

## Labelling Strategy



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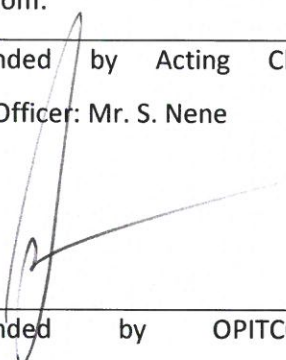


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Film and Publication Board™

Labelling Strategy	Applicable to:	Operations Division and IT Division
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## 1. Problem Statement

Currently, content distributors label their own material after it has been classified by the FPB, displaying the classification details as stated in the classification certificate. Unlicensed and unregistered distributors that have not brought their material to the FPB for Classification fraudulently display some form of classification decision.

## 2. Introduction

The Film and Publication Board (FPB) has sought to develop a labelling strategy that will assist in safeguarding the FPB logo and display thereof by distributors post classification. The FPB has commissioned a research study that looked at the feasibility of FPB implementing a labelling system and finding a mechanism to prevent the misuse of the FPB logo.

## 3. Proposed Labelling Solutions

The FPB should, by law regulate, manage and administer the rights, title, usage and interests of any of the trademarks owned by it. To address the challenges outlined above, and as the sole owner of the FPB trademarks, the FPB patented the FPB classification triangle and slogan **"We Inform. You Choose"**. A trade mark policy has since been developed and has been approved by Council. The policy defines and identifies the patented FPB trademarks, confirms FPB ownership of those trademarks, regulates the right of use by authorized users and defines prohibited actions and uses by authorized users of the FPB trademarks by juristic and natural persons.

Furthermore, the FPB needs to develop mechanism that will enable the authentication of all classification decisions issued by the Board. Currently, it is only the Trademark Logo that can be used to determine whether a distributor has a valid classification decision or not. This strategy proposes enhancements in the issuing of classification decisions (technology) and the monitoring thereof. The strategy does not recommend FPB printing

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of the classification decisions as this would prove to be costly financially and would require establishment of distributing mechanisms of classification stickers.

#### 4. Situational Analysis

Although the Films and Publications Act, Act no 65 of 1996 as amended and the Regulations are prescriptive regarding the classification and labelling of media content. Notwithstanding this however studies conducted by Tshintsha Business Solutions (Pty) Ltd on behalf of the organizations together with the feedback from the FPB Compliance Monitoring team have found that there is endemic blatant disregard of the Act and the Regulations by both the informal and formal content distributors in relation to the prescribed classification and labelling of media content in terms of the Act.

Currently, distributors label their own material after it has been classified by the FPB and bear the onus to display the classification information as stated on the classification certificate. This leaves both the distributors and consumers vulnerable to abuse by non-compliant distributors, who find it easy to copy the labels of the FPB and use them inappropriately and unlawfully.

FPB invests a substantial amount of resources to oversee industry compliance and enforcement. Significant progress has been made to ensure adherence by industry, the evidence suggests there is an incremental emergence of infringement of the FPB trademark and classification decisions. It also highlights the need to implement a secure and reliable labelling model that will guarantee authenticity of the products and the FPB quality stamp for the market that the product has been quality assured by the FPB to meet the minimum social protection standards.

Tshintsha Business Solutions (Pty) Ltd engaged with the distributors that the FPB referred them to understand how they labelled their material. There was good cooperation from

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the distributors, except for one, who refused to fully participate in the study. The results are shown below:

- 21 local distributors were contacted
- 15 responded
- 12 of those respondents use third parties for labelling
- 2 distributors do not use stickers but print the certification details on the DVD covers
- 1 distributor does labelling in-house

An overwhelming majority of distributors outsource labelling to third party sticker manufacturers, such as Redfern, Refinery, CDT, Future Packaging and BSK Wagner. The distributors order the stickers in bulk and the volumes depend on the season and/or releases. These can range from a few hundred stickers a month to 30 000 a month. The least expensive price for the sticker is R0.42c and the most expensive being R0.87c.

## 5. Legislative Framework

### 5.1. Films and Publications Act

In terms of Section 2 of the Films and Publications Act 65 of 1996, the mandate of the Film and Publication Board is to regulate the creation, production, possession and distribution of films, games and certain publications to—

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

In regulating the distribution of films, games and certain publications (“media content”), the FPB conducts classification of media content by providing classification decisions and



providing consumer advice to protect the public from exposure to unsolicited content. As a result, industry is required to label classified media content accordingly. In this regard, labelling enables the public to make informed choices for both themselves and for the children in their care.

