

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

Film and Publication Board (FPB)

Applicant

and

NOOR PLAY

Respondent

Case No: 0072025/RD/KZN

Date of hearing: 21 October 2025

MEMBERS OF THE ENFORCEMENT COMMITTEE

Judge Thokozile Masipa - Chairperson

Ms Malini Maharaj - Member

Dr. Adv Nzumbululo Silas Siphuma - Member

OFFICE OF THE ENFORCEMENT COMMITTEE

Kopano Mpete - Registrar

LEGAL REPRESENTATION

For the Applicant

Mr Sanele Mjila

For the Respondent

(No appearance)

DECISION

Judge Thokozile Masipa

INTRODUCTION

[1] This matter was referred to the Enforcement Committee for adjudication in terms of Section 6B of the Films and Publications Act No 65 of 1996 as amended ("the FP Act). It was alleged that the Respondent had failed to comply with section 18(1)(a) and section 18(1)(b) of the FP Act.

[2] In this matter, like in many others, heard by the Enforcement Committee, recently, there was a condonation application for the late filing of the notice of referral. In addition, there was an application for a default judgment. Both the condonation application and the default judgment application shall be discussed later in this judgment.

THE PARTIES

[3] The Applicant is the Film and Publications Board (FPB) established in terms of section 3 of the FP Act.

[4] The Respondent is NOOR PLAY, an entity which operates under the website (<https://noorplay.com>).

[5] According to Companies and Intellectual Properties Commission (CIPC) check conducted by FPB, NOOR PLAY is based in the United Kingdom (UK), and does not appear to have been registered as a company in South Africa. Its physical address is 36-37 Ludgate Hill, London, United Kingdom with mail addresses sm.ar@noorplay.com and support@noorplay.com .

CONDONATION APPLICATION BY THE APPLICANT

[6] In every condonation application the Applicant must show good cause before the application can be granted. Such good cause includes the nature, reason and extent of the delay, the prejudice likely to result if the application is granted and the prospects of success in the merits for the Applicant. More importantly, the Applicant must show that granting the condonation application is in the public interests.

[7] The Applicant submitted that the delay in filing the referral on time was not intentional but was caused by a serious shortage of Human Resources. (This has been fully dealt with in a separate judgment in respect of Application for Condonations).

[8] Meanwhile I proceed with the remaining requirements of good cause.

[9] The Applicant made submissions in respect of the prospect of success of its main application, the prejudice to the Respondent if the application were to be granted, and whether it was in the public interests that the application should be granted.

[10] Following those submissions, the Enforcement Committee was satisfied that a case had been made out for a condonation application.

[11] I say this because it cannot be denied that the prospects of success for the Applicant in this matter are extremely good as the evidence in support of the allegations against the Respondent was unassailable. In addition, while no prejudice was likely to be caused to the Respondent by granting the application, great prejudice might have been caused to the Applicant and the general public if the condonation application were to be refused. This, *inter alia*, would undermine the objectives of the FP Act to protect the consumer and especially children.

[12] Furthermore, it would create a bad precedent while sending a wrong message to the public and the industry. Shady enterprises, in the Film and Publication industry, might take this as a green light to flood the market with unclassified material and ignore the FP Act without fear of any consequences.

[13] Taking the above into consideration, the Enforcement Committee was of the view that it would be in the public interest to grant the condonation application.

THE RELIEF SOUGHT

[14] The Applicant sought the following relief:

- 14.1. Condonation of the late filing of a referral to the Enforcement Committee.
- 14.2. That a fine of R150 000 for the Respondent's failure to register as a distributor with the Film and Publication Board be imposed on the Respondent.
- 14.3. That a fine of R500 000 for the Respondent's failure to submit its films to the Film and Publication Board be imposed on the Respondent.
- 14.4. That the Respondent be ordered to pay costs in respect of the proceedings.

FACTUAL BACKGROUND

[15] According to its website, NOOR PLAY is a streaming service that offers a wide variety of TV shows. People can watch their favourite content with HD quality and subtitles.

[16] On opening NOOR PLAY website, one finds films that can be accessed or streamed over the internet through any internet-ready devices such as computers, mobile phones or internet connected TV where one is a subscribed member of the platform. The website reflects subscription prices to the public, ranging from USD 9.90 premium monthly plan and USD 69.99 annual package plan.

[17] An investigation by the FPB, also showed that NOOR PLAY is not registered with the FPB as a film distributor as required by the FP Act as amended.

[18] In addition, it was confirmed by the Applicant, that the films on the website had not been classified by the FPB. Consequently, the films did not display any FPB's classification decision, also known as rating.

APPLICABLE PROVISIONS IN THE FILMS AND PUBLICATION ACT AND PUBLICATIONS AMENDMENT REGULATIONS 2022 (THE REGULATIONS)

[19] Section 18(1) of the FP Act provides as follows:

“(1) any person who distributes, broadcast or exhibits any film or game in the Republic shall, in the prescribed manner, on payment of the prescribed fee -

(a) register with the Board as a distributor or exhibitor of films or games; and

(b) submit for examination and classification any film or game that has not been classified, exempted or approved in terms of this Act...”

DEFINITION OF “distributor”, “exhibitor” and “streaming”.

