

**IN THE ENFORCEMENT COMMITTEE OF THE FILM AND PUBLICATION
BOARD (FPB)**

Film and Publication Board (FPB)

Applicant

and

TV YABANTU

1st Respondent

Laz Dlamini

2nd Respondent

Case No:007/2025/RD/GP

Date of hearing: 09 Oct 2025

MEMBERS OF THE ENFORCEMENT COMMITTEE

Judge Thokozile Masipa - Chairperson

Ms Nalini Maharaj - Member

Dr. Adv Nzumbululo Silas Siphuma - Member

OFFICE OF THE ENFORCEMENT COMMITTEE

Ms Mpho Mooketsi - Registrar

LEGAL REPRESENTATION

For the Applicant

In person (represented by Mr. Andrew Sebapu in his capacity as the Acting Manager: Regulatory Compliance and Enforcement)

For the Respondent

In person (represented by Mr Lazarus Dlamini in his capacity as CEO of the company)

DECISION

Judge Thokozile Masipa

INTRODUCTION

- [1] At the outset, it is necessary to state that this matter is not your run of the mill case. Although it cannot be described as a complex matter, it required special care as it raised a unique legal question, that is, whether the cultural role of the films (videos) concerned, legally, placed such videos on a different footing than other films or videos.
- [2] It was this question that led the Enforcement Committee to seek legal opinion on the matter.
- [3] The Enforcement Committee found the legal opinion both comprehensive and helpful and we are grateful to counsel for his assistance.
- [4] This matter was referred to the Enforcement Committee (EC) of the fpb for adjudication by the Executive Regulatory Compliance and Enforcement in terms of Section 6B(1)(b)(d)(i) of the Act.

PARTIES

[5] Applicant is the Film and Publication Board established in terms of the Films and Publications Act No 65 of 1996 as amended ("the Act").

[6] The First Respondent is an entity known as TV Yabantu which operates under the website (www.yabantu.tv).

[7] According to Companies and Intellectual Properties Commission (CIPC) check, conducted by FPB, it does not appear to have been registered as a company.

[8] According to its website, TV Yabantu is a Mama Africa Television Network, that thrives and *"serves to bring the best Indigenous African content in order to entertain, inform, restore, preserve, protect, promote and awaken Africans to the values of Cultural Traditions through Film."*

[9] Mr Lazarus Dlamini, the Founder of TV Yabantu, describes it as *"an online blog, dedicated to sharing culture videos reflecting African heritage and traditions for cultural preservation and educational purposes"*.

"TV Yabantu operates with the intent to promote cultural exchange and understanding through these videos."

[10] In these proceedings, it shall be referred to as TV Yabantu or the First Respondent.

[11] The Second Respondent is Lazarus Dlamini, the founder and head of TV Yabantu. He shall be referred to as Mr Dlamini or the Second Respondent.

THE COMPLAINT

[12] Applicant alleged that TV Yabantu is in contravention of section 18(1)(a) and section 18(1)(b) read with the provisions of section 24A(1) and (2) of the Act, in that:

- 12.1. TV Yabantu distributes films without first having been registered with the Board to distribute films as required by section 18(1)(a) of the Act.
- 12.2. TV Yabantu distributes films which have not been classified by the Board as required by section 18(1)(b) of the Act.

RELIEF SOUGHT

[13] The Applicant seeks an order in the following terms:

- 13.1. Condoning the late filing of the Notice of Referral in terms of Rule 3 of the Enforcement Committee Rules.
- 13.2. Adjudication on the non-compliance with the provisions of the Act and to make appropriate findings after the parties have been granted an opportunity to be heard.
- 13.3. Impose a fine not exceeding the sum of R150000 (one hundred and fifty thousand for distributing films without first having been registered with the board as the distributor of films, as prescribed in terms of Section 24A (1) of the FP Act.
- 13.4. Impose a fine not exceeding the sum of R500 000,00 (five hundred thousand) for distributing unclassified films as prescribed in terms of section 24A (2) of the Act.
- 13.5. Ordering the Respondents to pay the costs in respect of the whole or part of the proceedings.
- 13.6. Further and/or alternative relief.