Section 18A of the Films and Publications Acts as well as section 14 (1), (4) and (5) of the regulations prescribe to distributors on how classification decisions ought to be displayed on music DVD's, educational films and children's films:

#### **Display of classification decisions**

Section 18A (1) Where a film, game or publication has been classified or exempted from classification in terms of this Act it must— (a) if it is a film or game approved for sale or hire, display the following certificate conspicuously and clearly visible on or through the cover or packaging of the cassette or holder of the film or game:

#### **Certificate of Classification**

Certificate of Classification No.: Classification and Consumer Advice: Any other condition imposed: (b) if it is a publication, display either on the front of the cover or on the wrapper of the publication, where applicable display the following information— (i) classification and consumer advice; or (ii) any other condition aimed at the protection of children; or (c) if it is a film approved for exhibition in public, display on all advertisements and illustrated exhibitions associated with that film the classification, consumer advice and any other condition imposed by the Board with respect to the exhibition of that in public. (2) The format, including size and design, as well as the manner of the display of certificates of classification on films, games and publications approved for distribution or exhibition, may be prescribed.

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### **Display of classification decisions**

Section 14(1) Every film and game or game in home-entertainment format and every publication, classified in terms of the Act, shall display, conspicuously and clearly visible on the front cover or packaging of the holder of the film or game, the classification triangle, as will be provided by the Board at the prescribed fee, showing the classification reference number, the classification, age restriction, consumer advice and any other condition imposed on the distribution or exhibition of that film or game.

Section (4) stipulates Every poster, and every advertisement in any media, of a film or game classified in terms of the Act, shall display, conspicuously and clearly visible on the poster or in the advertisement, the classification, age restriction, consumer advice and any other condition imposed on the exhibition or distribution of that film, game or publication.

(5) The format of the display of a certificate of classification on a poster shall be of a design similar to that displayed on the front cover or packaging of a film or game in home-entertainment format, but of a size, including that of the text, which is conspicuous at a distance of one metre of the poster.

### **5.2. Trade Marks Act no 193 of 1993**

The Trade Mark Act governs the process of registering a trade mark with the Trademark Register and stipulates implications for the illegal use of a registered trademark. The Act defines Trademarks as:

"A mark used or proposed to be used by a person in relation to goods or services for the purpose of distinguishing the goods or services in relation to which the mark is used or proposed to be used from the same kind of goods or services connected in the course of trade with any other person" (Trade Mark Act; 1993).

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The Act requires registration of a Trade Mark with the Registrar of Trade Marks which allocates a seal distinguishing all registered trademarks. A trade mark can be refused if:

- "Consists exclusively of a sign or an indication which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods or services, or the mode or time of production of the goods or rendering of the services"
- Conflicting with existing trademark rights
- Protection of well-known trademarks
- Prevent the dilution of the distinctive character or reputation of an existing well-known registered trade mark notwithstanding the absence of deception or confusion

The FPB Logo is a registered trademark. Use thereof is guided by the above stated legislative prescript.

### 5.3. Trademark Policy

Since the registration of the FPB Logo and slogan, the FPB Council has approved a Trademark Policy that governs the use the FPB Logo. The objective is to regulate the rights of use by selected Users under certain circumstances in respect of the use, applying and/or displaying of any of the FPB Trademarks in respect of labelling and product classification on materials/products that were classified by the FPB or have been self-classified by Distributors in accordance with applicable laws or FPB policies and/or for any other reason determined by the FPB. This strategy outlines operating mechanisms that FPB will put in place to ensure provisions of the Trademark Policy together with the applicable legislation are adequately implemented.

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## 6. International Benchmarks

The FPB conducted a desktop study and engaged with Classification bodies in other jurisdictions to better understand how the labelling on content is done in their respective markets. The FPB conducted an online search and engaged with some of the classification bodies to better understand the labelling model used in their respective jurisdictions. The countries surveyed in this strategy were not selected under any specific criteria but we were largely guided by the availability of information and stakeholder relations with bodies in the differing countries. 10 international film regulatory bodies were contacted with only 8 responding to the request for information which is mainly based in Europe.

