

### **3.3 Animal Protection Act, Performing Animals Protection Act and Animal Matters Act**

The Act shows that South African society is highly sensitive towards the handling of animals and (i) how individuals in custody of or in control of animals treat the animals, (ii) how negligent animal handling that leads to injuries or death, are treated. The Acts emphasise the non-abusive treatment of animals which indicates that society norms and values are generally opposed to animal abuse.

The Animal Protection Act, like the Animal Matters Amendment Act, is a reflection of society's concern for the welfare of animals. It further shows that society is intolerant of individuals who, in any way, abuse animals or mistreat and use animals for self-gain or enjoyment, whilst harming the animal physically and/or mentally. Using the conventional definition of animal rights, the Animal Protection Act can also be seen as society's way of protecting the rights of animals in the wild, with no direct interaction with people – thus showing that society values the diversity of the animals in the Republic of South Africa.

### **3.4 Promotion of Equality and Prevention of Unfair Discrimination Act**

The Act represents South Africa's views as a nation that highly favours equality and the prevention of unfair discrimination. Additionally, the Act clearly addresses discrimination against women and people with disabilities, citing that such discrimination should not be tolerated at all. This shows that our modern society has come to recognize the value of women in the society as equals and has, in like manner, become aware of the importance of the treating people with disabilities, which would include any mental disabilities without discrimination.

### **3.5 Consumer Protection Act**

The Consumer Protection Act came into effect on the 1<sup>st</sup> of April 2011, and introduces a single, comprehensive legal framework for consumer protection which outlines the entitlements of consumers and the responsibilities of suppliers.

It is clear from the Consumer Protection Act that society is becoming more and more aware of their rights. Accordingly, the culture of access to sufficient information in plain understandable language requires any person that interacts with consumers to meet such requirements. Hand in hand with access to information is empowering the consumer's right to choice. The consumer rights listed in the legislation relates closely to the Bill of Rights in the Constitution. However, access to information (section 32 of the Constitution) and freedom of expression (section 16) specifically as it relates to the right to receive and impart with information, seem to be the most prominent Constitutional considerations in the Act.

### **3.6 Criminal Law (Sexual Offences and Related Matters) Amendment Act**

The Sexual Offences Amendment Act was revised to give an all-encompassing protective framework in sexual offences as outlined in the South African Constitution. The Act was also created to set out a framework relating to the protection of victims of sexual offences, which ensures the provision of adequate and effective protection to victims of sexual offences.

A pertinent and significant development in the Sexual Offences Act is the inclusion and provision for same-sex sexual offences. The Amendment Act provides special protection measures for children and people with mental disabilities. The purpose of this Act is to ensure that law enforcers render a professional service to victims in respect of the investigation of offences of this nature and to assist victims in this regard. It also makes a new expansion of the scope of statutory offence of rape, to all forms of sexual penetration with or without consent, irrespective of gender.

The legislation makes specific reference to sexual offences that are not morally sound. These offences include; Incest, Bestiality and Sexual acts with a corpse, respectively. Such sexual acts are punishable by law and are in breach of morality in a civil society. In particular it also sets the boundaries for any form of child exploitation, this includes; being involved in the sexual exploitation of a child, furthering the sexual exploitation of a child, benefiting from the sexual exploitation of a child, and living from the earning of sexual exploitation of a child. Furthermore, the Amendment Act also protects against the sexual grooming of children. It speaks to any form of sexual grooming that may result in facilitating, promoting, persuading, or coercion of a child to perform a sexual act. To this end the Amendment Act further adds, performing any act in the presence of a child with the intention to encourage, reduce or diminish any unwillingness to perform a sexual act with either the primary offender or a third party.

The legislation also protects the innocence of a child which could be violated by exposing or displaying child pornography or pornography to a child and protects against causing or compelling children to witness sexual offences, sexual acts, or self-masturbation. It clearly makes, 'flashing', exposure or displaying of genital organs, anus, or female breasts, to children punishable by law.

The same applies to persons with mental disabilities. Accordingly, the legislation protects against any form of sexual exploitation of persons with mental disabilities. This protects against those who may have mentally impaired judgement from being sexually exploited by engaging in a sexual act, committing an unlawful sexual act, or being unwillingly and unknowingly offered to engage in a sexual act with a third party.

It speaks to the responsibilities of the care giver, guardian, parent, or teacher with regards to intentionally and knowingly allowing the commission of a sexual act by a third party with a mentally disabled person. The Amendment Act also protects against the sexual grooming of a third person with the intention to encourage the person to partake in a sexual act with a mentally disabled person. Similarly, a person who exposes a mentally disabled person to child pornography or pornography, or a publication or film is guilty of sexually grooming a mentally disabled person.

### **3.7 Electronic Communications Act**

The Electronic Communications Act, became effective in 2006, and introduced the concept of technological neutrality. It created a converged environment wherein different service providers were no longer restricted to provide a specific type of service. Accordingly, the focus of this approach was to stimulate competition and create lower prices and better service quality to consumers. The licensing regime still differentiates between broadcasting and electronic communication services (at the services level), however at the network level there are no limitations. It should be noted that no person may provide an electronic communications service, unless it has a licence, or has been explicitly exempted by the Independent Communications Authority of South Africa (ICASA). The legislation is much more consumer focussed and in the Guidelines issued in terms of the ECA, there are very strict provisions to ensure good quality services to consumers and access to sufficient information, in order for them to make an informed choice.

In the context of the guidelines, it is important to note that the ECA provides a clear indication that broadcasting services do not fall within the FPB's mandate and is to be regulated by ICASA.

