape and incidents of physical violence against women. Violence against women does not end with physical violence, however, since other forms of violence such as emotional and psychological violence have long term effects on victims. The Film and Publication Board seeks to engage with this social problem within its sphere of influence. The category "Sexual Violence" as a classifiable element seeks to sensitise the public to the issue of attitudes towards women, especially where these seem to be normative. Hence it could be argued that no further classifiable element is required.

The FBP considers this as a serious topic, and a trend worth noting. It therefore wishes to explore avenues to utilize its circle of influence to highlight the consequences of exposure to certain types of content, and therefore to facilitate informed decision making.

Should the FPB consider a specific classifiable element for Gender Based Violence, develop a system of voluntary advice or are the V and SV advisories sufficient?

11.3 Imitable behaviour

According to the Guidelines, “imitable acts and techniques” may be treated as a classifiable element to determine age restrictions where there is a reasonable likelihood that such acts or techniques may be copied or imitated, especially by children. Concerns have been noted with imitable behaviour being voluntary advice.

Should imitable behaviour become mandatory advice instead of voluntary advice?

11.4 Violence, Sexual Conduct

Classifiable elements within media content such as violence, sexual content and horror remain a concern and due to children’s extensive exposure to different media platforms, they are more likely to be exposed to violent and sexual content on the various platforms. It was however established, that the FPB Classification Guidelines seem to be aligned with the developmental levels of children, although the in-practice classification decisions are often seen as inappropriate and inconsistent among both children and parents of younger children, who view the classifications as too lenient, especially with respect to classifiable content which includes violence, sexual content and horror.

Through the analysis of appeals, it was observed that the Appeal Tribunal concluded that an appropriate advisory together with adult presence would be sufficient to deal with concern about a brief scene of sexual acts that was implied, and the scene would be assessed in context of the film as a whole. The use of the advisory ‘S’ indicating low impact sexual activity would enable parents to make informed choices about whether to take 10-year olds in their custody to the film.³⁶

Should the FPB follow a more stringent approach regarding the classification of nudity by only allowing low impact non-sexual nudity from the age classification of 13 instead of the current PG?

³⁶ SPUD 2 - THE MADNESS CONTINUES - FILM

Should low impact sexual activity only be allowed from an age classification of 16 and not 13 as it currently stands?

Should the FPB follow a more stringent approach regarding the classification of violence by only allowing low impact violence until the age classification of 13 where after the content could contain mild impact violence?

11.5 Cultural Representation

Cultural representation has been raised as a key issue in films, in particular in the period 2016/2017. The main case for this is Inxeba, which has led to much public discourse on cultural representation and the proposal herein that there may be a need to consider a new classifiable element which comes from this genre of film. FPB, believes that there is a fine line between cultural representation, which is proposed for discussion as a classifiable element, and misrepresentation which can be argued at poetic license in the arts.

The complexity with this type of classification is its subjective nature and fluidity of culture as a social practice; yet also as a sensitive and sacred practice within ethnicities.

Should the FPB develop a Classifiable element around Cultural Representation?

Does Cultural Representation take away from the culture or does it enrich it through educating other citizens of that specific culture in question?

What are the perceived dangers of cultural representation?

Does the need to classify culture apply exclusively to South African/ African culture (or material), or should it be considered in all material received?

11.6 Other Issues

The public is welcome to comment on any other issues that may or may not have been canvassed in this document which will impact on the manner in which the FPB fulfils its mandate through the review of the Classification Guidelines.

Annex A: Development Theories

1. Background

Protecting children from potentially harmful media content is central to the FPB's work. As commonly known, media in the form of television, movies and games forms a fundamental part of entertainment for children³⁷. The FPB age advisories are based on an appraisal of a range of expert knowledge garnered through research, sourced both externally and that generated internally. Children go through different developmental stages, characterised by various developmental milestones. Consequently, many different developmental theories that focus on aspects such as physical, emotional and moral development have been developed. For this review in particular, the theories of Piaget, Bandura, Erikson and Kohlberg; and a study commissioned by Unisa's Bureau for Market Research: "Impact of Media on Children Study" were considered. This Annex discusses the Development Theories; the market research is discussed in the main Discussion Document.

