



Film and Publication Board



## **MEMORANDUM OF UNDERSTANDING**

ENTERED INTO BETWEEN

**Independent Communications Authority of South Africa**

(Hereinafter referred to as "ICASA")

**AND**

**FILM AND PUBLICATION BOARD**

(Hereinafter referred to as "FPB")

(Both hereafter collectively referred to as "the Parties")

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**WHEREAS,** the key functions of ICASA is to regulate the electronic communications, broadcasting and postal services; issue licenses to providers of the aforesaid services; monitor the environment and enforce compliance with license conditions and regulations; investigate and decide on disputes and complaints brought by industry or members of the public against licensees; plan, control and manage the frequency spectrum and protect consumers;

**AND WHEREAS,** the FPB is mandated to, inter alia, regulate the creation, production, possession and distribution of certain publications and films by means of classification, the imposition of age restrictions and the giving of consumer advice, due regard being had in particular to the protection of children against sexual exploitation or degradation in publications, films and on the Internet; and make the exploitative use of children in pornographic publications, films or on the Internet, punishable;

**AND WHEREAS,** it is recorded that this Agreement may be reviewed to accommodate developments incidental to matters that require co-operation between the two statutory bodies in the electronic communications, broadcasting and postal industries. The review will take into account prevailing legal precedents, legislative amendments, promulgation of regulations, policy reviews, and developments in technology and service innovation as the case may be.



**THEREFORE,** the FPB and the ICASA agree as follows:

## **1. PURPOSE OF THIS MEMORANDUM**

This memorandum seeks to:

- 1.1 establish a formal relationship between the FPB and ICASA on the uniformity in classification and labeling of content by industry including the wireless application service providers, electronic communications service providers and broadcasters, and creation of awareness on compliance with applicable laws including in particular the Films and Publications Act, 1996 (Act No. 65 of 1996) ("the Act"), the Electronic communications Act, 2005 (Act No. 36 of 2005) ("the ECA"), the Code of Conduct contemplated in terms of section 54 of the ECA, and the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

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- 1.2 facilitate the creation of strategies to ensure greater compliance by Electronic Communications Service licensees with the Act, the ECA and Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act");
- 1.3 clearly define the framework for cooperation, terms of engagement and the deliverables for which both the FPB and ICASA will be responsible in terms of this Memorandum of Understanding ("the Memorandum");
- 1.4 promote the role of ICASA and FPB in the protection of children against undesirable content;
- 1.5 promote information sharing and research between the two organizations on matters of mutual interest in the realm of content regulation; and
- 1.6 strengthen cooperation between the Parties.

## **2. PRINCIPLES OF COOPERATION**

In order to achieve the purposes of this Memorandum, the Parties have adopted and will comply with the principles of co-operation set out below.

- 2.1 The Parties will cooperate with each other in mutual trust and good faith.
- 2.2 The Parties will assist and support each other in respect of agreed upon services and commitments between them in terms of this Memorandum.
- 2.3 The Parties will inform each other of, and consult each other on matters of common interest.
- 2.4 The Parties will avail to each other the necessary support for the success of the tasks and programmes envisaged and agreed to pursuant to this Memorandum.
- 2.5 The Parties agree to create and establish a Content Regulators Forum.

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### **3. SPECIFIC RESPONSIBILITIES OF PARTIES**

The Parties agree to undertake specific functions as outlined hereunder.

- 3.1 FPB and ICASA will initiate and coordinate stakeholder engagements and activities aimed at promoting compliance by industry with the Act at least once per annum.
- 3.2 ICASA will ensure that FPB is given an opportunity to participate in all policy discussions on matters relating to regulation of content in general and broadcasting content in particular.
- 3.3 FPB will ensure that ICASA is given an opportunity to participate in all policy discussions on matters relating to application of the classification of films, interactive computer games and certain publications.
- 3.4 FPB and ICASA may consult recognised industry bodies to bolster compliance with the Act and the Classification Guidelines.
- 3.5 FPB will provide the necessary support and resources to train the staff of the Broadcast Complaints Commission of South Africa, ICASA staff, electronic communications service providers and broadcasters on the Classification Guidelines and content labeling to ensure uniformity in the application of same.
- 3.6 ICASA will commit itself to mobilizing and providing access for FPB to electronic communications service providers, broadcasters and other industry players and stakeholders in order to allow for engagements.
- 3.7 ICASA will provide adequate support and resources to ensure the success and effectiveness of programmes agreed to pursuant to this Memorandum.
- 3.8 FPB will facilitate access for ICASA (and ICASA will do likewise) to its stakeholders and partners who are relevant and could be of benefit to the other party.
- 3.9 The Parties may undertake joint communication through media and other platforms on the focus areas of this Memorandum and publish this Memorandum on their website.