### **3.8 Electronic Communications and Transactions Act**

The overall objective of the Act is to enable and facilitate electronic transactions by creating legal certainty around transactions and communications conducted electronically<sup>1</sup>. In a society that relies more and more on electronic communications, this Act is of great importance to all. There is a clear focus on access to information, and the protection of personal information. Due to the convenience that e-commerce offers, as well as the economic importance for the country to participate in that space, the Act encourages a shift by protecting consumers to the largest extent possible. Security is of great significance in the e-commerce space and the creation of cyber inspectors reflects the serious light in which government views security. Lastly, although there is no general obligation created in

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<sup>1</sup> <http://www.intercomm.co.za/articles/ECTAct.htm>

the ECT Act for service providers to monitor the data it transmits or stores or to actively seek facts or circumstances indicating an unlawful activity, the ECT Act creates a system for service providers such as Internet Service Providers ("ISPs") and cellphone operators to inform competent public authorities of alleged illegal activities (such as child pornography).

### **3.9 Prevention and Treatment of Substance Abuse Act and the Drugs Master Plan**

The Prevention and Treatment of Substance Abuse Act, was enacted to provide for a comprehensive national response for the combating of substance abuse. It provides for mechanisms aimed at demand and harm reduction in relation to substance abuse through prevention, early intervention, treatment and re-integration programmes.

Upon reading the Act, there are several chapters that reflect on society, with regards to citizens' rights in society and aims at ensuring the protection of all, including children, who are seen as the most vulnerable to substance abuse. There is a focus on awareness of the dangers of substance abuse and the effect of substance abuse on society. Accordingly, the manufacturing of illicit drugs is also considered and addressed.

### **3.10 Civil Union Act**

Upon reading the Civil Union Act it is evident that the Act allows for the creation of a voluntary union of two persons who are both 18 years or older of age, which is solemnised and registered by way of either a marriage or a civil partnership. The legislation can be recognised as a progressive step forward for South Africa, in its move to distance itself from its Apartheid past. South Africa was therefore the first country in Africa to allow same sex marriages.

The Act has enacted requirements in the Constitution which states that, there is a need to create a new order in which all South Africans will be entitled to a common South African citizenship in a sovereign and democratic constitutional state in which there is equality between men and women and all people of all races, so that all citizens shall be able to enjoy and exercise their fundamental rights and freedom.

## **4. BENCHMARK STUDY**

In order to obtain an objective view of the performance of South Africa's classification system, the FPB conducted a benchmark study with a wide range of countries. The countries considered were:

- United Kingdom
- Tanzania
- China

- Nigeria
- India
- Kenya
- Germany

The first parameter included in each country assessment was a broad country overview. This provided context for the other three parameters which were:

- An overview of classification legislation;
- An overview of classification authority; and
- A consideration of their classification approach.

In this benchmark study it was found that China, Tanzania and Kenya impose strict censorship and do not have a comparable classification system to that of South Africa in place. Nigeria and India take a more moderate approach although their respective classification systems also use a censorship approach. India is in the process of amending its censorship approach and it remains to be seen if the new system will qualify as a classification rather than a censorship system. The United Kingdom (UK) and Germany have classification systems in place which are more similar than the rest of the benchmark countries to that of South Africa.

The South African classification system and approach compares exceptionally well with those of the UK and Germany. In terms of implementation, similar overarching factors, including context, tone and impact and medium of release are considered. 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 classification element and in the UK photo or pattern sensitivity, 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).

Another noteworthy distinction is 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 UK also considers "Horror" as a factor in their classification process, which takes the impact that horrific occurrences or incidents may have on children. It is stated that the use of frightening elements which might scare or unsettle an audience is part of a long tradition of story telling and film making. Many children enjoy the excitement of scary sequences, but, where films are targeted at a younger audience, classification decisions should take into

account such factors as the frequency length and detail of scary scenes as well as horror effects, including music sound and whether there is a swift and reassuring outcome. The FPB considered this to be a useful approach to be considered in the new guidelines.

Lastly, the UK uses 12 , 15 and 18 as age restriction categories similar to Ireland, Japan, Maldives, Nigeria and Poland amongst others. This is also partially similar to the Australian approach that also uses 15. There are a few countries with a 13 and 16 age restriction similar to South Africa, such as Argentina. However a large number of countries either use 12 and 16 as age restrictions such as France, Hungary and Latvia or 13 and 15 as age restrictions, such as Thailand.

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.

In terms of age categorisation, it was noted that Germany has an additional age group of 6 years which is quite unique in terms of approach although it was not included into the South African approach. Another observation of the German approach is that for games, consideration is given to first or third person violence in the classification approach. The FPB considered this a beneficial factor in the classification of games.

The FPB conducted further research following the benchmark study and also considered the approach taken in Australia. Some of the noteworthy findings from this research was their approach towards determining the impact of classifiable elements (very mild, mild, moderate, strong high and very high), which is used both for games and films as well as their consideration of classifiable elements based on impact. The FPB also took into account their consideration of the use of incentives or reward in the classification of games, as it applies to classifiable elements. Lastly, the Australian approach as it relates to the determination of the impact of interactivity with computer games was considered. In the guidelines this is reflected as “competitive impact”.

## **5. CONSUMER RESEARCH: QUALITATIVE AND QUANTITATIVE RESEARCH**

One of the guiding principles of the FPB is to seek to achieve high level objectivity in its classification guidelines and inclusive consideration of the changes in South African society as reflected in the prevalent norms and values of its citizens and developments in South African legislation. In addition to an analysis of the relevant legislation, international benchmarking and accumulated experience of the FPB: qualitative research was undertaken

among key stakeholders of the FPB and quantitative research among a nationally representative sample of citizens.

The findings from the research conducted among the stakeholders are dealt with below.

### **5.1 Qualitative Research Findings**

The FPB interacts with a number of organisations in the execution of its duties. These organisations include:

- Government Departments,
- Organisations that are concerned about the freedom of expression,
- Religious groups
- NGOs that are focused on morals, family values and the protection of children.
- Distributors and broadcasters that are directly involved in the implementation of the classifications that the FPB gives to movies, games and publications.

All these organisations have an interest in the activities and actions of the FPB. In some cases they are involved in joint presentations/road shows.

All the above organisations would be actively involved in reviewing the revised classification guidelines once they are published. It was therefore thought that it would be the correct approach to garner their opinions at the development stage of the project and to incorporate their suggestions into the classification guidelines where relevant.

