**MOTION PICTURE ASSOCIATION – INTERNATIONAL**


December 28, 2017

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

Dear Ms Lee,

Please find attached Motion Picture Association submission in response to the Public Consultation on Proposed Amendments to the Films Act.

Thank you in advance for your consideration of our comments. Please do not hesitate to contact us if you have any questions or require further information.

With kind regards

MPA

**MOTION PICTURE ASSOCIATION–INTERNATIONAL**

*Submission to the Info-communications Media Development Authority in response to the Public Consultation on Proposed Amendments to the Films Act*

28 December 2017

## 1. STATEMENT OF INTEREST

The Motion Picture Association International ("**MPA**) is a trade association representing the interests of international producers and distributors of filmed entertainment, including television programming, with a significant presence in the Singapore market.

The MPA represents the interests of major international producers and distributors of theatrical films, home video products and television programming, namely:

(a) Paramount Pictures Corporation

(b) Sony Pictures Entertainment Inc.

(c) Twentieth Century Fox Film Corporation

(d) Universal City Studios LLC

(e) Walt Disney Studios Motion Pictures

(f) Warner Bros. Entertainment Inc.

These companies are content providers of filmed entertainment and television programming for more than one hundred and fifty different markets around the world. Each of these companies or their affiliates also own or operate television channels carried by major pay television operators in Singapore. Furthermore, these companies directly employ more than one thousand professionals in Singapore and invest millions of dollars annually in developing Singapore-based content. A number of them have based their Asia-Pacific regional operations in Singapore as well.

## 2. INTRODUCTION

2.1 The Info-communications Media Development Authority ("**IMDA**") has on 4 December 2017 issued a public consultation (the "**Consultation**") in relation to proposed amendments to the Films Act (Cap 107) ("**FA**").

2.2 MPA is pleased to provide the following feedback in response to the Consultation. MPA applauds IMDA's proposal to codify its pilot classification scheme and to permit industry

to be able to co-classify video/film titles so that they can be made available to consumers on a timely basis. It is a laudable goal and will result in efficiencies of the classification process. In achieving this goal we would like to share our comments to ensure that the co-classification system does not have the unintended effect of delaying rather than expediting the classification process of films for exhibition.

## 3. RECOMMENDATIONS

3.1 MPA's feedback on the Consultation is summarised below:

(a) Codification of the co-classification scheme: Penalties and Sanctions for Misclassification

The Consultation provides that in respect of misclassification of films by "film content assessors", there will be a range of "punitive and non-punitive measures that IMDA will use", including the issuance of warnings.

However, the range of measures are not specified in the Draft Films (Amendment) Bill ("**Draft Bill**"). The Draft Bill merely states that IMDA has the right to either suspend the film content assessor's licence or impose on the film content assessor a penalty of up to SGD 5,000.

If it is the intention that there should be a tiered penalty regime, it would be useful that this be reflected in the language of the Draft Bill. This is particularly important given that the classification of films are often times be subjective, and it should not be the case that a mistake, or a misclassification by a film content assessor of a PG-13 film as a PG film should warrant an unduly harsh fine.

To that end, to assist film content assessors in assessing films, it will also be important for IMDA to provide such assessors with clear guidelines on the objective criterion of how films should be assessed and classified.

(b) IMDA authority to re-classify or revoke a previous classification, sua sponte

We would like to submit that the ability of IMDA to, on its own initiative, call for the re-classification or revocation of a previous classification, could potentially lead to confusion and uncertainty in the film industry. This right of IMDA will also run counter to the intention behind formalising the co-classification regime, i.e., to enable industry players to bring authorized content to consumers in a timely manner. We hope that greater guidance be provided on the specific situations under which a film can be called for the re-classification or revocation of its classification.

(c) Standing to file an appeal against IMDA decisions under the FA

The Consultation proposes that more than one party (aside from the owner of the film, which is currently the only party permitted to appeal under the FA), may appeal the classification of a film. It is appropriate that those persons or entities with a direct nexus to the film have standing to appeal a classification decision. The Draft Bill, however, does not specify that the new classes of persons able to appeal is limited to only those persons who are directly involved in the commercial exploitation of the film or in the classification process. [1]

This may lead to further uncertainty in the industry after the classification has been provided, whether by the film content assessor or by the IMDA.

To provide for greater certainty, we would submit that only those parties having a direct nexus with the film should be permitted to appeal IMDA decisions on classification of the film.

(d) Enhancements to IMDA's investigation and enforcement powers

The proposed widening of IMDA's investigation and enforcement powers is a concern, since these powers may be exercised by IMDA without warrant, in particular in respect of mere "noncompliance" by a licensee with a provision of the FA.

