

INFO-COMMUNICATIONS MEDIA DEVELOPMENT AUTHORITY

PROPOSED AMENDMENTS TO THE FILMS ACT

PUBLIC CONSULTATION

4 DECEMBER 2017

- 1. INTRODUCTION**
- 2. PROPOSED KEY AMENDMENTS TO THE FILMS ACT**
- 3. INVITATION TO COMMENT**

PART 1: INTRODUCTION

- 1.1 The Films Act sets out the framework for regulating the distribution, exhibition and possession of films in Singapore. Under the Films Act, distributors and exhibitors of films are required to obtain a licence from the Info-communications Media Development Authority of Singapore (“IMDA”). In addition, all films need to be classified by the Board of Film Censors (“BFC”). The Films Act also provides for certain entities and/or films to be exempted from some or all of the provisions, so that regulatory efforts are focused on content of concern to the public.
- 1.2 With the move towards co-regulation with the industry and in view of the changes in the media landscape, the Ministry of Communications and Information (“MCI”) and IMDA are proposing amendments to the Films Act. These amendments include:
 - (a) Formalising the co-classification scheme, following successful trials with the video distribution industry and film exhibition industry in 2011 and 2015 respectively to co-classify video/film titles up to PG13;
 - (b) Introducing a new video games class licence scheme to enhance protection for minors, in view that video games are becoming more complex and graphically realistic, and increasingly taking on more mature themes;
 - (c) Clarifying and updating the licensing and classification scope in view of changes in the media landscape, and to refocus regulatory efforts on distribution and public exhibition activities;
 - (d) Amending the processes for appeals against IMDA’s decisions; and
 - (e) Enhancing IMDA’s investigation and enforcement powers, as IMDA increasingly takes on investigations into breaches of the Films Act from the Police.
- 1.3 This consultation paper is structured as follows:
 - (a) Part 2 discusses the proposed key amendments to the Films Act in greater detail, with the draft Films Act (Amendment) Bill attached in the **Annex**.
 - (b) Part 3 describes how interested parties may provide their comments on the proposed Films Act amendments and the draft Films Act (Amendment) Bill to IMDA.
- 1.4 Interested parties are invited to provide their comments to this consultation by no later than 15 December 2017, 5pm, in the manner specified in Part 3 of this paper.

PART 2: PROPOSED KEY AMENDMENTS TO THE FILMS ACT

2.1 Part 2 sets out the details of the following proposed key amendments to the Films Act:

- (A) Formalisation of the Co-Classification Scheme;
- (B) Introduction of Video Games Class Licence;
- (C) Clarification and Update to the Films Licensing Scope;
- (D) Changes to the Films Classification Scope;
- (E) Amendments to Appeals against IMDA’s Decisions under the Films Act;
- (F) Enhancements to IMDA’s Investigation and Enforcement Powers; and
- (G) Other Amendments.

For the full Films Act amendments, please refer to the draft Films Act (Amendment) Bill in the **Annex**.

(A) Formalisation of the Co-Classification Scheme

2.2 The Censorship Review Committee 2010 (“CRC 2010”) noted that the amount of media content accessible to the public was increasing exponentially over the years, and co-regulating with the industry was a feasible way to create a safe and vibrant media environment. Hence, the CRC 2010 recommended that the video industry be allowed to co-classify video titles that can be G, PG or PG13. This recommendation was accepted by the then-Ministry of Information, Communications and the Arts (“MICA”), currently MCI.

2.3 In 2011, IMDA launched the pilot trial for the industry to co-classify video titles meant for distribution. During the trial, employees from participating video companies were trained by IMDA to become qualified film content assessors. Once qualified, these content assessors could co-classify videos up to PG13. In the pilot trial, IMDA conducted final checks on the titles classified by film content assessors. Following the success of the pilot trial for videos meant for distribution, IMDA extended the trial to films intended for public exhibition in 2015. To date, about 2,300 titles have been co-classified by film content assessors.

Proposed Amendments

2.4 ***With the success of the co-classification pilot trials for videos intended for distribution and films for public exhibition, MCI/IMDA propose to formalise the scheme.*** With co-classification, the industry is able to co-classify titles at their own pace, allowing titles to be made available to consumers sooner. The co-classification scheme is optional, and industry players who do not wish to participate may continue to submit their films to IMDA for classification.