FACTUAL BACKGROUND

[14] Following an online inspection of the website of the First Respondent, on 14 May 2024, the Applicant, through its Compliance Officer, Mr Thulani Zondi, addressed a letter to the Respondent.

[15] The relevant portion referred to the Applicant's mandate in terms of the FP Act, which, it said,

“was extended by the 2019 Amendment Act which came into effect on 01 March 2022. Pursuant to the amendment, the FPB is now vested with responsibility to regulate online content”.

[16] The letter continued:

“We have noted that your platform TV Yabantu distributed various forms of videos. These videos could be accessed by various users including children. What is more concerning is that some of these videos contain harmful and prohibited content. The provisions of section 18(1)(a) require any person who distributes, broadcasts or exhibit[s] any film or game in the Republic to register with the [FPB] as a distributor or exhibitor of films and games.”

[17] In addition, the letter dealt with the definition as set out in the FP Act.

[18] It further explained what distribution means *“in relation to a film, game, or a publication, without derogating from the meaning of that word, includes—*

- (a) to stream content through the internet, social media or other electronic medium;*
- (b) to sell, hire out or offer or keep for sale or hire, including using the internet;*
- and*

(c) for purposes of section 24A and 24B, to hand or exhibit a film, game or a publication to a person under the age of 18 years, and also the failure to take reasonable steps to prevent access thereof by such a person.”

[19] Furthermore, the Applicant explained that according to the Act, *“distributor” means “a person who conducts the business of distributing films, games or publications and includes a commercial online distributor”.*

[20] In the same letter, the Applicant informed the Respondent of the Applicant’s power in terms of section 18(C) of the FP Act to *“on application approve and accredit a commercial online distributor to conduct classification of films, games and publications on its own (self-classification)”.*

[21] In addition, the letter explained that *“[a] commercial online distributor who complies with the provisions of section 18(C) shall be exempted from the requirements of submitting films, games and publication[s] for classification to the FPB ...”*

[22] The Applicant served a Cease-and-Desist Letter dated 14 May 2024 as well as a Notice of Contravention dated 23 August 2024 on the Respondent by email and gave the latter 30 days to comply. In the event the Respondent needed more time to remedy the non-compliance, it was to request an extension.

[23] The Respondent failed to respond meaningfully or comply with the provisions of the Act. In addition, it failed to ask for more time. What could be gleaned from the few letters from the Respondent is that the latter’s position is that it does not fall under the FP Act. Hence the referral to the Enforcement Committee.

CONDONATION APPLICATION

- [24] The Applicant argued a condonation application for the late filing of the referral of the complaint to the Enforcement Committee. Like in many other matters that have been brought before the Enforcement Committee recently, the main basis for the late referral, was the limited resources of the Applicant. It was explained that the Applicant had very few personnel who had to deal with the large number of inspections and follow up inspections.
- [25] For convenience, one condonation judgment, relating to all the condonation applications heard by the Enforcement Committee, was issued. For this reason, it became unnecessary to write detailed submissions and a detailed discussion by the Enforcement Committee before it came to its decision. Suffice to say that the Enforcement Committee was satisfied that a case had been made out for the granting of the application. In particular, we noted that this was a case where the interests of children are paramount.
- [26] The delay is of real concern and is viewed in a serious light as it concerns the interests of the public, specifically of children. However, refusing to grant the condonation application may be more prejudicial in the long term. I say this because it might send the wrong message to the industry and the general public. In addition, it might encourage errant entities to flout the law with impunity.
- [27] In the present case, after considering all the relevant facts, the Enforcement Committee decided to grant the condonation application.

RESPONDENT'S RESPONSE

- [28] The Respondents denied that the First Respondent had contravened any law. The basis of the denial was that the First Respondent was not a distributor as contemplated by the Act.
- This was because the Respondent's main goal was to preserve and promote African culture.