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3.10 The Parties will support each other in policy matters and where possible undertake joint projects in terms of research and submissions to Parliament in relation to policy and legislative review.

3.11 FPB and ICASA may jointly announce their partnership to the public at a date to be determined once this Memorandum has been signed by the Parties.

3.12 The Parties may, in agreement, look at other areas of cooperation within the realm of the purpose of this Memorandum during the course of the Memorandum and within the set commitments.

3.13 The Parties will use their best endeavors to establish and launch the proposed 'Content Regulators Forum', whose sole objective will be to provide a platform for regulators to share ideas and discuss matters of mutual interest.

3.14 The Content Regulators Forum will be established in line with legislative requirements for such committees, and the terms of reference of such committee will be determined in line with due process, and will be aligned with this Memorandum.

#### **4. DURATION**

This Memorandum will commence on the date of signature of the last signing party and will remain in force until it is terminated by either party in terms of clause 18.

#### **5. REVIEW**

The terms of this Memorandum and the performance of the Parties in terms thereof will be reviewed quarterly at a scheduled meeting between the Parties.

#### **6. ENGAGEMENT AND EXCHANGE OF INFORMATION**

6.1 Subject to clause 7, the parties will endeavor to exchange information necessary to give effect to this Memorandum.

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6.2 The preferred procedure for the exchange of information between the FPB and ICASA is as follows:

6.2.1 Where FPB requires information from ICASA, the FPB will address written request for information to the **Chief Operations Officer** of ICASA and also copy the point of contact identified in terms of clause 6.

6.2.2 Where ICASA requires information from FPB, ICASA will address the written request for information to the **Chief Operations Officer** of FPB and also copy the point of contact identified in terms of clause 6.3.

6.3 For purposes of this Memorandum:

6.3.1 The **Manager, Legal and Regulatory Affairs** will be the contact person at FPB; and

6.3.2 The **General Manager Policy Research and Analysis** will be the main contact person at ICASA.

6.4 FPB and ICASA will keep records of the information exchanged between them.

## 7. CONFIDENTIALITY

Both Parties warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, must be kept as strictly confidential and must not be divulged to any third parties without prior written consent of the other party. Each party and their employees, contractors or service providers, must maintain the utmost secrecy in respect of all such information.

## 8. FORCE MAJEURE

8.1 If any party is unable to perform any obligation under this Memorandum due to circumstances beyond its control, then the party concerned will be excused from the timeous performance of the obligation(s) for the

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duration that the circumstances rendering the performance impossible still prevail.

- 8.2 Any party unable to perform its obligations due to circumstances in terms of clause 8.1 must inform the other party in writing of the circumstances within 5 (five) days of the occurrence thereof.
- 8.3 The Parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 8.1. Upon removal of the circumstances giving rise to impossibility of performance, the party so prevented or delayed will forthwith give written notice to the other party.
- 8.4 For the purpose of this Memorandum "*Force Majeure*" means any circumstances beyond the reasonable control of the party concerned and includes but not be limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.
- 8.5 The mere shortage of labour, materials or utilities will not constitute Force Majeure unless caused by circumstances which may be deemed to constitute Force Majeure.

## 9. MEDIATION

- 9.1 In the event of a dispute or difference between the Parties with regard to interpretation and/or implementation of any one or more of the provisions of this Memorandum, the dispute or difference must be resolved in a manner other than resort to judicial proceedings.
- 9.2 In the event that the Parties fail to resolve a dispute within 14 (fourteen) business days of their first meeting or such longer period as the Parties may agree in writing, any party may refer such dispute or difference to mediation in accordance with the rules and regulations of the Independent Mediation Service of South Africa (IMSSA).
- 9.3 Any party may demand that a dispute be referred to mediation by giving a written notice to that effect to the other party.