The research approach selected was in-depth interviews with the COO or a person having direct interaction with FPB for each stakeholder. This was considered to be sufficiently flexible to illicit information that might be proffered. In addition the number of interviews conducted was relatively small and the profile of respondents quite varied which meant quantitative measures could not be generated. The FPB interviewed 22 key stakeholders as part of the qualitative research.

A structured questionnaire was used as a framework for the interview. The research indicated that role of the FPB is clearly understood by the respondents. The respondents were unanimous in believing that the role of the FPB was relevant particularly in today's society.

In terms of societal changes that the FPB should be incorporating into their classification system, the respondents indicated that technological developments such as social media should in particular be considered. One of the questions asked to respondents was if the

FPB adapted to changes in society? It was stated that while the FPB has been sensitive to child pornography, some felt it was a bit conservative.

*"Tend to be a bit conservative when it comes to some content FPB does not balance right of freedom of expression."*

The research furthermore indicated that most respondents dealing with classifications understood how the rating system works, and that it was also used by broadcasters when complaints were received against them.

Although the response was overwhelmingly positive when respondents were asked if the classification system provides sufficient information, a particular concern was raised regarding sexual violence. The research indicated that objections to FPB ratings were minimal although some broadcasters raised concerns about the handling of nudity and sexual nudity, and indicated that a more consistent approach is required.

During this research, respondents were reminded that the Classification Guidelines were possibly being revised and were asked for their suggestions in this regard.

A number of suggestions were made

*"Note that L does not give a sufficient indication of the problem with language. In addition SV (sexual violence) may be required"*

*"The rating system should be more sensitive to societal changes and the changes in child development. They should also provide more information, perhaps an educational road show to inform parents about the importance of ratings."*

*"There should be regular reviews of the classification system as well as on-going research and analysis. This is necessary to ensure that the approach is relevant and ties in within the broader legislative requirements on child protection in SA."*

The findings that emerged from the qualitative research that were incorporated into the guidelines are:



- The introduction of a system to ensure a more consistent classification approach; The introduction of more classifiable elements (i.e. sexual violence – “sv”)
- The introduction of a system to measure the impact (low, mild, moderate, strong, very strong and extreme).

## 5.2 Quantitative Research Findings

The FPB Fieldwork for the quantitative study was undertaken between October and November 2011. A semi-structured questionnaire was used which covered the objective of the research, whilst the interviews were conducted at the respondents' homes.

Pilot interviews were conducted to check that the questions were understood and the flow of the questionnaire. Standard check-back procedures were conducted on the work of each interviewer to ensure the quality of the research conducted. It should be noted that there was a bias towards metropolitan areas.

### 5.2.1 Sample Structure for the quantitative research

		TOTAL	E Cape	Free State	Gauteng	KZN	Limpopo	Mpumalanga	N West	N Cape	W Cape
	<b>CITIZEN SAMPLE</b>	<b>1000</b>	<b>139</b>	<b>65</b>	<b>202</b>	<b>210</b>	<b>110</b>	<b>69</b>	<b>80</b>	<b>21</b>	<b>104</b>
<b>RACE</b>	<b>Black</b>	751	117	55	142	168	107	62	72	9	19
	<b>Coloured</b>	87	11	1	7	2	0	0	0	9	57
	<b>Indian</b>	27	0	0	4	22	0	0	0	0	1
	<b>White</b>	135	11	9	49	18	4	7	7	3	27
<b>GENDER</b>	<b>Female</b>	526	76	34	102	113	62	36	39	11	54
	<b>Male</b>	474	63	31	100	97	49	33	40	10	50
<b>COMMUNITY</b>	<b>Metro, 250,000 plus</b>	416	64	17	143	125	0	0	0	0	74
	<b>Cities, large towns (40,000 up to 250,000)</b>	224	23	20	36	24	0	0	0	0	67
	<b>Small towns (500 to 40,000)</b>	260	38	21	3	39	24	29	47	6	14

	<b>Rural</b>	100	14	7	20	21	75	33	25	13	13
<b>AGE</b>	<b>15 – 24 years</b>	295	46	18	48	69	39	22	22	6	26
	<b>25 – 34 years</b>	228	28	14	53	48	23	16	18	5	23
	<b>35 – 49 years</b>	252	30	17	58	48	24	17	22	6	29
	<b>50+</b>	225	35	15	42	45	25	14	18	5	26
	<b>FOCUSSED SAMPLE</b>	350	32	23	141	63	4	9	15	4	60

A total of 1350 interviews were conducted, of this a sample of 1000 was structured to broadly reflect the profile of the South African households. The research was stratified to include a rural sample. A further sample of 350 was conducted at households in Major Metro/Cities with children aged 6 to 18 years in the home. This stratified sample also has access to television (TV) and the internet. The racial profile within each province was structured to correctly reflect that of the province and the profile of the country as a whole. The age profile was as follows<sup>2</sup>:

AGE GROUPS	TOTAL %	African %	Coloured %	Indian %	White %
15-24	8	10	3	5	7
25-34	33	33	34	33	35
35-49	35	35	38	31	30
50+	24	22	25	31	28

The sample considered education, languages spoken<sup>3</sup>, dwelling type, employment, literacy and income.

The findings made in terms of the quantitative research are an important element of the project conducted in order to review the FPB's Classification Guidelines. They are particularly important in identifying the "on the ground" perspectives and in assisting the FPB to determine the prevailing norms and values in South Africa, across provinces, age groups, and racial groups, amongst others.

<sup>2</sup> The sample is biased towards the 25-49 age group reflecting the inclusion of households with children 6 to 18 years

<sup>3</sup> Xhosa and Zulu are the two most widely spoken home languages spoken by the sample interviewed. While only 15% of the sample spoke English as a home language, 75% indicated that they could speak it increasing its penetration to 90%. Afrikaans was second on 44% followed by Zulu on 38%.