- 2.5 ***MCI/IMDA will prescribe the type of films that a registered film content assessor can co-classify.*** Specifically, film content assessors registered with IMDA will be allowed to co-classify films up to the PG13 rating. However, any film, regardless of rating, intended for film festivals or ad-hoc outdoor screenings will continue to be classified by IMDA. Film festivals are generally targeted at niche audiences and their subject matter and depictions may be more challenging than mainstream films. Hence, IMDA will continue to classify these films directly to maintain a balance between artistic expression and the comfort level of our society. For ad-hoc outdoor screenings, as there is a higher risk of accidental exposure of the film to members of the public, including children, a more cautious approach is thus taken. IMDA will continue to directly classify films that deal with sensitive subject matters (such as race, religion, or politics), films with dialect content, and films which fall within the age-restricted ratings (i.e. films that can be classified as NC16, M18 or R21) or which may exceed the classification ratings.
- 2.6 ***MCI/IMDA will specify the registration requirements for film content assessors and the duties of the film content assessors and the companies that appoint them.*** IMDA will register film content assessors who have successfully completed the required training, and maintain a list of registered film content assessors on IMDA's website. This is to facilitate the industry's access to the pool of registered film content assessors. Once registered, film content assessors have a duty to co-classify content according to IMDA's film classification guidelines, so that members of the public can be assured that films are classified consistently and make informed viewing decisions. From time to time, IMDA will conduct sample audits of the film content assessors' classifications.
- 2.7 ***MCI/IMDA also propose to introduce penalties on film content assessors and colluders for breaches.*** There is a range of punitive and non-punitive measures that IMDA will use in the event of misclassification by content assessors, depending on the facts and circumstances of each case. For example, for genuine mistakes by newly registered film content assessors, IMDA will give some leeway by issuing warnings, instead of imposing financial penalties. Where punitive measures are required, they will be calibrated according to the severity of the breach. For example, the financial penalty for low-impact breaches, such as misclassification of a PG13 film as PG or G, will be kept low, with a maximum cap of \$600. For more severe misclassification, such as classifying an R21 film or a film that should have been refused classification¹ as G, the financial penalties will be correspondingly heavier, up to a maximum of \$5,000. Additionally, if there is collusion between a film content assessor and a film distributor or exhibitor to deliberately misclassify a film, the penalty will be up to a maximum of

¹ For more details on "refused classification", please refer to Para 2.34 of this public consultation paper.

\$5,000 for each party involved. The enforcement measures will be administrative and not criminal in nature. As the regulator, IMDA will investigate alleged co-classification breaches and impose the penalties. Parties aggrieved by IMDA's decisions may appeal to the Minister.

- 2.8 ***With film content assessors having classification powers, the Films Act will be amended to allow IMDA to call in any classified film or video for re-classification, and to re-classify it or revoke its previous classification. At the same time, film distributors and exhibitors may also submit a classified film or video to IMDA for re-classification. The Films Act will make clear that IMDA's classification rating will prevail over that of the film content assessor's where the two are different.*** These provisions are to provide for scenarios where IMDA is required to review the film content assessor's rating, whether in the process of IMDA's sample audit, or as a result of IMDA's review of the rating due to feedback or dispute between film content assessors and film distributors/ exhibitors on the appropriate classification rating. In such cases, if IMDA assesses a title to have a different classification from the film content assessor's classification, IMDA's classification will supersede the film content assessor's classification.
- 2.9 ***While the re-classification provisions were primarily for co-classified titles, MCI/IMDA propose extending them to cover films previously classified by IMDA.*** IMDA's film classification guidelines are developed in consultation with the community and industry, and updated from time to time to reflect the social norms and values of Singapore's society. Thus, a film that was classified in the past could possibly qualify for a different classification today due to updates to the guidelines. This amendment would allow IMDA the option to reclassify old films when there are changes to the film classification guidelines.

