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Our Reference: Review of Films and Publications Board Classification Guidelines

Date: 29 March 2018

The Films and Publications Board (FPB)

For Attention:

By Email: classificationguidelines@fpb.org.za

Dear Sir / Madam,

RE: SUBMISSIONS ON THE REVIEW OF FPB CLASSIFICATION GUIDELINES (MARCH 2018)

1. We refer to the Discussion Document on the Review of the FPB Classification Guidelines (February 2018) as well as your further communication via your website fixing a deadline for submissions of 30 March 2018.

INTRODUCTION

2. Cause for Justice ("CFJ") is a non-profit human rights and public interest organisation founded to advance constitutional justice in South Africa, primarily through participation in the legislative process and governmental decision-making structures, litigation and public awareness. Three of CFJ's core values give it a particular interest in the Review of the Classification Guidelines namely, (1) the responsible exercise of freedom, (2) protection and promotion of human dignity / worth, and (3) protection of the vulnerable in society (social justice).
3. During the course of 2013, 2014 and up to March 2015, CFJ was involved as one of three applicants in the "ICASA // StarSat (formerly TopTV)" judicial review case which concerned the distribution of pornography via subscription television channels. The matter was disposed of in CFJ and its co-applicants' favour at 'leave to appeal'-stage in the Supreme Court of Appeal.
4. In addition, CFJ also made submissions to the FPB during July 2015 as part of the public participation process on the Draft Online Content Regulation Policy and is a participant in the South African Law Reform Commission Project 107 - Sexual Offences: Pornography and Children (which is still on-going).
5. CFJ also made both written submissions and oral representations to the Parliamentary Portfolio Committee on Communications as part of the public participation process on the Films and Publications Amendment Bill, 2015.

MANAGEMENT COMMITTEE MEMBERS: RYAN SMIT, GENERAL MANAGER | WYNAND VILJOEN, CHAIRPERSON
CRAIG SNYDERS, EX-OFFICIO EXECUTIVE MEMBER | DIETER VON FINTEL, EX-OFFICIO EXECUTIVE MEMBER

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6. The purpose of these submissions is to express CFJ's views in respect of the consumer advice currently provided to adults in terms of the FPB Classification Guidelines ("Guidelines") and the Discussion Document's recommendations in respect thereof.
7. CFJ is generally supportive of the current Guidelines and welcomes most of the Discussion Document's recommendations, especially regarding stricter age restrictions for content that contains violence and sexual acts.

STRUCTURE OF SUBMISSIONS

8. A Convergence of Guidelines to societal values and norms
- B Impact of violent and sexual media content of children
- C Content containing gender-based violence
- D Convergence with comparative jurisdictions
- E Recommendations
 - Blasphemy
 - Gender-based violence
 - Imitable behaviour
 - Violent and sexual content
 - Need for education
- F Conclusion

A. CONVERGENCE OF GUIDELINES TO SOCIETAL VALUES AND NORMS

9. The Discussion Document states that more than a third of South Africans do not think that the current Guidelines are aligned with the values of society. The Discussion Document also states that there are strong assertions from the South African public that the current age ratings need to be revised. CFJ notes that, according to the Discussion Document, both parents and children think that current age restrictions are too lenient, especially with regard to violent and sexual content.
10. CFJ recommends that the current age restrictions with regard to violent and sexual content be revised upward in order to reflect societal norms and values. The purpose of the FPB, and by logical extension the Guidelines, is to provide consumer advice to adults in order to make informed viewing, reading and gaming choices for both themselves and the children in their care, and also to protect children from exposure to disturbing and harmful material. In order to successfully fulfil this purpose, the Guidelines must align to and reflect societal norms and values and be consistent with scientific research into the effects of certain media content on both adults and children. If not, the Guidelines will be vulnerable to attack on the basis that it is irrational, irrelevant and/or impractical.
11. Most importantly, the Guidelines should be aligned to and reflect the rights, values and norms of the Constitution.¹ The Bill of Rights demand that various important rights and considerations must be

¹ Constitution of the Republic of South Africa, 1996.

weighed in the balance. Some of the main considerations are, (1) that the inherent dignity or worth of all people must be protected and respected, (2) that people must be protected from all forms of violence, (3) that people may not be treated in cruel, inhuman or degrading ways, and (4) that children's best interest must be the paramount consideration in every matter affecting children, and that the right to freedom of expression (1) entitles those who produce content for profit, to impart information and ideas, while also (2) entitling those who wish to view such content, to receive information and ideas.

12. The balancing exercise is often a difficult and delicate matter. In such matters, the objective normative value system contained in the Bill of Rights is a guiding principle to strike an appropriate and just balance. Without entering into a full-scale constitutional balancing exercise, the basic principle is that the rights of creators, producers and distributors of viewing, reading, audio or interactive content does not extend so far that it entitles them to undermine the South African constitutional order (values and norms), in which human dignity and the best interest of the child are paramount considerations.