The main findings of the research considered for the drafting of the classification guidelines can be divided into 6 sections which are:

- (1) Findings relating to the issues that are of concern to South African families,
- (2) TV viewing habits of South Africans.
- (3) Findings related to South African's habits with respect to cinema, DVD's/Blu Ray, internet and personal computers regarding film and games.
- (4) Details of the controls applied by parents, which are an additional measure to classification – a complementary approach to ensuring children's safety.
- (5) Awareness of the FPB classifications.
- (6) Lastly, children and pornography were considered – a key issue which drives the FPB in pursuing its mandate.

To start off with, the research gauged what issues South Africans and South African Parents bringing up their children in South Africa have to grapple with. It transpired that crime is the biggest issue facing South Africans followed by poverty. These concerns were mentioned spontaneously by respondents. Drugs were on the other hand spontaneously mentioned as the biggest concern for parents bringing up children followed by crime (which was the biggest concern overall).

Based on a list of 11 factors, mentioned first and in total (first three mentions) the research showed that the biggest issue facing South Africans was unemployment, followed by crimes against women/children, and sexual abuse / harassment which were on a similar level. Child pornography was in 4th spot, having been mentioned spontaneously by only 1% of respondents, just ahead of corruption. However, sexual abuse and child pornography emerged with the highest level of concern at the aided level.

From the questions aimed at obtaining a view of respondents on the current classification criteria, which focussed specifically on Sex (S), Violence (V), Bad Language (L) and Nudity (N), sex was considered as being the most harmful to children. This was followed a long way back by violence and then nudity. The responses received indicated that bad language was not regarded as a serious matter in comparison with sex and violence.

It was important for the FPB to obtain an understanding of how material is accessed, and it was found that 25% of the respondents have hired a DVD/Blu Ray in the last month. The incidence of hiring was equally likely to happen in all community sizes. With regards to access via personal computers, the research indicated that 25% of family members use a PC at the home. Usage varies by community size and race. Time spent on the computer on average per day did not vary significantly by age. It varied from an average of 1.5 hours among 8 year-olds to 1.9 hours for 17 year-olds.

Television access in South Africa is much higher with virtually every household in South Africa having a television set. Only 38% of people indicated that they have been to a cinema with about 1 in 10 people indicating that they have been to the cinema during the last week. Lastly, 15% have seen an IMAX or 3D (three dimensional) movie. Not surprisingly the likelihood of having seen an Imax/3D movie is much higher in metro areas, 20% versus 7% in the rural areas.

As stated earlier in this Explanatory Note, the main issue among parents is any material with a sexual overtone, with violence coming in second. Some parents simply said that their child should only see age-appropriate material which could be referring to the FPB's age classification system. The FPB noted that some parents simply depended on time restrictions to manage what their children watched.

The main way in which parents control what their children watch is to sit/ view the programmes with them. However, the next highest level of mention by parents was to "check classifications". Sex, violence and not age appropriate content were the main restrictions applied to children in terms of what they cannot view. It was lastly found that 23% of parents select the DVD in order to control what their children view. With 8% indicating that they check the age restriction. A further 6% watch the DVD with their children.

While sex is a primary issue with regard to TV, films and DVD/Blu Ray it is not the case with games where *violence* is the main concern. It is noted that 36% of respondents indicated that their children did not play games.

It was furthermore interesting to note that 13% of parents of children, that play games, have played games with their children, as a means of monitoring what games their children played. A third of the parents of children that play games do not control the games their children play. Monitoring is the main method for controlling use of games. In total 10% of parents take cognisance of age classifications on games. A third of parents indicated that they were sensitive to the different formats that were available to play games i.e. arcade, mobile phone etc.

As with games and TV, films and DVD/Blu Ray some parents monitor their children's internet activity (15%) or use security codes to limit access (7%), whilst 9% of internet users have an electronic website control. 12% of parents do not execute any control on internet access for their children. The main concerns that parents raised were access to pornography and adult sites. To this end, issues relating to sex are regarded as being particularly harmful to children. However, in addition to pornography and adult sites, social networking sites (Chat rooms/ Facebook/Mxit/etc) were also sites that that some children are not allowed to access.

The research also tested awareness by respondents of classifiable elements as well as their usefulness. It found that the majority of respondents are aware of the 3 symbols that are used most often in the classification of films which are S (93%), L (88%) and V (92%). Awareness of N (80%) is nearly as high and is an indication of the relative frequency of its use compared to S, L and V. Awareness of B (blasphemy – 5%), D (Drugs – 6%) and P (Prejudice – 8%) in comparison were extremely low.

Expanding on classifiable elements, respondents were also asked whether “SV” (sexual violence) should be added as an additional category to warn about scenes containing sexual violence (i.e. rape scenes). This proposal was supported by 80% of respondents as an additional category. The research in addition indicated that respondents would support a special warning where applicable for the following:

- Photo/pattern sensitivity (85%)
- Motion sickness (82%) and
- Low frequency sound (82%)

In as far as age categories are concerned, it appears that age classifications are clearly understood and are correspondingly found to be extremely useful. The inclusion of M (referring to mature accompaniment) and which is an approach currently used by the FPB, was found to be confusing, and only a small proportion of respondents got it right. The current age categories used by the FPB are however understood and remains relevant according to the research.

Lastly, the views of respondents regarding publications were also considered and the research indicates that one in five people believe that there are newspapers, magazines or books that are generally available which are not appropriate for children. A specific concern was expressed about the distribution of Adult publications and some believed that it was not effectively controlled.

## **6. DRAFTING APPROACH**



The FPB has prepared a user guide to make it easier to interpret the guidelines, which is made available with this explanatory note. However, the proposed approach in the guidelines is as follows:

Films/Games: must consider context, impact and release format in making a classification decision with context being an overarching factor; and

Publications: must consider context and impact in making a classification decision.