(B) Introduction of Video Games Class Licence

- 2.10 Video games are becoming more complex and graphically realistic, and increasingly taking on more mature themes. In 2008, then-MDA introduced classification ratings for video games, such that those with mature themes or content carry age-advisory "Suitable for 16 and above" or age-restricted "M18" ratings. This is to help consumers make informed decisions when purchasing video games.
- 2.11 In most cases, the video games are submitted by upstream wholesale distributors to IMDA for classification. After assessing the information submitted, IMDA will determine the appropriate rating and notify the distributor. For video games rated as M18, IMDA will issue a classification certificate to the wholesale distributors for each title classified. The certificate includes point-of-sale requirements such as (a) to

display the correct classification label on video games classified as M18; and (b) to ensure that video games classified as M18 are not sold to underage consumers. However, in practice, the sale of video games to consumers does not occur at the wholesale distributor level, but rather at the downstream retailer level. As a result, downstream retailers may not be aware of the point-of-sale requirements or are uncertain whether the requirements apply to them, as they may not have sight of the classification certificates issued by the IMDA to the wholesale distributors.

Proposed Amendments

- 2.12 ***To enhance the protection of minors from age-restricted M18 video games, MCI/IMDA propose to introduce a new automatic class licence scheme for retailers that sell video games on physical media (e.g. DVDs).*** This would allow the point-of-sale requirements to be spelt out as licence conditions. Breach of licence conditions will result in the imposition of financial penalties, or the suspension or revocation of licence for more serious breaches.
- 2.13 As the class licence is automatic, there will be no registration requirement for the video game retailers. Video game retailers will not need to pay licence fees or put up a performance bond. It will therefore be largely “business as usual” for video game retailers, with the key difference being the direct imposition of point-of-sale requirements via licence conditions on the retailers.

(C) Clarification and Update to the Films Licensing Scope

(C-1) Clarification of Films Licensing Scope

- 2.14 Section 6(1) of the Films Act states that “No person shall carry on any business, whether or not the business is carried on for profit, of importing, making, distributing or exhibiting films unless he is in possession of a valid licence”. Given this broad licensing provision and the increasing ease with which parties can engage in such activities today due to technology advancements, IMDA has received queries on the application of the licensing scope, including:
- (a) Whether a licence is required for film importation and film making;
 - (b) Whether entities/persons whose core businesses are not in film distribution or exhibition are required to obtain a licence if they wish to distribute or exhibit films; and
 - (c) Whether a licence is required for the private exhibition of a film.

2.15 MCI/IMDA would clarify that the primary regulatory focus of the Films Act remains on the distribution and public exhibition of films, as these activities have wider and more direct impact on consumers. To this end, film importation and film making have been exempted from licensing requirements since 2008². In addition, film distribution and exhibition licences are issued to entities independent of the nature of their core businesses. For example, some hotels currently hold film exhibition licences. Further, where film exhibition is concerned, a licence is required for public exhibition only. When considering whether an exhibition is “public” or “private”, relevant factors include whether there was intent to have pre-event public solicitation of guests or public advertising of the event, whether entry was limited to pre-registered invited guests, the access controls in place, and if there was risk of exposure of the film to the public, by way of the venue.

Proposed Amendments

2.16 ***For greater clarity and transparency on the licensing scope, MCI/IMDA propose to:***

(a) Remove the requirement to obtain a licence for the making of films; and

(b) Clarify that a licence is required for the distribution or public exhibition of a film in the course of any business, independent of whether the entity/person’s core business involves film distribution or exhibition, or how regularly the entity/person engages in film distribution or public exhibition.

2.17 With the proposed amendments, there will be licensing exemptions granted to focus regulatory efforts on areas where they are more needed. For example, the existing licensing exemption for public exhibition of films rated PG13 and below will remain. In addition, new licensing exemptions will be granted for distribution and public exhibition of films carrying content that has been exempted from classification requirements. These are typically content suitable for most audiences, such as corporate videos, musical instrumental performances or educational documentaries on topics such as geological formations. These licensing exemptions will be gazetted after the enactment of the revised Films Act.

(C-2) Licensing the Public Exhibition of Films Transmitted Digitally

2.18 With developments in technology, film exhibitors no longer need to have physical or digital copies of a film at the same place where the screening is held. Instead, the film could be stored in a remote location, in Singapore or overseas, and digitally transmitted or streamed over the Internet to a public place for exhibition in Singapore.