Piaget's stage theory of cognitive development, and Bandura's social learning theory, coupled with an understanding of Erikson's psychosocial theory as well as Kohlberg's theory on moral development provides an interesting perspective of the impact of the media on children and informs FPB's analysis.

2. Overview of Key Theories

2.1. Piaget's Theory of Cognitive Development

Piaget posited that children progress through 4 stages and that they all do so in the same order. Below, is a graphical representation of Piaget's cognitive development from birth until the age of 11 years.

PIAGET'S THEORY OF COGNITIVE DEVELOPMENT		
STAGES	AGE RANGE	DESCRIPTION
Sensorimotor	From birth to 2 years	- Identifies object performance, the object still exists when out of sight - Recognition of ability to control object and acts intentionally

³⁷ Impact of Media Material on Children – UNISA and FPB 2016

Preoperational	2 to 7 years	▪ Begins to use language ▪ Egocentric: Difficulty seeing things from other viewpoints ▪ Classify objects by a single feature
Concrete Operational	7 to 11 years	▪ Logical thinking ▪ Recognizes numbers, mass and weight ▪ Classifies objects by several features, can place them in order
Formal Operational	11 years and onward	▪ Logical thinking about abstract tasks ▪ Concerned about the future

Source: Film and Publication Board

The first two stages identified by Piaget, clearly indicate the very linear engagement that children have with their surroundings. However, during the concrete operational phase (age 7 to 11), children's ability to consciously, thoughtfully and pro-actively choose to pursue goals (instead of simply reacting to the environment) appears during this developmental period. In addition, children's thinking style gradually becomes more logical, organized, and flexible as they enter Piaget's "concrete operational" thinking stage.³⁸ At this age, children can easily identify the consequences of particular actions – for example if the glass drops it will break. However, they cannot easily think about more abstract things like what it will really mean for the family if a parent loses her job. In the Piagetian theory, it is not until children enter adolescence (11 years and onwards) that they become capable of more abstract "formal" operations involving representations of things that are intangible and abstract (without any tight link back to a tangible person, place or thing), such as "liberty", "freedom" or "divinity". It is therefore conceivable that exposure to certain content may have a real impact on children between the ages of 7 and 11.

According to Piaget, young people develop what he calls "the morality of cooperation" from the age of 10-11 years. His theory proposes that, youth develop a morality of cooperation when they realize that to create a cooperative society people must work together to decide what is acceptable, and what is not. Piaget believed that youth at this age begin to understand that morals represent social agreements between people and are intended to promote the common good. Furthermore, they recognize people may differ in the way they understand and approach a moral situation.

³⁸ <https://www.mentalhelp.net/articles/cognitive-development-piaget-s-concrete-operations/>

They also begin to understand that the difference between right and wrong is not an absolute but instead must take into consideration variables such as context, motivation, abilities, and intentions. Moreover, Piaget believed youth at this age begin to understand that the morality of a decision does not rest solely on the outcome of that decision. For example, youth at this age realize that sharing nude pictures of yourself online is wrong, regardless of whether he or she gets caught.

By middle adolescence, youth expand their understanding of fairness to include ideal reciprocity. Ideal reciprocity refers to a type of fairness beyond simple reciprocity and includes a consideration of another person's best interests. It is best described by the phrase "Do unto others as you would have them do unto you". Teens who have reached ideal reciprocity imagine a problem from another person's perspective and try to place themselves in another person's "shoes," before making a moral decision.

2.2. Bandura's Social Learning Theory

Bandura's Social Learning Theory, has often been called a bridge between behaviourist and cognitive learning theories. It posits that people learn from one another, via observation, imitation, and modelling because it encompasses attention, memory, and motivation. This is a critical consideration in assessing the impact that the content that children are exposed to, has on them.