### 6.1 Factors Considered

In light of the above, the factors to consider for each of the above are clearly set out in the guidelines. For your ease of reference it is:

<p><b>Context:</b></p> <ul style="list-style-type: none"> <li>• The expectations of the public in general and the target market of the material;</li> <li>• The theme of the material;</li> <li>• The manner in which an issue is presented;</li> <li>• The literary, artistic or educational merit of the film;</li> <li>• The apparent intention of the film maker, as reflected in its effect.</li> </ul> 	<p><b>Release Format (not applicable to Publications):</b></p> <ul style="list-style-type: none"> <li>• The ability to replay scenes;</li> <li>• The ability to view certain scenes out of context;</li> <li>• The clarity of images; and</li> <li>• The impact of technology</li> </ul> 
<p><b>Impact:</b></p> <ul style="list-style-type: none"> <li>• No - contains no classifiable elements</li> <li>• low - no noteworthy single or cumulative occurrences of classifiable elements accordingly classifiable elements occur in passing or briefly;             <ul style="list-style-type: none"> <li>- occurrences of classifiable elements are not realistic;</li> <li>- no details, close-ups or slow motion of violence and sexual activity or sexual conduct;</li> <li>- no accentuation techniques such as lighting, perspective and resolution; and</li> <li>- theme of material is not threatening and cause no moral harm;</li> <li>- No verbal reference or visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence;</li> <li>- Classifiable elements form part of a bona fide story line.</li> </ul> </li> <li>• mild - only single occurrences of classifiable elements;             <ul style="list-style-type: none"> <li>- occurrences of classifiable elements are not realistic;</li> <li>- no details, close-ups or slow motion of violence and sexual activity or sexual conduct;</li> <li>- no accentuation techniques such as lighting, perspective and resolution; and</li> <li>- theme of material is not threatening and cause no moral harm;</li> <li>- No verbal reference or visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence;</li> </ul> </li> </ul>	

- Classifiable elements form part of a bona fide story line.
- moderate: - single or cumulative occurrences of classifiable elements and incidental depiction of a classifiable element;
  - occurrences of classifiable elements are not realistic;
  - no details, close-ups or slow motion of violence and sexual activity or sexual conduct;
  - Verbal reference rather than visual representation of certain classifiable elements such as sexual activity or conduct, sexual violence and violence with no noticeable effect;
  - no accentuation techniques such as lighting, perspective and resolution;
  - Theme of material may be threatening but cause no moral harm;
  - Verbal reference rather than visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence with no noticeable effect;
  - Classifiable elements form part of a bona fide story line.
- Strong: single or cumulative occurrences of classifiable elements;
  - Occurrences of classifiable elements may be realistic;
  - No details, close-ups or slow motion of sexual conduct or extreme violence;
  - No accentuation techniques such as lighting perspective and resolution of sexual conduct or extreme violence;
  - Theme of material may be threatening but cause no moral harm;
  - Verbal reference rather than visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence which may have a noticeable effect;
  - Classifiable elements form part of a bona fide story line.
- Very Strong: - single or cumulative occurrences of classifiable elements;
  - Occurrences of classifiable elements may be realistic;
  - May contain details, close-ups or slow motion of classifiable elements;
  - May use accentuation techniques such as lighting perspective and resolution; and
  - Theme of material may be threatening but cause no moral harm;
  - Verbal reference and/or visual representation of certain classifiable elements such as sexual activity or conduct, and violence but not sexual violence;
  - Classifiable elements do not necessarily form part of a bona fide story line.
- Extreme: Meets the requirements of XX and in some instances X18 set out in the Guidelines



The above factors inform the interpretation of classifiable elements and the ultimate allocation of an age restriction.

## 6.2 Classifiable elements:

The FPB has decided to expand upon the current classifiable elements based on 3 considerations:

- The Legislative Review;
- The International Benchmarking; and
- Findings from the Qualitative and Quantitative research.

As explained in paragraph 2 above, there is a concrete drive to improve access to information to consumers. The trend reflected in legislation is to provide more rather than less information to consumers in order to make informed decisions regarding the content they wish to access. In addition, both the quantitative and qualitative research supported the expansion of classifiable elements.

For example if there is nudity ("N") of a moderate impact in a film that is classified as an 18 age restriction due to strong impact substance abuse ("D") and high impact language ("L") the classification will indicate 18 NDL although the nudity is only applicable to a 15 age restriction.

The FPB has furthermore introduced more classifiable elements than those used in the past based upon its considerations of the international approach. These include:

- "Photo or pattern sensitivity, motion sickness and reactions to low frequency sound"
- "Imitable Acts and Techniques" and
- "Criminal Techniques".

It should be noted that "photo or pattern sensitivity, motion sickness and reactions to low frequency sound" as well as "Imitable Acts and Techniques" are entirely voluntary indications by classifiers and was informed by the approach taken in the UK.

The understanding set out in the guidelines for photo or pattern sensitivity is based on the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) version 2.0 produced in 2008. It specifies that content should not flash more than 3 times in any 1 second period.<sup>4</sup> It is included into the guidelines in order to raise awareness and encourage

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<sup>4</sup> <http://web.mit.edu/aeroastro/partner/projects/project1-qanda.html>

film and game distributors to provide necessary warnings to consumers. Accordingly, it would only be added as consumer advice by classifiers with required expertise in the matter and is not mandatory advice. This is also not a classifiable element considered in the allocation of an age restriction.

Low-frequency noise (LFN) is generally taken to mean noise below a frequency of about 100 to 150 hertz. The human ear is not very sensitive at these low frequencies. However, there may be some members in society that are troubled by LFN. This is similarly to photo or pattern sensitivity included only to raise awareness and encourage film and game distributors to provide necessary warnings to consumers. It would also only be added as consumer advice by classifiers with required expertise in the matter and is not mandatory advice and is not considered in the allocation of an age restriction.

Motion sickness is a more general concern for consumers and may be experienced to various degrees in different circumstances such as first person interactive gameplay and certain filming styles (such as that used in the Blair witch Project). This is similarly included to the elements mentioned above, only to raise awareness and encourage film and game distributors to provide necessary warnings to consumers. It is also recognised that it may only be a problem with certain release formats. It is proposed to be added as consumer advice by classifiers with required expertise or that is experiencing motion sickness during a classification and is not mandatory advice and is not considered in the allocation of an age restriction.