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9.4 The mediation must be held:

9.4.1 In Johannesburg and conducted in the English language;

9.4.2 Immediately in an informal manner on such basis as the Mediator may determine with a view to it being completed within 90 (ninety) days after it is demanded.

9.5 In the event mediation fails, either party may elect to terminate this agreement in terms of clause 18 of this agreement.

## **10. DOMICILUM CITANDI ET EXECUTANDI**

10.1 The Parties choose as their *domicilium citandi et executandi* for all purposes under this Memorandum, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

### **Independent Communications Authority of South Africa**

Physical address: 164 Katherine Street

Pinmill Farm Block B

Sandton 2146

Postal address: Private Bag x 10002

Sandton

2146

Telephone: (011) 566 3000/1

Email: [wngwepe@icasa.org.za](mailto:wngwepe@icasa.org.za)

### **The Film and Publication Board**

Physical address: Eco-glade 2

420 Witch Hazel Street

Eco Park

Centurion

0169

Postal address: Private Bag X2205

Houghton

2041

Telephone: (012) 0031400

Email: [Themba.wakashe@fpb.org.za](mailto:Themba.wakashe@fpb.org.za)

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10.2 Any notice or communication required or permitted to be given in terms of this Memorandum will be valid and effective only in writing. It will be competent to give such notice by facsimile.

10.3 Either party may give notice to the other party to change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that such change will become effective on the 7<sup>th</sup>(seventh) business day from the deemed date of receipt of the notice by the other party.

10.4 Any notice sent by facsimile to the facsimile number stipulated in the *domicilium citandi et executandi*, will be deemed to have been received on the date of dispatch (unless the contrary is proved).

10.5 Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the *domicilium citandi et executandi* , will be deemed to have been received on the 7<sup>th</sup>(seventh) business day after posting (unless the contrary is proved).

## **11. SEVERABILITY**

Each of the provisions of this Memorandum will be considered as separate terms and conditions and in the event this Memorandum is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

## **12. COSTS**

Each party will be liable for its own costs in respect of, and incidental to, the negotiation and execution of this Agreement.

## **13. ENTIRE AGREEMENT**

This Memorandum constitutes the entire agreement between the parties with regard to the matters dealt with in this Memorandum and no representations,

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terms conditions or warranties not contained in the Memorandum will be binding on the Parties.

#### **14. VARIATION AND CANCELLATION**

No agreement varying, adding to, or deleting from or canceling this Memorandum will be effective unless reduced to writing and signed by or on behalf of the Parties.

#### **15. INDULGENCES**

No indulgences granted by the Parties may constitute a waiver of any of its rights under this Memorandum. Accordingly no party may be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

#### **16. GOVERNING LAW**

The Memorandum will be construed in accordance with the laws prevailing in the Republic of South Africa.

#### **17. CESSION AND ASSIGNMENT**

The parties will not be entitled to cede and assign their rights and obligations in terms of this Agreement without the prior written consent of the other.

#### **18. TERMINATION**


Notwithstanding the provisions of clause 4above, either Party has the right to cancel this Memorandum at any time by giving the other party 30 (thirty) business days written notice.

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THUS DONE AND ENTERED INTO AT Johannesburg ON THIS  
DAY.....23rd OF August 2016

  
\_\_\_\_\_  
**MRS. NFT MPUMLWANA**  
**COUNCIL CHAIRPERSON**  
**FOR THE FILM AND PUBLICATION BOARD**

Who warrants that he is duly authorized hereto.

**IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:**

1.   
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WITNESS


2.   
\_\_\_\_\_  
WITNESS

THUS DONE AND ENTERED INTO AT Sandton ON THIS  
DAY.....05 OF September 2016

  
\_\_\_\_\_  
**RUBBEN MOHLALOGA**  
**ACTING CHAIRPERSON**  
**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

Who warrants that he is duly authorized hereto.

**IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:**

1.   
\_\_\_\_\_  
WITNESS

2.   
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WITNESS