

## Film Community Position Paper

We, the undersigned, are concerned about clauses in the Films Act and the proposed amendments submitted by the IMDA and MCI for public consultation on 4<sup>th</sup> December 2017.

We are concerned that a number of existing clauses and their proposed amendments will erode public confidence in the processes that regulate access to films in Singapore, and we seek more transparency in the decisions surrounding the classifying and censoring of films.

The following are specific areas of concern:

### Enhancement to IMDA's Investigation and Enforcement Powers

Proposed enhancements to IMDA's powers of investigation and enforcement significantly increases the intrusiveness of powers of enforcement, increases the classes of IMDA officers who can wield these new powers, and broadens the Films Act offences to which they apply.

Presently, a limited number of IMDA officers<sup>1</sup> are empowered by the Films Act to enter premises without a warrant to conduct search and seizure only if they suspect that a person is in possession of unlawful films (party political and obscene films).

In its proposed amendments, the IMDA seeks to be able to execute these powers through **any** classification or licensing officer<sup>2</sup> and to grant these powers for any suspected breach of any of the clauses of the Films Act. Classification or licensing officers will now be authorized to "*break open any door or window leading to the premises, or remove by force any obstruction*" if necessary to obtain entry.

We find this problematic because

- Such sweeping and invasive powers should only be granted to the Police, the custodians of law and order of the country. It is not clear that classification or licensing officers have the necessary law enforcement operational background to wield such powers.
- With today's technology, film content is stored in hard disks, personal computers and phones that contain other personal and private content unrelated to the film in question. All these personal equipment will be made seizable by IMDA officers in the Films Act, with no way of ensuring that the privacy of personal data will be protected. This may potentially result in severe breaches of privacy and civil liberties by persons who may not have law enforcement backgrounds.

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<sup>1</sup> Currently **only** a Censor, Deputy or Assistant Censor or Inspector of Films can exercise powers of search and seizure of unlawful films under s34 of the Films Act.

<sup>2</sup> Section 34 powers to search and seize obscene and political films, under the Proposed Amendments, will be given to **any classification or licensing officer**. Under the new proposed Section 4 of the Films Act, the IMDA may appoint **any** officer of the IMDA as a classification or licensing officer.

## Limited Update to the Films Classification Scope

While MCI/IMDA has clarified that the primary regulatory focus of the Films Act<sup>3</sup> is the distribution and exhibition of films, the same standards are not applied to all films under the Films Act –

### Making, distribution and exhibition of party political films

Section 33. Any person who —

- (a) *imports any party political film;*
- (b) *makes or reproduces any party political film;*
- (c) *distributes, or has in his possession for the purposes of distributing, to any other person any party political film; or*
- (d) *exhibits, or has in his possession for the purposes of exhibiting, to any other person any party political film, knowing or having reasonable cause to believe the film to be a party political film shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years.*

### Search and seizure of unlawful films

Section 34.—

(1) *Any Deputy or Assistant Commissioner of Police, Assistant Superintendent of Police or any Censor, Deputy or Assistant Censor or Inspector of Films, if satisfied upon written information and after such further inquiry as he thinks necessary that any person has in his possession any obscene film or party political film, may without warrant, with such assistance and by such force as is necessary, by night or by day, enter and search any place where he has reason to believe the film is kept, seize the film and any equipment used in the exhibition, making or reproduction of the film and take into custody any person reasonably believed to be in possession thereof.*

(2) *Any film, and any equipment used in the exhibition, making or reproduction of the film, in respect of which any person has been convicted under section 29, 30, 31 or 33 shall be forfeited and shall be destroyed or otherwise disposed of in such manner as the Minister may direct.*

We find the disparity in the application of standards between these sections and the rest of the Films Act troubling. While we welcome the IMDA's intent to deregulate mere possession of films, the same standard should be consistently applied across the board. Therefore, we seek that consequential amendments be made to the mere possession of films under Sections 33 and 34 of the Films Act.

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<sup>3</sup> Paragraph 2.15 of the Public Consultation Paper

## **Appeals deemed to undermine National Security to be determined by the Minister**

The current appeals process for films that have been refused classification by the IMDA for undermining national security allows the filmmaker to have an audience with the Films Appeals Committee (FAC), a citizen-based committee, as he/she makes the case against the IMDA's decision. One such incident in recent memory was the documentary *To Singapore With Love* by Tan Pin Pin.

The proposed amendments seek to give the Minister sole discretion (even after consultation with the FAC) over the outcome of the appeals. This reduces transparency and undermines public confidence in the decision making process.

We call on the MCI/IMDA to reconsider this amendment and maintain the original process of appeal.

Further, we call on the MCI/IMDA to publish the minutes of the discussions of the FAC in an open and transparent manner, so that there can be better accountability on such matters of public interest. If these minutes cannot be published because of national security concerns, the FAC's decisions and their rationale should be set out in the fullest extent practicable having regard to such concerns.

## **Replacement of “NAR” with “Refused Classification”**

Films currently determined to be “Not Allowed for all Ratings” are effectively banned from distribution and exhibition. We believe the IMDA has the role and responsibility to classify all films that are submitted to it, including the need to disallow a rating if it deems necessary. The IMDA must not refuse to classify a film that is submitted to it.

We do not view this as a change in terminology, but a fundamental shift in the IMDA's position by refusing to fulfill its role as the film classification authority of Singapore.

## **Duration of Public Consultation**

The four-week period (4<sup>th</sup> to 30<sup>th</sup> December 2017) is too short a window for proper public consultation. Considering the breadth and scope of the 93-page Film (Amendments) Bill, the technical nature of subject matter and the number of potential stakeholders it involves, we propose that the consultation period is extended by another four weeks. This will provide adequate time for members of the public to carefully consider the social and political implications of the proposed amendments and provide qualitative feedback to the MCI/IMDA.

As members of the filmmaking community, we seek a creative industry environment that is vibrant and innovative, where the rules set out by the law are fair to content creators. As filmgoers and consumers ourselves, we seek a regulatory system that is transparent and accountable, so that we can be confident in the decision-making processes of the IMDA.

As such, we call on the MCI/IMDA to address our concerns and reconsider its proposed amendments to the Films Act.

## SIGNATORIES

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