Imitable acts and techniques may be a concern to parents and guardians as younger children may attempt to enact some of the acts and techniques observed during a film or game, which may be dangerous. The FPB proposes that warnings of this nature be included to raise awareness, but that it should ideally be indicated by film and game distributors. It is proposed to be added as consumer advice by classifiers with required expertise although it is recognised that it may be a subjective warning. It is however not mandatory advice and is not considered in the allocation of an age restriction.

“Criminal Techniques” has become a serious concern in recent years and is considered in Australia (however results in material to be refused classifications). It is already a consideration by classifiers in South Africa, although it is not reflected in the current guidelines. The FPB accordingly proposes the inclusion thereof as a classifiable element, which must be considered in the allocation of an age restriction.

During the research phase of the project, it was indicated by stakeholders and classifiers that more clarity has to be provided regarding sexual violence. Currently, different classifiers

indicate occurrences of sexual violence as either sex "S", violence "V" or both respectively. However, it is critical to provide accurate and clear information to consumers regarding occurrences of sexual violence. It was accordingly decided to include sexual violence as a separate classifiable element to be considered in the allocation of either age restrictions, distribution restrictions or for it to be regarded as refused material.

Lastly for film, "Horror" has been added as a classifiable element not only due to the approach followed in the UK, but also as a result of recommendations by classifiers. Horror is regarded as more than a specific genre and may occur in different genre films and games. The FPB has accordingly decided to consider the impact of occurrences of horror in the allocation of age restrictions. In light of the fact that the guidelines should be reviewed on a regular basis, horror could be excluded in future if the public does not find it to be a useful element.

For example a fantasy film such as Harry Potter contains numerous scenes of horror which may be disturbing to younger viewers, although the films as such would not be regarded as horror movies.

An additional classifiable element has also been added to the classifiable elements of games. "Competitive intensity" was recognised to some extent in the previous guidelines wherein the guidelines explained the relationship between violence in games and subsequent aggression in children. In this version of the guidelines, the FPB has attempted to make a more explicit link between competitive intensity and violence and regards it as a classifiable element that must be considered in the allocation of an age restriction. It has been found that first person views and virtual reality perspectives result in gamers having a more intense experience. Accordingly, the level of competition is linked with the impact of either first or third person gameplay violence, in order to determine the impact of competitive intensity. The approach is illustrated more clearly in the user guide for these guidelines.

### **6.3 Proposed Age Restrictions:**

The FPB has proposed the following age restrictions:

- "A" – all ages
- "PG" – means the material may contain classifiable elements that may be disturbing or harmful for sensitive young viewers and that parents and care-givers are in the best position to decide whether or not a child in their care may access material classified as "PG"
- "10" – means that children under the age of 10 may not access the material.

- 13PG” means an all-ages category but cautions sensitive viewers and indicates that parents and care-givers are in the best position to decide whether or not a child in their care that is under the age of 13 may view the films, DVD or Blu Ray for home entertainment purposes;
- “13” means that children under the age of 13 may not access the material’

All other age restriction and restricted distribution categories remain the same (16, 18, X18 and XX).

In this project the FPB considered the developmental stages of a child from early childhood (0 – 4 years) and middle childhood (5- 10/12 years) to adolescence (10/12 – 18). In doing this, the fact that there is a wide variation in terms of the milestones was also considered due to numerous factors such as genetic, cognitive, physical, family, cultural, nutritional, educational and environmental factors.

Parental guidance (“PG”) is generally used approach as advice to parents with children. The FPB has decided to place the onus on parents and caregivers to decide if a child is ready to access material. Accordingly the general “PG” is used as well as 13PG to provide such flexibility.

As explained in paragraph 2 above, in terms of the Children’s Act, children can make serious health related decisions such as giving or withholding consent to HIV testing and acquiring condoms and contraceptives at the age of 12. The FPB has considered aligning its age restriction approach with that of the Children’s Act. However, due to our schooling system wherein the child goes to secondary school at the age of 13, it was decided to retain 13 as an age restriction. This decision was supported by the responses obtained in the quantitative research, wherein a majority supported the current age categories.

The age category of 16 was also retained. It should be noted that in terms of the National Road Traffic Act, Act 93 of 1996, a child of 16 years of age can obtain a learners drivers licence. Most of the countries considered have a similar age to South Africa to obtain a learners or drivers licences (16 or 17 years) and legally allowing children to leave school (16, 17 or 18).

The quantitative research indicated that use of M (mature accompaniment) is not an approach that is widely understood or supported by South Africans. The FPB has accordingly removed reference to 10M and 13M in the current version of the guidelines. This was done to ensure a more user friendly and understandable classification environment. It should be

noted however, that in the context of films rated 13PG, parents are required to accompany their children under the age of 13 to cinemas.

In as far as age categories are concerned, the FPB has also aligned the age restriction approach of games to that of film to the extent possible. Accordingly, the age restrictions that are proposed in these guidelines to be applicable to games are PG, 10, 13 and 13PG, 16 and 18. The latter 2 age categories remained unchanged.

Publications were not extensively considered in the previous version of the guidelines and the existing provisions do not seem to provide enough guidance. It was therefore decided to provide a clearer indication of the age categories to be applied to different types of publications. It is however important to note that in line with the Films and Publications Act, only publications containing content that could potentially fall within the restricted distribution category (X18 or XX) must be classified. All other classifications of publications are voluntary, but must be classified by the FPB upon request. Voluntary classification does however not mean voluntary compliance, regardless of whether a publication has been classified or not, it must comply with the requirements set out in the classification guidelines.