Such a broad expansion of its powers may inadvertently impact all licensees across the entire film industry in unintended ways and we urge IMDA to reconsider its position.

## 4. SPECIFIC COMMENTS

4.1 The MPA understands that the proposed amendments are being issued in response to changes in the media landscape, having regard also to the movement in the industry towards the co-regulation and co-classification of films by industry players together with IMDA and the Board of Film Censors.

IMDA should be applauded on its move to codify into the FA the scheme that permits industry to co-classify titles using registered film "content assessors".

4.2 Our specific comments to the proposed amendments are provided below.

Codification of the co-classification scheme: Penalties and Sanctions for Misclassification

4.3 The move by IMDA to formalise the co-classification scheme so that the industry will be able to co-classify titles using registered film content assessors, is commendable. However, in order to ensure that these registered film content assessors are able to effectively carry out their roles and classify films appropriately in a timely manner

[1] Section 24(2), Draft Bill.

consistent with international practice of day-and-date releases, IMDA should ensure that there is transparency in the classification regime (whether by publishing more detailed film classification guidelines or by conducting rigorous training for the registered film content assessors) and apply a consistent standard across all films and content assessors.

4.4 We hope to receive more details about IMDA's plans to carry out the training of the film content assessors so as to ensure consistency and transparency in the co-classification scheme.

4.5 The principles of consistency and transparency are essential given that the proposed amendments to the FA include penalties which may be imposed on "film content assessors and colluders for breaches"[2].

4.6 It is noted that the Consultation states that "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", including the issuance of warnings for "genuine mistakes by newly registered film content assessors". However, this range of measures is not evident from the language of the Draft Bill.

4.7 Section 20B of the Draft Bill simply states that the regulatory action which IMDA may take against a film content assessor includes the imposition of a financial penalty "not exceeding SGD5,000 for conduct that does not constitute an offence under [the FA]" or the suspension of the registration of an individual as a film content assessor, "in lieu of cancelling registration [of the individual] as a film content assessor".[3]

4.8 In addition, the penalties and powers granted under the Draft Bill may be applied by the IMDA in a wide range of scenarios, including, among others, where the film content assessor has "engaged in conduct rendering the individual unfit to be a film content assessor"[4]. It is currently also not clear what type of conduct would be considered conduct "rendering the individual unfit to be a film content assessor" other than that which has been provided in Section 20B(12) of the Draft Bill, i.e.:

> *If the film content assessor:*
>
> *(a) had assigned a classification rating for 2 or more films which are re-classified by the Authority under section 15 (Classification and re-classification of films) ; or*
> *(b) had assigned a classification rating for a film which is reclassified by the Authority under section 15(2) and —*
> *(i) the original classification is 2 or more levels higher than the re-classification of the film by the Authority; or*

---

2 Paragraph 2.7, Consultation.
3 Section 20B(2), Draft Bill.
4 Section 20B(1)(g), Draft Bill.

*(ii) the assessment of the content of the film which he prepared and submitted to the Authority for the original classification is misleading or incorrect or contains grossly inadequate information*

4.9 The classification of films into the different ratings can be an extremely subjective exercise. Depending on the type of film which is being assessed for classification, it is submitted that there can sometimes be only a slight difference between a PG and PG-13 film, and this is regardless of whether the registered film assessor is "newly registered" or not.

4.10 In addition, it is also submitted that the fact that the IMDA may have to reclassify a film which was previously classified by a film content assessor should not, on its own, be enough to trigger the imposition of penalties on the film content assessor or the suspension of their registration as a film content assessor, having regard to there often being much subjectivity in such assessments, and to also take into account instances where the content assessor may have inadvertently missed the content (for example where there was only a small, fleeting appearance of the same). IMDA in reclassification of the film would have achieved the result that the film is ultimately correctly classified, and prosecution of film content assessors should only apply in cases where they had deliberately or intentionally misclassified films.

4.11 If the imposition of penalties or the suspension of the film assessor's registration is too easily triggered, the proposed regime would be unduly harsh and onerous on the film content assessor, and may in fact serve to stifle the co-classification scheme rather than encourage it to further develop, because film content assessors may then become too conservative in their ratings, so as to err on the side of caution in light of the recourse which may be had against them personally.

4.12 Accordingly, the Draft Bill should be amended to reflect that film content assessors would only face prosecution if there is deliberate or intentional misclassification of films, and also establish a tiered enforcement regime, including the giving of warnings as opposed to the immediate imposition of a financial penalty (as stated in the Consultation).