² Films (Business Activities Exemption) Notification 2008, accessible at [link](#).

This method of transmitting films for exhibition is already seen in some cinemas in the United States.

Proposed Amendments

- 2.19 ***To keep pace with technology, MCI/IMDA propose to license the public exhibition of any film in Singapore, regardless of where the physical or digital copy of the film is located.*** This would cover public exhibition where (a) the physical/digital copy of the film and the act of public exhibition are in the same place, such as most cinemas in Singapore; or (b) where the physical/digital copy of the film is in a different place, and is being digitally transmitted to the public exhibition location in Singapore.

(D) Changes to the Films Classification Scope

- 2.20 The purpose of classification is to help consumers make informed media choices, while protecting the young and safeguarding the public interest. Under the current Films Act, all films need to be classified by the BFC, regardless of whether it is meant for distribution, public exhibition or for private use. Accordingly, it is an offence to possess an unclassified film (i.e. a film that has not been classified by the BFC). This means that individuals who bring unclassified films into Singapore for private consumption, whether in person or via mail delivery, would have to submit the film to the BFC for classification or risk committing an offence.

Proposed Amendments

- 2.21 ***In keeping with the intent of focusing our regulatory efforts on the distribution and public exhibition of films, MCI/IMDA propose to narrow the classification scope so that only films intended for distribution and public exhibition need to be classified.*** However, for films containing content that is against the public interest, IMDA will have the power to require any film to be submitted for classification.

(E) Amendments to Appeals against IMDA's Decisions under the Films Act

(E-1) Decisions to be heard by the Films Appeal Committee ("FAC") and the Minister for Communications and Information

- 2.22 The FAC is an independent panel appointed by the Minister to hear appeals on IMDA's decisions related to classification matters. With some of the new Films Act amendments, such as the formalisation of the co-classification scheme and the video game class licence scheme, there will be decisions by IMDA that are not related to classification. Examples of such decisions include appeals relating to IMDA's regulatory decision to revoke or not grant a licence or class licence, or refusal to register a person

as a trained content assessor. There is thus a need to create a channel of appeal for such decisions, and these appeals will be determined by Minister.

2.23 The Films Act will also be amended for appeals against IMDA's decisions refusing classification for films that undermine national security. These appeals will be determined by the Minister. Nevertheless, to preserve citizen representation in the appeals process, the Minister will consult the FAC for the purpose of forming an opinion on which to base his appeal decision. This amendment is in consideration that national security is at the heart of the Government's core responsibilities. It also takes into account the increasing pervasiveness of media and how different media, including film, can be used to disseminate content that could undermine our security, for instance, by spreading hate or foreign influence among Singaporeans and those who live here. Very few films have been disallowed in recent years, but we need to be vigilant and have a range of levers to ensure that films with such content are not disseminated widely.

2.24 ***Thus, MCI/IMDA propose to:***

- (a) Set out a right of appeal to the Minister against any decisions of the IMDA that are not classification-related;***
- (b) Set out that appeals against IMDA's classification decisions for films determined to be against national security are to be decided by the Minister. The Minister will consult the FAC for its views, before deciding on the appeal; and***
- (c) Set out the list of IMDA's classification decisions that can be appealed to the FAC, as follows:***
 - (i) Refusal to classify or re-classify a film (excluding films determined to be against national security or films otherwise specified in the Act);***
 - (ii) Classification or re-classification of a film (excluding films determined to be against national security);***
 - (iii) Consumer advice for a film;***
 - (iv) Classification condition for a film in relation to the display of the classification ratings, markings and consumer advice (if any) and the circumstances of the distribution or public exhibition of a film to which any classification certificate relates;***
 - (v) Refusal to approve an advertisement for a film or the conditions imposed on such an approval; and***
 - (vi) Revocation of a classification rating by the film content assessor.***

(E-2) Changes to the Films Appeal Committee Composition

- 2.25 The Films Act currently mandates that the FAC must comprise 15 members, appointed for a fixed term of 3 years. The quorum is also fixed in law at 5 members.