B. IMPACT OF VIOLENT AND SEXUAL MEDIA CONTENT ON CHILDREN

13. CFJ takes a particular interest in the impact of violent and sexual media content on children. The Guidelines provide a crucially important guide to adults who have children in their care and who need sound information to be able to make appropriate decisions regarding what media content those children should be exposed to.
14. The FPB Guidelines are based on scientific research which studies the impact of certain media content on children at various developmental stages. According to the Discussion Document, research indicates that children (at various stages of development) are most affected by content that is violent, sexual or contains horror. These types of content impact children both emotionally and behaviourally, and desensitise children who are repeatedly exposed thereto from a young age.
15. CFJ is especially concerned about violent and sexual content. Scientific research evidence has proven that exposure to violent and sexual content, and especially the combination of both, carries a significant risk of harm to both children and adults.
16. According to Dr J Coulsen,² a leading Australian parenting expert, sexual and violent content genuinely influences the behaviour and morality of children (and adults). Such content has a definite impact on the way people behave towards others. According to Dr Coulsen, while a specific person may not necessarily become "violent" or "sexual" in all instances, their behaviour and their responses are definitely impacted by what they have seen: their empathy is reduced, their objectification of others is increased, and their morality erodes. Dr Coulsen argues that exposure to sexual and violent content is desensitising and presents violence and sex as glamorous and consequence free (which

² J Coulsen 'The Problem with Exposing Kids to Sexual and Violent Content' <https://ifstudies.org/blog/the-problem-with-exposing-kids-to-sexual-and-violent-content> (2015).

it is obviously not). When adults are desensitised by repeated exposure to sexual and violent content, they are less concerned about their own and their children's' exposure to it.³

17. The American College of Paediatricians⁴ have found that increased exposure to sexual content among adolescents is correlated with increased sexual activity and risky sexual behaviours by those adolescents.⁵
18. A number of research studies have found that increased exposure to violent and sexually violent content is not only associated with increased violent behaviour, but that aggressive behaviour early in childhood is a reliable predictor of violence and juvenile delinquency later in childhood and adolescence.⁶
19. In summary, exposure to violent and sexual content, desensitises young and adolescent children to violent and sexual behaviour. This makes them more likely to engage in such behaviour themselves as participants or 'perpetrators'. It also makes them less likely to avoid such behaviour or recognise the perpetration of such behaviour against themselves or others as wrong.
20. Given the scientific research evidence on the harmful effects of exposure to violent and sexual content, CFJ supports and recommends stricter age restrictions with regard to violent and sexual content. Too lenient age restrictions would be socially irresponsible and will result in the FPB falling short of its mandate as set out in the Films and Publications Act (1996).

³ According to researcher SJ Kirsh, observing violence influences the development of cognitive models that determine how a person behaves. (SJ Kirsh *'Children, adolescents, and media violence: A critical look at the research'* (2011) Sage Publications.)

According to researchers NL Carnagey, CA Anderson and BJ Bushman, violent crimes and aggression as a problem-solving strategy is the central focus of many television programmes. Childhood exposure to such content leads to the development of perceptions of the world as overly unsafe and dangerous, putting children at risk of developing a 'mean world syndrome' that can predispose them to behaving more aggressively, especially towards ambiguous situations. (NL Carnagey, CA Anderson, & BJ Bushman *'The effect of video game violence on physiological desensitization to real-life violence'* (2007) *Journal of Experimental Social Psychology* 43(3).)

According to Dr KA Earles, constant exposure violence content dulls children's aversion to violent behaviour. Dr Earles argues that content portraying violence does not present patience, compromise or negotiation as conflict-solving mechanisms and fails to properly illustrate the negative consequences (both physical and psychological) of violence. (KA Earles, R Alexander, M Johnson, J Liverpool & M McGhee *'Media Influences on Children and Adolescents: Violence and Sex'* (2002) *Journal of the National Medical Association* 94(9).)

⁴ American College of Paediatricians *'The Media, Children, and Adolescents'* (2014).

⁵ Similarly, regarding exposure to sexual content, Dr Earles argues that it is reasonable to deduce that, if children learn aggressive behaviour from exposure to violent content, children will learn heightened sexual behaviour from exposure to sexual content.

⁶ T Huffman, *'Violence in Media: Effects on Children & Adolescents'* (2012).