### 6.1. British Board of Film Classification (BBFC) (United Kingdom)

- BBFC has labelling regulations which stipulates that the Age Advisory and Classifiable elements must be within a triangle/square or circle which must be no less than 5mm in size
- A unique registration number is issued to each distributor and the number must be displayed in the label
- Distributors may then produce their own labels from various labelling companies in the country
- Videos distributed digitally are not required by law to display BBFC classification ratings
- BBFC has a licensing scheme that allows the use of their ratings and content labelling information on Video On Demand services
- Online distributors register with the BBFC
- BBFC offers content owners/distributors access to their Watch & Rate service

### 6.2. Finish Centre for Media Education and Audiovisual Media (MEKU)

- Finland operates similar to South Africa in many ways
- Labelling is done by distributors

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- Finish Centre for Media Education and Audiovisual Media does not do online classification
- However, it has developed and maintains an online classification system
- Finland has independent content classifiers
- These content classifiers are registered with MEKU
- MEKU trains and supervises the work of the content classifiers
- The independent content classifiers use the MEKU online classification system to classify the online content
- MEKU monitors compliance with the Act
- Finland focuses on protection of children from viewing inappropriate material

### 6.3. Freiwillige Selbstkontrolle Multimedia-Diensteanbieter e.V. (FSM) (Germany)

- The FSM (Voluntary Self-Monitoring of Multimedia Service Providers), is a non-governmental organisation, founded in 1997 in Germany
- Its members are companies and associations of internet and the mobile phone industries
- FSM designed and developed an in-house tool to help content providers to find out about the age suitability of their internet content
- This tool can be used for any type of online content (clips, standard websites, online browser games, social networking)
- The tool is used by content providers to classify their content
- FSM encourages parents to install youth protection software on their computers

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#### 6.4. Freiwillige Selbstkontrolle der Filmwirtschaft GmbH (FSK) (Germany)

- The FSK is a Self-Regulatory Body for the legally regulated protection of youth and minors in Germany
- Its task is to estimate the effects that films, DVDs, Blu-ray Discs and videos might have on children and adolescents, and to rate the material according to its suitability for different age groups
- Online content owners/distributors register with FSK online
- FSK online offers the following services:
  - **Continuous consulting service** for the company, focussing on current and future development in conformity with German law.
  - **Seal of Quality** for the web-bases services of the company, which informs the users of the compliance with youth protection regulations.
  - **Complaints Office** of FSK online serves as focal point for any user complaints

#### 6.5. Australian Classification Board

- In Australia, it is a legal requirement that films, computer games and certain publications be classified before being provided for sale/hire
- The Australian Government and all States and Territories share the responsibility for regulation under the National Classification Scheme (NCS)
- The Australian Classification Board issues determinations for Markings and Consumer Advice for Classification of Publications, Films and Computer Games.
- The Determination outlines clear rules on when a particular label is applicable, size of the label and where it should be displayed on the material being distributed.
- Labels for physical material can be downloaded from the website of the Australian Classification Board
- Each decision needs to reflect the unique registration number of each distributor

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- The regulation of online content is broadly a matter for the Australian Communications and Media Authority (ACMA)
- The ACMA may take various actions with respect to prohibited content, depending on where the internet host is based.

#### 6.6. New Zealand Film and Video Labelling Body

- In New Zealand, the Classification and labelling of material is regulated by the Films, Videos and Publications Act of 1993
- The Film and Video Labelling body operates separately from the Classification Body and the Office of the Chief Censor. The Body is an industry body whose existence is acknowledged by legislation of the country.
- Material that has previously received an unrestricted rating in other jurisdictions (UK and Australia) or from the New Zealand Classification Office is sent to the Film and Video Labelling Body for them to issue a classification label
- Material that has previously received a restricted rating cannot be submitted directly to the Labelling Body for a label. This must be resubmitted for classification prior to issuing a label.
- The labelling body acts as the agent for the distributor when films are submitted to the classification body
- Labels are issued with a thermal code embedded in the label. Distributors print their own labels. Printers used need to have the functionality that enables the printing of the thermal code.
- Distributors pay a prescribed fee for all labels issued. Fees are informed by the distribution platform that will be used.

A review of international benchmarks indicates that the printing of labels of classification decisions is largely the pre-occupation of distributors or organised distributor bodies. BBFC's Cooke (2013) warns that if a regulator is to venture into the space of labelling then it should treat what it has to offer as a service, not a regulatory issue. It must manage

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labelling and advice as a brand, that must be registered, protected, exploited and promoted. The primary focus, he says, should be to protect the consumer in the digital space.

## 7. Safeguarding the FPB Trademark

This strategy proposes mechanisms that can be used to ensure the FPB logo is protected through ensuring distribution thereof is restricted and closely monitored. The strategy further proposes the use of unique codes that will be used to authenticate the classification decision displayed on the material

This strategy entails the use of FPB Online to issue classification decisions with a logo that cannot be tempered with. Secondly, it entails the use of Quick Response Codes (QR) for the allocation of unique codes that can be tracked once the material is distributed in the market.