Proposed Amendments

- 2.26 ***For administrative flexibility, MCI/IMDA propose to allow the Minister to appoint between 15 to 21 members to the FAC, and to determine the period of their appointment. With the change in the number of members, the quorum for a meeting will be changed from a fixed 5 members to a proportion at least one-third of members.***

(E-3) Changes in Process for Appeals to the Films Appeal Committee

- 2.27 Under the current Films Act, the owner of a film may appeal against IMDA's classification of that film within 30 days from notification of IMDA's classification decision. However, MCI/IMDA recognises that there may be other parties with a direct stake in the distribution or public exhibition of the film in Singapore who may wish to appeal against a classification decision. For example, the owner may have outsourced the film distribution to a third-party who in turn has a direct commercial interest in the classification decision.
- 2.28 Currently, upon receipt of an appeal, the FAC can decide to (a) dismiss an appeal, confirming IMDA's decision; or (b) reverse or vary IMDA's decision. The FAC can also impose a charge of up to \$250 on the appeal applicant when dismissing a "frivolous" or "vexatious" appeal, or require an additional deposit for any appeal to cover any additional cost that may be incurred due to the appeal.

Proposed Amendments

- 2.29 ***MCI/IMDA propose to:***
- (a) Allow the following persons to appeal to the FAC if they are aggrieved by an appealable classification decision by IMDA:***
- (i) the person who applied for the classification or re-classification of a film;***
 - (ii) the person who is the maker of a classified film;***
 - (iii) the person who intends to distribute or publicly exhibit a film;***
 - (iv) the person who applied for approval of an advertisement for a film; and***
 - (v) the film content assessor whose classification of a film is revoked.***

- (b) Remove the additional charges imposed when dismissing a “frivolous” or “vexatious” appeal, and the requirement to pay an additional deposit for appeals.***

(F) Enhancements to IMDA’s Investigation and Enforcement Powers

2.30 Today, the Films Act provides IMDA and Police with powers to enter premises without warrant to search for and seize unlawful films³. However, for other breaches of the Films Act, such as the distribution or public exhibition of unclassified films, such powers are vested with the Police who assist IMDA with enforcement and investigations. Going forward, the enforcement and investigation for breaches under the Films Act will be taken on by IMDA, and the Police will only be called on when necessary. Accordingly, the Films Act will need to be amended to empower IMDA with the necessary enforcement and investigation powers to take on this role.

Proposed Amendments

2.31 ***MCI/IMDA propose to enhance IMDA’s investigation and enforcement powers to:***

- (a) Request any documents and information from any person to investigate a suspected breach of the Films Act or licence conditions;***
- (b) Enter and inspect, without warrant, any premises and examine any film or advertisement for a film found on the premises;***
- (c) Dispose of films, equipment or materials that have been seized during enforcement and is unclaimed, forfeited or has to be disposed without returning to the owner⁴; and***
- (d) Provide for the composition of offences.***

³ Current Films Act s34 (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.

⁴ IMDA will dispose of films in cases where it is not suitable to be returned to the owner. For example, obscene films or films that have been prohibited by the Minister under the current Films Act Section 35.

(G) Other Amendments

- 2.32 Transfer of BFC Functions to IMDA. Under the current Films Act, classification of films and video games is performed by the Chairman and members of the BFC, who are appointed by the Minister. Prior to 2003, the Minister appointed Ministry officers as the Chairman and members of the BFC. Since 2003, the Minister appointed then-MDA officers and current IMDA officers to the BFC. The classification process and decisions are thus handled by IMDA staff who are appointed as BFC members. There is no need to maintain a BFC structure that is distinct from IMDA. ***To streamline legislation and reflect operational realities, MCI/IMDA propose to dissolve the BFC and transfer its functions under the Films Act to IMDA.*** Operationally, there is no change in the process for the submission of films for classification.
- 2.33 Replacement of “NAR” with “Refused Classification”. IMDA currently classifies films according to the Film Classification Guidelines⁵ that reflect community norms. Films can be assigned one of the following ratings: G, PG, PG13, NC16, M18 and R21. There is also a very small number of films that exceed acceptable community norms or are against the public interest, and are therefore not allowed for distribution or public exhibition. Such films are currently determined to be Not Allowed for all Ratings (“NAR”)⁶. ***MCI/IMDA propose to introduce a new section 16 to specify the films that IMDA and film content assessors will refuse to classify, which will replace NAR.*** This shift from NAR to refused classification is a change in terminology for improved clarity and to suit the legislative construct of the amended Films Act. Essentially, there is no difference between a NAR film and a film that has been refused classification, as both cannot be distributed or publicly exhibited, but can be possessed for private use.
- 2.34 Regulation of Advertisements for Films. Under the current Films Act, all advertisements for the distribution or exhibition of films have to be approved by the BFC, unless exempted.⁷ “Advertisements” here refer to static forms, such as posters or signboards. It excludes trailers for a film, as trailers contain moving images and are themselves regulated as films. ***MCI/IMDA propose to only require advertisements for films that are intended for distribution or public exhibition to be submitted to the***