#### **6.4 Other considerations**

The FPB has taken a strict stance on a number of issues, that were not dealt with previously in great detail in the guidelines. This includes *inter alia* the explicit regulation of paraphilia's as XX classified content, with the exception of paedophilia which is illegal in South Africa. The FPB considered the DSM-IV criteria for defining a paraphilia as follows:

*"Paraphilias all have in common distressing and repetitive sexual fantasies, urges or behaviors. These fantasies, urges, or behaviors must occur for a significant period of time and must interfere with either satisfactory sexual relations or everyday functioning if the diagnosis is to be made. There is also a sense of distress within these individuals. In other words, they typically recognize the symptoms as negatively impacting their life but feel as if they are unable to control them."*

The FPB propose to consider any content that may encourage any paraphilia's and classify it appropriately. This accordingly resulted in the recognition of paraphilias as well as the explicit mentioning of persons that appear *non compos mentis* in any instance in either films or games that may be involved in actions that fall within classifiable elements to be classified within the XX category, where appropriate.

## **7. CONCLUSION**

The FPB has prepared these guidelines not just with the view of ensuring a more consistent internal approach towards classification, but also to enable any interested party or stakeholder to be in a position to understand and pre-empt the FPB approach. During the process of preparing the guidelines it transpired that the South African framework compares favourably to that of the rest of the world (for comparable countries), and the objective of these guidelines is to build upon that position.

## ANNEXURE A

### USER GUIDE – FILMS/GAMES/PUBLICATIONS

This user guide was prepared to assist in the interpretation of the draft Guidelines. It summarises some of the provisions and provides an illustration of the interpretation of the classification considerations.

#### FILMS

##### 1. Considerations:

- Draft Guidelines introduce amended age restriction categories
- There seemed to have been confusion regarding the previous system of 10/10M/10PG/PG and the guidelines attempt to clarify it.
- The new age restriction categories are A, PG, 10, 13/13PG, 16 and 18. This leaves the discretion of accompanying the child to the cinema or with the use of home entertainment to the parent or caregiver.
- Although the FPB considered changing to age categories to 12 and 15 to align with the approach in other countries (UK, Australia and US) it was decided to remain with the current system, as all consumers are familiar with it and supported the current age categories based on the quantitative research.
- More classifiable elements were introduced – “photo or pattern sensitivity, motion sickness and reactions to low frequency sound” – is voluntary consumer advice, mainly to be indicated by distributors. However, if noticed by a classifier, may be indicated.
- More classifiable elements introduced – “Imitable acts and techniques” – voluntary consumer advice, only indicated by classifier if noticed.
- More classifiable elements introduced - “criminal techniques” – mandatory consumer advice.
- More classifiable elements introduced – “sexual violence” “SV” – mandatory consumer advice – it is recognised that it should be clearly distinguished from S and V i.e.
- More classifiable elements introduced – “horror” “H” – classifiers indicated that there may be a requirement to consider horror as it is not regarded as “theme” in terms of context. It is used in the UK and seems to be a useful indicator to protect children.
- Introduce a system to measure impact (hopefully more clear) – first determine what is meant by low, mild, moderate, strong, very strong and extreme and then apply to the classifiable elements (please see grid’s below).
- Please note that classifiable elements with an Extreme impact generally falls either within the X18 or XX category (Restricted Distribution).
- Includes a section on the classification of trailers.
- Includes a section on the treatment of films with an educational value.

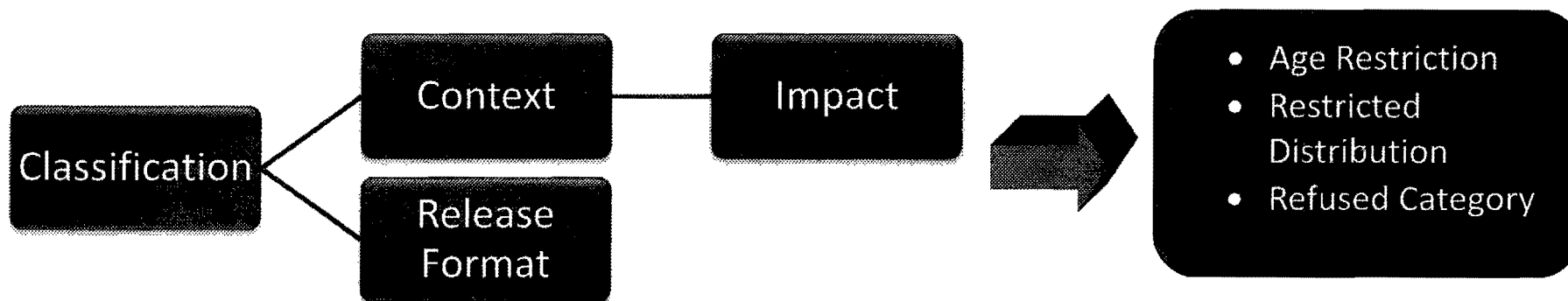
## 2. Process:

- Consideration of Context, Impact and Release Format is mandatory.
- The Impact must always be considered in light of the context, therefore a higher or lower rating than that indicated by the impact and classification grid if justified by the context

**Considerations**

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**Possible Decisions**





# IMPACT GRID – FILMS

No	Low *	Mild **	Moderate ***	Strong ****	Very Strong *****	Extreme *****
No classifiable elements	*no noteworthy single or cumulative occurrences of classifiable elements accordingly classifiable elements occur in passing or briefly	** only single occurrences of classifiable elements	***single or cumulative occurrences of classifiable elements and incidental depiction of a classifiable element	****single or cumulative occurrences of classifiable elements	****single or cumulative occurrences of classifiable elements	**** Single or cumulative occurrences of classifiable elements
No classifiable elements	*occurrences of classifiable elements are not realistic	*occurrences of classifiable elements are not realistic	*occurrences of classifiable elements are not realistic;	****Occurrences of classifiable elements may be realistic	****Occurrences of classifiable elements may be realistic	****Occurrences of classifiable elements may be realistic
No classifiable elements	*no details, close-ups or slow motion	*no details, close-ups or slow motion	*no details, close-ups or slow motion	****No details, close-ups or slow motion of sexual conduct or extreme violence	****May contain details, close-ups or slow motion of classifiable elements	****May contain details, close-ups or slow motion
No classifiable elements	*no accentuation techniques such as lighting, perspective and	*no accentuation techniques such as lighting, perspective and	*no accentuation techniques such as lighting, perspective and	****No accentuation techniques such as lighting perspective	*****May use accentuation techniques such as lighting perspective	*****May use accentuation techniques such as lighting