[29] In a letter dated 20 May 2024, Maimane Attorneys stated that their client, TV Yabantu had repeatedly informed the Applicant that *“it is not a distributor for purposes of the Films and Publications Act but operates as a content creator.”*

[30] In addition, the letter stated that the Respondent had not refused to comply with the Applicant’s regulations but had consistently stated *“that there needs to be clarity on substantive legal questions in particular on the subject of whether TV Yabantu qualifies to be a distributor in terms of the FP Acts.”*

THE ISSUE

[31] The issue then became that of the interpretation of the word *“distributor”*, and whether or not its operations fall within the provisions of the FP Act.

THE LEGAL FRAMEWORK

[32] Briefly, the following are applicable provisions of the FP Act namely—

- 32.1. the provisions of section 18(1)(a) and 18(1)(b). These require any person who distributes, broadcasts or exhibits any film or game in the Republic to register as distributor and submit for classification any film or game that has not been classified, exempted or approved in terms of the FP Act.
- 32.2. Section 18(C) of the FP Act highlights the power of the FPB to *“on application approve and accredit a commercial online distributor to conduct classification of films, games and publications on its own (self-classification)”*.
- 32.3. In terms of section 24A(1) of the FP Act any person who knowingly distributes or exhibits in public a film or game without first being registered with the Board as a distributor or exhibitor of films or games shall be guilty

of an offence and liable upon conviction to a fine not exceeding R150 000 or to imprisonment for a period not exceeding eight months or both a fine and such imprisonment.

- 32.4. In terms of section 24A(2) of the FP Act any person who knowingly distributes, exhibits in public, offers for sale or hire any film, game which has not been classified by the Board, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R500 00 or to imprisonment for a period not exceeding five years or both a fine and such imprisonment.

ANALYSIS AND DISCUSSION OF THE FACTS AND THE LAW

- [33] Thulani Zondi, the Compliance Officer, deposed to a Statement in which he states that, during the course of conducting an online inspection on the website platform of TV Yabantu, he established that the latter was distributing or streaming films in the Republic without having been registered with the Board as a distributor of films/content. He noticed that, through its website, TV Yabantu was distributing or streaming various films online which were accessible to members of the public.
- [34] A further observation that the Compliance Officer made was that the distribution and streaming was done without displaying clearly and conspicuously and in the prescribed manner, the classification reference numbers, age restriction and consumer advice.
- [35] None of the above was contradicted. The only repeated response by the Respondents was that TV Yabantu was not a distributor for purposes of the FP Act but operates as a content creator.
- [36] It seems, to the Enforcement Committee, that the First Respondent is an online distributor as contemplated in the Act.

- [37] The videos can easily be accessed by the general public, including children. It is worth repeating that the law applies to all who reside in the Republic.
- [38] At this stage it would be helpful to examine the purpose of the provisions of section 18(1)(a) and section 29(1)(b). Both aim to ensure that the public is protected against unscrupulous distributors and exhibitors of films, games and certain publications.
- [39] Pursuant to the provisions of section 18(1)(b) the public is given information that enables parents to make informed decisions about films (in this case, videos) that they and children under their care may watch.
- [40] The provisions also protect children from harmful material and premature exposure to adult content. This applies to all children in the Republic irrespective of their cultural background. So, a debate about the fact that what is perceived as nudity and sexuality in one culture may not necessarily be so in another, is not helpful at all.
- [41] What may be helpful is to focus more on the objectives of the Films and Publications Act 65 of 1996 (as amended, particularly by the 2019 Amendment Act which took effect on March 1, 2022). The Act is the primary content regulatory framework in South Africa. Its role is crucial, especially in the modern, permissive society characterized by high internet consumption and digital content sharing.
- [42] It is for this reason that the Act's role was extended from traditional classification to active online content regulation.
- [43] It is important to note that notwithstanding the challenges faced by the general public in modern permissive society, the aim of the Act is not to censor content. Rather, it is to balance freedom of expression with the protection of children and

public morality. That should be sufficient to allay any fears of the Respondent regarding a possible intention by the Applicant to censor content.