Figure 1: Quick Response Code of Wikipedia Mobile

### 7.1. Labelling of Material Distributed on Traditional Platforms (DVD, Cinema etc)

The FPB will retain the current labelling model wherein distributors appoint their own service providers to facilitate the printing of labels and stickers. The distributors will be able to download and print the assigned classification ratings from the FPB Online system. When downloaded, the classification rating label will be embedded with a security feature(s) which will be linked to FPB's own internal systems. Each decision will have a unique QR code which is linked to FPB Online. Upon scanning the bar code, a Compliance

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Monitor will be able to verify that the material was classified by the relevant distributor and the FPB Trademark and age rating will also be available.

The code will be displayed on the bottom right corner below the decision of the FPB.

Compliance Monitor laptops have cameras and a QR Code scanner app will be downloaded on the laptops which will be used to scan code downloaded on the laptops which will be used to scan code.

#### *Implementation*

6 months to develop QR code module on FPB Online. This period will also be used for testing the module. In June 2018, all material issued by FPB will have a QR Code. No specific security paper will be required by the distributor.

#### *Cost effective and easy to implement*

The unique coding will be in the form of a QR code that will be generated each time a new classification decision is issued. This code will be automatically generated through FPB Online. This unique coding on the sticker will also be linked to a specific registered distributor; this will further assist in verifying the authenticity of the displayed classification decision. The code will be displayed on the bottom right corner of the classification decision, below the consumer advisories.

Distributors will be requested to print and assign the Classification decision at their own cost using their own infrastructure.

#### *ICT Dependencies*

Implementation of the proposed Labelling model would require 6 months to implement. The organization will develop an enhancement on FPB Online System that will enable the automatic generation of a rating post classification on the restricted logo together with the QR Code.

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This will be developed in-house by the ICT Unit making use of technologies that are already in place and in use within the FPB ICT environment. This approach will ensure that the labeling model is implemented in the most cost-effective and technically feasible manner.

#### *Compliance Monitoring*

The FPB will have to enhance its compliance monitoring procedures to enable the tracking of labels attached to material. Compliance Monitors will be required to scan material to enable them to assess whether material that is displayed is bearing the correct classification decision. The tablets that compliance monitors currently use will be used to scan the QR Codes to check whether the decision is contained on FPB Online. A QR Code scanner application will be downloaded on the laptops which will be used to scan the code downloaded.

This will mitigate the risk of distributors creating fraudulent classification decisions.

#### *Benefits*

- The cost of implementing the model will be far less than FPB establishing infrastructure that would enable centralized distribution of classification labels
- The use of security paper as opposed to a unique code can be expensive
- The technology required in the use of the QR code is relatively inexpensive and can be developed inhouse.

#### *Risks Associated with implementation of the Labelling Strategy*

Risk	Mitigation
Inability to use QR Code scanning by monitors	<ul style="list-style-type: none"> <li>• Telephonic consultation with Client Support</li> <li>• Accessing ERMS for Classification decision</li> </ul>

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Inability to link QR Codes to FPB Online	ERMS can be referenced to confirm the Classification decision
Limited overall systems availability	Telephonic consultation with Client Support

## 7.2. Labelling of Material distributed on Online Platforms

The FPB developed a model for digital content labelling and appointed a service provider (Discover Digital) to implement the Online Content regulation system as part of the implementation of the labelling strategy.

The system will use an electronic solution to label all content classified by the FPB. The system to be employed will ensure protection against trademark infringement by ensuring that each title classified received into the system will have its own uniquely generated logo and label conforming to the FPB standards; in instances where a title has been previously classified the label will be extracted and be stored in the repository of classified material to avoid any form of duplication.

Once online content has been allocated a rating, a pre-roll clip (header) will be generated that contains the appropriate rating icon. Each decision has a unique number through QR code. This code will be issued with each decision. The FPB's requirement is to stitch the pre-roll to the originally submitted content; the system will be configured to store the originally submitted content. Should the distributor appeal against the rating, the system must have access to the originally submitted content to generate the new asset with the new pre-roll attached to the original content. Distributors have 30 days to query the classification applied to an asset after which the original unencrypted assets will be deleted.

The online labelling model developed by the service provider has strong security features, which makes it easy for the FPB to manage the use and printing of trademarks by

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distributors and/or their designated printers. The system creates proper logos and audits trails in respect of actions executed by distributors, classifiers and FPB administrators. The system allows access, downloading and printing of trademarks, classification certificates and classification decisions only to the distributor who requested classification of specific material.