No	Low *	Mild **	Moderate ***	Strong ****	Very Strong *****	Extreme *****
	resolution	resolution	resolution	and resolution of sexual conduct or extreme violence	and resolution	perspective and resolution
No classifiable elements	*theme of material is not threatening and cause no moral harm	*theme of material is not threatening and cause no moral harm	*Theme of material may be threatening but cause no moral harm	*Theme of material may be threatening but cause no moral harm	*Theme of material may be threatening but cause no moral harm	*****Theme of material may be threatening and may cause moral harm.
No classifiable elements	*Classifiable elements form part of a bona fide story line	*Classifiable elements form part of a bona fide story line	*Classifiable elements form part of a bona fide story line	*Classifiable elements form part of a bona fide story line	*****Classifiable elements do not necessarily form part of a bona fide story line	*****Classifiable elements do not necessarily form part of a bona fide story line
No classifiable elements	*No verbal reference or visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence	*No verbal reference or visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence	**Verbal reference rather than visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence with no noticeable effect	****Verbal reference rather than visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence which may have a noticeable	*****Verbal reference and/or visual representation of certain classifiable elements such as sexual activity or conduct and sexual violence but not sexual violence	*****Verbal reference and/or visual representation of certain classifiable elements such as sexual activity or conduct, sexual violence and violence



No	Low *	Mild **	Moderate ***	Strong ****	Very Strong *****	Extreme *****
				effect		

### FILMS - CLASSIFICATIONS

Classifiable Elements FILM	A	PG	10	13PG/13	16	18
"B"	Advise	Advise	Advise	Advise	Advise	Advise
"D"	NO	NO	**Low/Mild	**Low/Mild	***Moderate	****Strong
"H"	NO	*Low Impact	**Low/Mild	***Moderate	****Strong	*****Very Strong
"L"	NO	*Low Impact	**Low/Mild	***Moderate	****Strong	*****Very Strong
"N"		*Low Impact non sexual	Low Non sexual	Mild Non sexual	***Moderate	****Strong
"P"	NO	NO	NO	*Low	***Moderate	****Strong
"S"	NO	NO (affection yes)	NO (affection yes)	*Low impact sexual activity	***Moderate sexual activity – No sexual conduct	***Moderate implied sexual conduct/ *****Strong sexual activity
"SV"	NO	NO	NO	NO	NO actual may be	NO actual may be

	implied				implied	
"V"	NO	*Low	**Low/Mild	***Moderate	****Strong	****Strong
Photo/pattern sensitivity/Motion Sickness/ Low Frequency Sound	Voluntary Advise	Voluntary Advise	Voluntary Advise	Voluntary Advise	Voluntary Advise	Voluntary Advise
"Imitable Behavior"	Voluntary Advise	Voluntary Advise	*Voluntary Advise – low impact	**Voluntary Advise – mild	***Voluntary Advise - moderate	****Voluntary Advise - strong
"Criminal Techniques"	NO	NO	NO	NO	*Low	**Mild

Elements	X18 - just for rating purposes	XX – just for rating purposes
"S"	<p>***** Very Strong</p> <p>Explicit sexual conduct between consenting adults (no bona fide story line)</p>	<p>***** Extreme</p> <p>Explicit sexual conduct which violates or shows disrespect for the right to human dignity of any person</p> <p>Bestiality, incest rape (sexual violence)</p> <p>Conduct or act which is degrading of human beings</p> <p>Explicit infliction of sexual or domestic violence</p>

Elements	X18 - just for rating purposes	XX - just for rating purposes
		<p>Non consensual sex and apparently non-consensual sex due to either party being non compos mentis</p> <p>Depictions and encouragement of Harmful Paraphilia's</p>
"V"	*****Very Strong	<p>*****Extreme</p> <p>Gratuitous, exploitative or offensive depictions of violence which are excessively frequent prolonged or detailed and cruelty or real violence which are very detailed</p> <p>Conduct or act which is degrading of human beings</p>
"D"	*****Very Strong	<p>*****Extreme</p> <p>Detailed instruction or promotion in matters of crime or violence</p>
"H"	*****Very Strong	<p>*****Extreme</p> <p>Conduct or act which is degrading of human beings</p>



Elements	X18 - just for rating purposes	XX – just for rating purposes
"V"	***** Very Strong	***** Extreme  Explicit infliction of sexual or domestic violence Explicit visual presentations of extreme violence
"SV"	NO (unless part of bona fide story line/documentary or scientific dramatic or artistic merit))	***** Extreme  Explicit infliction of sexual or domestic violence
Criminal Techniques	***** Very Strong (not detailed)	***** Extreme  Detailed instruction or promotion in matters of crime or violence

## GAMES

### 1. Considerations:

- Draft Guidelines align age restriction categories with films based on the same reasoning as that for films (above).
- Uses the same classifiable elements including the new ones.
- Introduces an additional classifiable element to that of films – “competitive intensity”.
- Competitive intensity was introduced in the previous version of the guidelines and is the link between aggression and the level of competition. Accordingly, it is a classifiable element when linked with violence in a game.
- Also introduces third and first person gameplay – as it has a direct link with the competitive intensity if a game is played in first or third person particularly as it relates to violence. This concept was aligned with the Australian approach.
- Introduces a system to measure impact (hopefully more clear) – first determine what is meant by low, mild, moderate, strong, very strong and extreme and then apply to the classifiable elements (please see grid’s below).
- Please note that classifiable elements with an Extreme impact generally falls either within the X18 or XX category (Restricted Distribution).