- [44] A key mandate is protecting children from accessing harmful, prohibited, or sexually explicit material online. This includes strict measures against child pornography, with the Act providing mechanisms to criminalize, detect, and remove such content. And this protection applies to all children, irrespective of their cultural backgrounds.
- [45] In view of the above, the attitude of the Respondents, therefore, that because the purpose of TV Yabantu is to preserve and promote African culture, it does not fall within the jurisdiction of the FPB, has no merit.
- [46] The frustration of the Respondents at what is perceived as an injustice and a failure by the Applicant to recognise TV Yabantu's unique role in the industry, is understandable. Nevertheless, its position on the issue is misplaced for a number of reasons.
- [47] In South Africa, laws apply equally to everyone, irrespective of nationality or cultural background. Similarly, all entities/businesses that operate within the borders of South Africa, irrespective of their origin or cultural backgrounds, are governed by the laws in the industry in which they operate.
- [48] South Africa, as a multicultural society, has a constitution that not only recognises but also promotes the equality of all cultures.
- [49] It is precisely this equality that binds the South African society together. More importantly, it is this equality that guarantees justice to all who live within the country.
- [50] So, to allow individuals or entities to be governed according to their cultural backgrounds, would be to invite confusion and promote instability in the Film and

Publications industry. In addition, it might also encourage division and cause injustice.

CONCLUSION

- [51] FPB classifies films, games, and certain publications to inform viewers of age-appropriate content and consumer advice.
- [52] The first Respondent has failed to be registered as a distributor of films with the Applicant. It has also failed to submit its videos on the basis that the content is being used to promote and preserve African culture and therefore, does not fall within the purview of the FP Act. In our view, the submission has no foundation.
- [53] While the Enforcement Committee is sympathetic to the concerns raised on behalf of the Respondents, it is of the view that the first Respondent is obliged to comply with the law, before it can attempt to negotiate a way forward with the Applicant.
- [54] Meanwhile a simple solution to the issue at hand, is to be found in the very legislation that the Respondent is reluctant to comply with.
- [55] In our view, the first Respondent would have to comply with section 18(1)(a) of the FP Act, by registering with the Board. The Respondents have not said why it would be prejudicial for the simple Act of registering the first Respondent with the Applicant. In the absence of such an assertion, the first Respondent has an obligation to register. Once that has been done, the Respondents may approach the FPB with a view to making an application for self-classification, as set out in section 18C, if they wish. If the application is successful, then it shall not be necessary for the First Respondent to submit its videos for classification.

FINDINGS

[56] Having considered the facts of this matter, the Enforcement Committee makes the following findings:

- a. The condonation application for the late referral of the complaint in terms of Rule 3 of the Enforcement Committee Regulations is granted.
- b. The Respondents are found to have failed to comply with section 18(1)(a) of the Films and Publications Act No 65 of 1996 as amended in that it distributed various videos without having been registered as a distributor of films/videos.
- c. The Respondents are found to have failed to comply with section 18(1)(b) in that the First Respondent failed to submit its videos for classification.

ORDER

[57] Accordingly, the Enforcement Committee issues the following order:

- a. The Respondents are fined an amount of R150000 (One Hundred and Fifty Thousand Rand) for distributing films without first having been registered with the Board as the distributor of films, as prescribed in terms of Section 24A (1) of the FP Act.
- b. The Respondents are fined an amount of R500 000,00 (Five Hundred Thousand Rand) for distributing unclassified films as prescribed in terms of section 24A (2) of the FP Act;
- c. The Respondents are ordered to pay costs in respect of the proceedings.

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ENFORCEMENT COMMITTEE

Judge Thokozile Masipa – Chairperson

Ms Nalini Maharaj – Member

Dr. Adv Nzumbululo Silas Siphuma – Member

Date: 30/07/2026