#### ICT Dependencies

- In-house ICT Developer Skills
- Tablets (Equipped with cameras and QR Code Scanner App)
- Functional Internal Applications (FPB Online, ERMS & OCR systems)
- Connectivity to FPB Systems
  - Bandwidth
  - Virtual Private Network (VPN)

#### Compliance Monitoring Dependencies

- Tablets (Equipped with cameras and QR Code Scanner App)
- Functional Internal Applications (FPB Online, ERMS & OCR systems)
- Client Support Unit
- Connectivity to FPB Systems
  - Bandwidth
  - Virtual Private Network (VPN)

#### Benefits

- Infrastructure & ICT Equipment in Place
- In-House Skills available
- Low Implementation Costs
- Real-time verifications

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#### Risks

- Unavailability of systems
- Cellphone connectivity issues

### 8. Penalties for Infringements of the FPB Trademark

Criminal and/or Civil trademark infringements<sup>1</sup> will be dealt with in accordance with the applicable legislation regulating the protection of trademark rights, as is set out in the FPB Trademark Policy<sup>2</sup>.

### 9. Remedies Available for FPB

#### 9.1. Civil actions:

Remedies in civil actions include interdicts (which does not constitute a claim for damages), orders for the removal of the infringing mark from material, and/or an award for damages upon institution of such a claim.<sup>3</sup>

Damages that can be recovered refers to any loss of trade suffered by the FPB, either directly from the acts complained of, or properly attributable to the injury to the FPB's reputation, business, goodwill and trade and business connection caused by the acts complained of. In addition, hereto the 'loss of control' by the FPB over its own reputation under certain circumstances also constitutes a ground for damages.

All damages claimed, must be quantified and proven. In the FPB's situation an actuarial report would be the best form of proof that could be provided in support of a claim for damages.

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<sup>1</sup> Unauthorized use of a registered trademark in ways that are specifically prohibited.

<sup>2</sup> Legislation applicable for both civil and criminal actions: Trademarks Act (civil action), the Counterfeit Goods and Merchandise Act (criminal action).

<sup>3</sup> Section 34 (3) and (4) of the Trade Marks Act 194 of 1993 allows for a claim of reasonable royalty by the infringed party and further gives the Courts a discretion to hold an enquiry to same.



## 9.2. Criminal Actions:

Punishments in respect of criminal cases where trademark infringements resulted or related to criminal activities constitute, in case of a guilty verdict, fines and/or imprisonment.

## 10. Organizational and Personnel Implications

Once the Labelling Strategy is approved, there will be a need for re-alignment of the organisational strategy and training of personnel resources of the FPB to ensure effective and efficient implementation of the Strategy.

## 11. Communication Implications

Public awareness and education is crucial in mobilising role-players and as a cross-cutting issue this should be led by the FPB Communications Unit with the support of the Department of Communications. The strategy will be placed on the FPB corporate website for inputs and engagement. A copy of the draft strategy will also be dispatched to all registered distributors who are the most implicated by its provisions.

Distributors will be given 30 working days to make inputs to the proposed strategy.

Post the 30 days allocated period, FPB will consolidate all inputs and table a final strategy for FPB Council Consideration and implementation.

## 12. Departments and Parties to be Consulted before Implementation of the Labelling Strategy

The following department/bodies were consulted:

- Government Printing Works;
- Department of Communications;
- The Department of Trade and Industry;

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- Distributors of films, games and certain publications;
- Nu Metro;
- Ster Kinekor;
- Bollywood film distributors;
- Nollywood film distributors
- Local film makers and distributors
- Game developer, publishers and distributors;
- The internet service providers' association;
- Wireless application service providers' association; and
- The SAPS.

### 13. Financial Implications

There are no funds required for the development of this solution as Labelling has already been incorporated into the Online Content Regulation (OCR) system that is currently being developed.

*The rate for development of systems by external service providers is on average **R650/h.***

*Thus, over a two-month period costs would be:*

- $R650 \times 8 \text{ hours} \times 5 \text{ days} \times 4 \text{ Weeks} = \underline{\underline{R104\ 000}}$

*In-House development is normally half the cost thus estimated at **R52 000.***

The maintenance and support that will be required will be covered in the OCR project. The funds that may be required will be those for travel and accommodation for the person(s) that will be presenting this solution to distributors.

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## 14.Recommendations

The above evidence is indicative of the urgent need to implement a secure and reliable labelling (system and) model that guarantee the authenticity the product and provide consumers with the confidence that the product (has indeed) been classified by FPB for the South African market. It is hereby recommended that Council approve the proposed labelling strategy.

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