⁵ IMDA’s film classification guidelines can be accessible at [link](#).

⁶ Some examples of films that would be considered as NAR under the current film classification guidelines would be films that denigrate any racial or religious groups, or create misunderstanding or disharmony amongst the races in Singapore.

⁷ In general, advertisements that are suitable for most audiences do not require BFC’s approval. The full list of conditions to qualify for the exemption can be found in the Films (Exemption) Notification 2005, and accessible at [link](#).

Authority, in a prescribed manner, unless exempted. IMDA will have powers to approve, refuse approval, or revoke any approval.

- 2.35 Removal of Minimum Penalty for Offences. The current Films Act provides for the minimum and maximum penalties for offences. This is no longer aligned with modern legislative design, where the Courts are provided discretion to impose an appropriate sentence taking into account all circumstances of the case and the degree of harm caused, including mitigating circumstances. ***MCI/IMDA propose that the reference to a minimum penalty (e.g. minimum fine quantum) be removed from the Films Act. The maximum penalties for offences will be retained.***
- 2.36 Removal of References to Obsolete Terms/ Practices. As part of updating the Films Act, ***various terms which are obsolete or are replaced by new terms in the Films Act amendments, for example, “approved warehouse” would be repealed and deleted from the Films Act.***
- 2.37 The above paragraphs summarise the proposed key Films Act amendments. For the full amendments to Films Act, please refer to the **Annex**, for the draft Films Act (Amendment) Bill.

PART 3: INVITATION TO COMMENT

- 3.1 IMDA would like to seek comments from members of the public on the proposed amendments to the Films Act as set out in Part 2 and the draft Films Act provisions in the **Annex**. Respondents should clearly identify the sections and provisions on which they are commenting. Respondents may also suggest changes to the proposed provisions. The proposals should be accompanied by reasons for the changes.
- 3.2 Submission by organisations of the written comments should be in the following format:
- (a) Cover Page;
 - (b) Table of Contents;
 - (c) Summary of major points;
 - (d) Statement of interest;
 - (e) Comments; and
 - (f) Conclusion.

All comments from organisations must be submitted in softcopy (in Microsoft Word format).

- 3.3 Submissions from individuals can be in email format. Respondents must provide their full names for the submission to be considered. IMDA reserves the right to publish all submissions in full. Individuals who wish to remain anonymous should state their request to redact their full names when making the submission.
- 3.4 This consultation closes on 15 December 2017 and comments should be submitted to IMDA on or before 5pm of that date. Parties submitting comments should include the full company or individual names, their correspondence address, contact number and email address. Organisations should include their particulars on the cover page of their comments. All comments should be addressed to:

Ms Lee Ee Jia
Director (Media Policy)
Info-communications Media Development Authority
(Attention: Ms Tee Yock Sian)
Email: consultation@imda.gov.sg

- 3.5 IMDA reserves the right to make public all or parts of any written comment and to disclose the identity of the source. Commenting organisations may request confidential treatment for any part of the comment that the commenting organisation believes to be proprietary, confidential or commercially sensitive. Any such

information should be clearly marked and placed in a separate annex. If IMDA grants the request for confidential treatment, it will consider, but it will not publicly disclose, the information. If IMDA rejects the request for confidential treatment, it will return the information to the commenting party and will not consider the information as part of its review. As far as possible, commenting organisations should limit any request for confidential treatment of information submitted. IMDA will not accept any comment that requests for confidential treatment of all or a substantial part of the comment.