According to researchers K Rodenhizer and K Edwards, sexual violence (including sexual violence during dating) are widespread problems among adolescents (and emerging adults) and a growing body of research shows that exposure to sexual content and content that contains sexual violence, are risk factors for these behaviours. (KE Rodenhizer & KM Edwards *'The Impacts of Sexual Media Exposure on Adolescent and Emerging Adults' Dating and Sexual Violence Attitudes and Behaviors: A Critical Review of the Literature'* (2017) Sage Publishing.)

C. CONTENT CONTAINING GENDER-BASED VIOLENCE

21. CFJ is also particularly concerned about content containing gender-based violence. South Africa has alarmingly high levels of violence, especially sexual violence, against women. Content depicting sexual violence against women dehumanises and objectifies women and plays a causal role in the perpetrating of gender-based violence.⁷
22. The United Nations Declaration on the Elimination of Violence against Women,⁸ an international legal instrument that is binding on South Africa, defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Gender-based violence includes but is not limited to physical and sexual violence.
23. Dr S Heward-Belle, director of the Sydney School of Education and Social Work at the University of Sydney, comments on the peculiar nature of gender-based violence as opposed to violence between men.⁹ Dr Heward-Belle argues that in male-on-male violent content, there is a greater degree of agency and reciprocity. Typically, the depicted violence occurs between men who both (or all) have some degree of power and agency, and enact violence on each other in order to achieve some objective. Often, male characters find themselves in violent situations due to having done something (active) to put themselves in those situations in the first place.
24. In contrast, content depicting gender-based (male-on-female) violence typically features a dichotomous relationship where an active and powerful male aggressor perpetrates violence against a passive and weak(er) female victim. Dr Heward-Belle further argues that gender-based violence is often used as an episodic and gratuitous part of a plot (neither necessary for or contributing to the storyline). Men do the violence while (in contrast) violence is done to women.
25. According to Professor G Davey,¹⁰ Emeritus Professor of psychology at the University of Sussex, one of the most insidious effects of negative content such as gender-based violence is its detrimental effects on viewers' moods (often without viewers being aware thereof). Professor Davey argues that continuous exposure to violent content (as part of entertainment) heightens an individual's own personal worries and concerns and makes people worry more about such events occurring in their own personal lives.
26. Research shows that (especially male) viewers become desensitised towards violence, including sexual violence, towards women and some men are particularly susceptible to excuse, condone or

⁷ In terms of the Films and Publications Act (1996), films, games or publications containing explicit depictions of sexual violence or domestic violence fall within the "XX" classification, which may not be distributed at all in South Africa.

⁸ UN Resolution 48/104 'Declaration on the Elimination of Violence against Women' (20 December 1993).

⁹ L Hartnell 'No more Game of Thrones: Why I've banned TV Shows featuring Violence against Women' (2017)

<http://www.abc.net.au/news/2017-02-17/why-i-wont-be-watching-game-of-thrones-this-year/8264940>.

¹⁰ Ibid.

perpetrate sexual violence against women in response to viewing content that contains gender-based violence.¹¹ The above research is in line with the findings of the Discussion Document, which notes that (1) viewing sexually aggressive films negatively affect viewers' attitudes towards women, (2) men who are repeatedly exposed to such films have a higher instance of believing rape myths (for example, that women who are victims of sexual aggression and violence actually enjoy the sexual aggression and violence) and are less sympathetic to rape victims in films, and (3) are more likely to accept cultural stereotypes about women.

27. Based on the peculiar and heinous nature of gender-based violence and its underlying male-female power imbalances, considered together with the prevalence thereof in South African society, we urge strongly that it should be recognised it as a separate category of violence. As shown above, academic research has proven that content depicting violence (and especially sexual violence) *against women* is harmful in different ways and in some respects even more harmful than for example content depicting violence against men or non-sexual violence.
28. CFJ recommends that gender-based violence is recognised as a classifiable element in acknowledgement of the serious dehumanising and harmful individual and social effects of gender-based violence in South Africa. Adults should be able to choose not to expose themselves or their children to content which contains gender-based violence and the harms and trauma associated with such exposure. In order to enable adults to make informed choices, both for themselves and their children, we recommend that gender-based violence becomes a separate and additional classifiable element and mandatory advice.

D. CONVERGENCE WITH COMPARATIVE JURISDICTIONS

29. The Discussion Document notes the high level of convergence between the classification systems of South Africa and the United Kingdom and Germany. It further notes the slightly more conservative German approach with regard to certain types of content.
30. German law, in the context of for example violence and sexual conduct, balances the right to freedom of expression with the right to human dignity and the duty to protect children. Content may not violate human dignity, individuality and personhood. Content that does not depict characters as humans, but merely as objects for other purposes (such as the sexual stimulation of viewers, for example) are highly objectionable. According to academic M Reimann,¹² German Courts are ultimately concerned with human dignity and works (or any content) that deny its characters their human individuality and personhood, are unacceptable expressions.
31. CFJ supports the high regard for, and the protection of, human dignity as exemplified by the German approach. Like Germany, South Africa also has a history marred with human rights violations, and

¹¹ MG Weisz & CM Earls 'The Effects of Exposure to Filmed Sexual Violence on Attitudes toward Rape' (1995) *Journal of Interpersonal Violence* 10(1).