<u>IMDA authority to re-classify or revoke a previous classification</u>

4.13 The Draft Bill confers IMDA the power to re-classify or revoke a previous classification[5] in certain situations, including, among others, where IMDA "on its own initiative" calls in a classified film for re-classification purposes. It is essential that adequate guidance be provided regarding the situations under which IMDA may call in a classified film for re-classification purposes either in the Draft Bill or in implementing regulations.

[5] Section 15, Draft Bill.

4.14 The Draft Bill does not provide much detail on the circumstances under which IMDA may call in a film for re-classification or revocation of a previous classification. In respect of newly released films in particular, this broad and general power of IMDA may result in confusion and uncertainty in the industry, and again lead to unnecessary delays in classification of films and for such films to reach audiences on a timely manner.

4.15 In order to avoid such unintended consequences, we submit that greater clarity and guidance be provided on the circumstances under which a classified film may be re-classified or have its classification revoked.

Standing to file an Appeal to an IMDA decisions.

4.16 Presently under the FA, only the owners of films may appeal against IMDA's classification of a film.

4.17 It has been proposed under the Consultation that other parties may also appeal decisions in respect of "appealable classification decisions"[6] by the IMDA, including[7]:

(a) the person who applied for the classification or re-classification of a film;

(b) the person who is the maker of a classified film;

(c) the person who intends to distribute or publicly exhibit a film;

(d) the person who applied for approval of an advertisement for a film; and

(e) the film content assessor whose classification of a film is revoked.

It is appropriate that of those persons or entities listed above, only those who have a direct nexus to the film should have standing to file an appeal to a classification decision. The Draft Bill, however, is not clear on who is permitted to apply for classification (or reclassification) of a film. We submit that the Draft Bill clarify that the persons contemplated should be only those who have a direct commercial nexus to the film in question.

Enhancements to IMDA's investigation and enforcement powers

4.18 Under the present FA, both the IMDA and Police are provided with the power to enter premises without warrant to search for and seize unlawful films[8]. However, in respect of other offences under the FA (e.g. the exhibition of unclassified films), the police are currently vested with the power to assist IMDA with investigations and enforcement.

6 Sections 24(1) and 24(5), Draft Bill.
7 Section 24(2), Draft Bill.
8 Section 34, FA.

4.19 The Consultation and Draft Bill propose that IMDA be granted with very wide powers[9], in many instances, these powers would appear to be unqualified and would be able to be exercised by licensing or classification officers without further regard to any other authority.

4.20 We note that it is uncommon for an administrative body to have such far-reaching powers, which one would associate more with the police, in particular when "enforcement purposes" are in turn been defined very broadly to include, among other things "any contravention of or noncompliance with a provision of [the Films Act] or its subsidiary legislation".

4.21 We urge the IMDA to consider maintaining the division of powers of enforcement between the IMDA and the Police as presently provided for under the existing Films Act.

Other comments

Fees payable under the FA

4.22 We hope IMDA will clarify if the fees payable by licensees for the classification of films will be revised having regard to the proposed amendments of the FA on the codification of the co-classification scheme.

Clarification if the proposed changes to the FA will apply to online content

4.23 It is our understanding that the proposed changes to the FA are not intended to apply to content that is made available over the Internet or via OTT services. However, this is not clear in the proposed changes to the FA (particularly the new concept of "electronic transmission") and should be clarified to avoid confusion.

Seek flexibility in NC-16 ratings as "advisory"

4.24 Although not part of the consultation, we hope that IMDA will consider extending some flexibility to NC-16 rating as "advisory" rather than "restricted", similar to PG-13 and consistent with the video games classifications.

## 5. CONCLUSION

5.1 We are supportive of the steps IMDA is taking to enhance the film classification regime in Singapore, particularly in respect of the codification of the co-classification regime. This will certainly bring greater efficiency in the co-classification process and enable stakeholders to bring films to consumers without unnecessary delays.

[9] Section 34(1) FA as amended by Section 22, Draft Bill.

5.2 While it is important to regulate the actions of registered film content assessors to ensure that they appropriately classify films, it is equally important to ensure that the co-classification regime is not stifled by onerous obligations or overly punitive enforcement actions. To that end, we hope the guidelines issued and the training conducted for these film content assessors will be clear and easy to follow to allow film content assessors to carry out their roles in an efficient manner.

5.3 We are fully supportive of IMDA's objective of ensuring a safe and vibrant media environment. However, the proposed amendments allowing wide-reaching powers for warrantless searches by IMDA in the absence of FA Section 34 authority should be reconsidered.

5.4 We hope IMDA will take into consideration our comments with regard to the proposed legislative amendments in order for the film industry as a whole to benefit fully from these proposed amendments.

5.5 We will be available to further discuss with IMDA any questions that may have arisen in relation to the submissions set forth above.

****