Group	Age	Virtue	Crisis
Infants	0 to 18 mo	Hope	Trust vs. Mistrust
Toddlers	18 mo to 3 yrs	Will	Autonomy vs. Shame & Doubt
Preschool	3 to 6 yrs	Purpose	Initiative vs. Guilt
Childhood	6 to 12 yrs	Competence	Industry vs. Inferiority
Adolescence	12 to 18 yrs	Fidelity	Identity vs. Role Confusion
Young Adults	19 to 40 yrs	Love	Intimacy vs. Isolation
Middle Adulthood	40 to 65 yrs	Care	Generativity vs. Stagnation
Seniors	65 yrs +	Wisdom	Ego Integrity vs. Despair

Source: <http://richardstep.com/erikson-stages-psycosocial-development-richardstep-1a/>

According to Bandura, children observe the people around them behaving in various ways. Individuals that are observed are called “models”. In society, children are surrounded by many influential models, such as parents within the family, characters on children’s TV, friends within their peer group and teachers at school. These models provide examples of behavior to observe and imitate, e.g., masculine and feminine, pro and anti-social, etc.³⁹

Children pay attention to some of these people (models) and encode their behavior. At a later time, they may imitate the behavior they have observed. From a gender perspective, Bandura posits that children may imitate models regardless of whether the behavior is ‘gender appropriate’ or not, but there are a number of processes that make it more likely that a child will reproduce the behavior that its society deems appropriate for its gender.⁴⁰

³⁹ <https://www.simplypsychology.org/bandura.html>

⁴⁰ <https://www.simplypsychology.org/bandura.html>

2.3. Erikson's Psychoanalytic Theory

Erikson presents a comprehensive **psychoanalytic theory** that identifies a series of eight stages, in which a healthy developing individual should pass through from infancy to late adulthood. According to Erikson's psychoanalytical theory, adolescents and teens take on new social roles from those of their childhood once they reach puberty. A conflict seems to arise between the identity they have of themselves and the identity that adults in their lives have of them; and this causes an identity crisis. The child has to form its own ego identity to overcome the crisis caused by relying on its early years of identity.

The adolescent begins to master life and reality, but Erikson views the critical periods as 'role confusion' or 'identity diffusion'. Adolescents may be confused and become vulnerable to being highly impressionable and being influenced by role models, heroes, celebrities, and popular and gang culture. This period is one of conflict and rebellion. The way in which the adolescent solves the crisis will influence the strength of individuality that is established in life. It is simple to see how exposure to content in the media may influence children when such exposure is evaluated against the development theories mentioned above.

2.4. Kohlberg's Theory on Moral Development

Before concluding the discussion regarding development theories, it is important to consider Kohlberg's theory of moral development constitutes an adaptation of a psychological theory originally conceived by Piaget. Kohlberg followed the development of moral judgment far beyond the ages studied earlier by Piaget who also claimed that logic and morality develop through constructive stages.

Kohlberg postulates that holds that moral reasoning, the basis for ethical behaviour, has six identifiable developmental stages, each more adequate at responding to moral dilemmas than its predecessor. The 6 stages of moral development, are separated into 3 levels:

- Pre-conventional
- Conventional
- Post-conventional

The theory states that children progress through the various stages of morality, from personal subjective value judgments, through to the highest moral conscience stage, basing moral and social judgments on the principle of justice in an objective idealistic manner, which is attained around the adolescent phase. This means that justice is based on individual or human rights,

equality, and reciprocity (equality of exchange: punishment for bad and reward for good); and any infringement of these rights is seen as morally wrong.

Kohlberg's studies in a range of contexts (Mexico, Turkey, Taiwan, Israel, Malaysia, Thailand) revealed that there were no differences in moral development across cultures. However, Kohlberg been criticised by cross-cultural psychologists who believe that his theory codifies post-modern Western liberal notions of justice and morality.

Kohlberg's Theory

Level/Stage	Age Range	Description
I: Obedience/Punishment	Infancy	No difference between doing the right thing and avoiding punishment
I: Self-Interest	Pre-school	Interest shifts to rewards rather than punishment – effort is made to secure greatest benefit for oneself
II: Conformity and Interpersonal Accord	School-age	The “good boy/girl” level. Effort is made to secure approval and maintain friendly relations with others
II: Authority and Social Order	School-age	Orientation toward fixed rules. The purpose of morality is maintaining the social order. Interpersonal accord is expanded to include the entire society
III: Social Contract	Teens	Mutual benefit, reciprocity. Morally right and legally right are not always the same. Utilitarian rules that make life better for everyone
III: Universal Principles	Adulthood	Morality is based on principles that transcend mutual benefit.

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