¹² M Reimann '*Prurient Interest and Human Dignity: Pornography Regulation in West Germany and the US*' (1987-88) *University of Michigan Journal of Law Reform* 21 (1987- 88).

therefore the high value placed by the German approach on the protection of human dignity as inviolable, is both informative and instructive.

32. In this regard, CFJ notes the view expressed by retired Constitutional Court judge Laurie Ackermann that Germany probably has the richest and most deeply philosophically grounded scholarship and jurisprudence on human worth (human dignity) and equality in the world.¹³

E. RECOMMENDATIONS

33. Blasphemy

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?

- 33.1. CFJ recommend that blasphemy becomes mandatory advice.
- 33.2. Adults with children in their care use the Guidelines to make informed choices regarding the content their children are exposed to. Content classification and advice should enable adults to raise their children in terms of their deeply-held convictions about the meaning, origins and purpose of life. For the vast majority of South Africans, their convictions about themselves and the world (worldview) are inextricably tied to their religious beliefs. Therefore, adults need to be informed whether content contains blasphemies against their deity, as for persons who are religious, blasphemy is a matter of overriding importance when making decisions about viewing content. In order to live in accordance with their religious beliefs and conscience, these adults need information that will enable them to keep themselves and the children in their care from exposure to such blasphemies.

34. Gender-based Violence

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?

- 34.1. CFJ recommends that gender-based violence becomes a classifiable element (and mandatory advice).
- 34.2. Gender-based violence is a great concern, and exposure to such content is proven to be harmful to both adults and children, sustaining views that women are objects for the

¹³ L Ackermann 'Human Dignity: Lodestar for equality in South Africa' (2012) JUTA.

purposes of sexual gratification and/or enjoy sexual violence. Not making gender-based violence a classifiable element, would be socially irresponsible.

35. Imitable Behaviour

Should imitable behaviour become mandatory advice instead of voluntary advice?

- 35.1. CFJ does not have any specific concerns regarding imitable behaviour as mandatory advice, except to say that the more advice adults are provided with, the better choices they will be able to make for their children.

36. Violence and Sexual Conduct

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?

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?

- 36.1. CFJ strongly agrees that stricter age restrictions are required with regard to nudity and support an age restriction of 13 years for non-sexual nudity. CFJ recommends that the FPB considers an even stricter age restriction of 16 years for non-sexual nudity.
- 36.2. CFJ strongly agrees that low-impact sexual activity should carry an age restriction of no lower than 16 years, although 18 years would arguably be more in line with societal and constitutional norms and values and be consistent with scientific research into the effects of media content of a sexual nature on children.
- 36.3. CFJ strongly agrees that low impact violence should carry age restriction of 13 years. CFJ recommends that the FPB considers an even stricter age restriction of 16 years for low impact violence.

37. Need for Education

- 37.1. The Discussion Document invites comments on any other issues that may or may not have been canvassed therein. CFJ is also concerned by discrepancies between public agreement with the appropriateness of the Guidelines and public willingness to follow the Guidelines, as noted by the Discussion Document. The reluctance and failure of businesses to enforce the Guidelines in respect of product sales, is likewise concerning.
- 37.2. CFJ would like to encourage the FPB to seriously consider actively educating the public (and especially parents and adolescents) and the business sector regarding the very important reasons for classifying certain content, the importance of following classification advice, and the potential harms of ignoring classification advice. The Guidelines will fail in its purpose, especially with regard to protecting children, to the extent that it is not adhered to by the public and the business sector.

F. CONCLUSION

38. CFJ is generally supportive of the current Classification Guidelines as well as the FPB's recommendation that stricter age restrictions be implemented for content that is of a violent and sexual nature. CFJ encourages the FPB to seriously consider the harmful impact of content of a violent and sexual nature on children and women when reviewing the Classification Guidelines.
39. CFJ further implores the FPB to promote and protect the inviolability of human dignity when considering its policy in relation to content that contains gender-based violence.
40. Finally, CFJ would like to thank the FPB for the opportunity to make written representations as part of this review process. As noted hereinabove, we have been an interested party and stakeholder in this field since 2013 and remain so to this day. We are at the Board's disposal for purposes of offering assistance in relation to the further conduct of the review process and any other matters that the Board may deem appropriate.

Yours faithfully,

Liesl Stander (Preparer)
Legal Advisor: Law and Policy

and

Ryan Smit (Reviewer)
Director: Law and Policy