In terms of the Act, “distribute” in relation to a film, game or a publication, without derogating from the ordinary meaning of that word, includes

(a) to stream content through the internet, social media or other electronic media;

(b) to sell, hire out or offer or keep for sale or hire, including using the internet;

“distributor” means a person who conducts the business of distributing films, games or publications and includes a commercial online distributor”.

“streaming means the delivery of films by an online distributor or broadcaster, including the online streaming or downloading of films and catch up services that enable time-shifted viewing of a film online, to the end user of an online delivery medium, including the internet”.

[20] From the above, it is clear that the Respondent falls within the scope of the FP Act.

THE ISSUE

[21] The issue to be determined by the Enforcement Committee was whether NOOR PLAY was in contravention of section 18(1)(a) and section 18(1)(b) of the FP Act.

[22] However, before discussing the issue, it is necessary to first consider the condonation application before the Enforcement Committee.

CONDONATION APPLICATION FOR THE LATE FILING OF THE REFERRAL

[23] In every condonation application the Applicant must show good cause before the application can be granted. Such good cause includes the nature, reason and extent of the delay, the prejudice likely to result if the application is granted, and the prospects of success for the Applicant, in the merits for the Applicant.

[24] More importantly, the Applicant must show that granting the condonation application is in the public interests.

[25] In making its decision, the Enforcement Committee took into account all the above considerations. It could not be denied that the prospects of success for the Applicant in this matter are extremely good.

[26] In addition, while no prejudice was likely to be caused to the Respondent by granting the application, great prejudice might be caused to the Applicant and the general public if the condonation application were to be refused. The Respondent would walk away without having to answer for its actions, while consumers would be left without protection from the Respondent's harmful content.

[27] Moreover, a refusal of the condonation application, in the present matter, would create a bad precedent while sending a wrong message to the public and the industry. Unscrupulous enterprises, in the Film and Publication industry, might take this as a green light to flood the market with unclassified material and ignore the FP Act without fear of any consequences. That should be avoided, where possible.

[28] In the result, the condonation application is granted.

DISCUSSION AND ANALYSIS

[29] It was not in dispute that NOOR PLAY is a distributor as contemplated in the Act.

[30] Also not disputed, was that NOOR PLAY was and is still not registered as a distributor of films with the FPB in terms of section 18(1)(a) of the FP Act.

[31] Furthermore, there was evidence, which was not contradicted, that none of the films distributed by NOOR PLAY were submitted to the FPB for classification.

[32] The Enforcement Committee had no reason to disbelieve any of the evidence before it and accepted such evidence as true and reliable.

[33] Before making a finding, however, it became necessary to consider a default judgment that was made on behalf of the Applicant.

APPLICATION FOR A DEFAULT JUDGMENT

[34] To obtain a default judgment from the Enforcement Committee when a Respondent fails to appear, the Applicant must demonstrate: proper service of the summons/notice of hearing, that the Respondent failed to enter an appearance or file a plea, and provide a valid, *prima facie* claim that the Film and Publications Act was violated.

[35] In terms of Rule 5 of the Enforcement Committee Rules, 2023, a Notice or document may be delivered in any manner set out in the table which includes sending it by electronic mail. The delivery shall be deemed to be the date and the time recorded by the computer used by the sender, unless there is conclusive evidence that it was delivered on a different date or at a different time.

[36] Nothing is said in the Rules regarding what would constitute proof of service or whether or not or in what circumstances proof of service can be dispensed with, if at all.

[37] In the present case the method of service was per email address, which is permitted by the Rules.

[38] Rule 5 states that manner of service includes sending the documents by electronic email. However, how to determine proof of service is not stated.

[39] Given that a default judgment is a drastic measure, the implications of which are set out hereunder, the Enforcement Committee took a number of issues into account.

Violation of *Audi Alteram Partem* (Right to be Heard):

[40] The fundamental principle of justice is that both sides should be heard. Default judgment deviates from this principle in that the decision maker makes its decision solely on one version. Based on the circumstances of a matter, this may be warranted.

[41] An analysis of the facts, in the present case, suggests that the Respondent uses the same email address to conduct its daily business. It seems unlikely, therefore, that the email address used for service, is incorrect, nonexistent or nonfunctional, especially as there was no notification of non-delivery. Over and above the absence of a notice of non-delivery the Enforcement Committee requested the Applicant to file an affidavit of service to prove proper service.

[42] An Affidavit of service was duly filed by the Applicant. Having read the Affidavit, the Enforcement Committee was satisfied that *inter alia*, the email address was correct, the source of the email address was reliable, when and how service was effected. And, as stated earlier, it is highly unlikely that the Respondent, as an online business, would publish wrong contact details on its website.

[43] In view of the above, and of the fact that service took place in terms of Rule 5, the Enforcement Committee is satisfied that proper service on the Respondent has

been has been established and that the Applicant has made out a case for the relief that it sought.

FINDING

[44] In the result, the Enforcement Committee makes the following findings:

- 44.1. The Respondent is found to have failed to comply with section 18(1)(a) of the FP Act in that it failed to register as a distributor of films with the Film and Publications Board.
- 44.2. The Respondent is found to have failed to comply with section 18(1)(b) of the FP Act in that it failed to submit its films to the Film and Publications Board for classification.

ORDER:

[45] Accordingly, the Enforcement Committee grants default judgment in the following terms:

- 45.1. Condonation of the late filing of a referral to the Enforcement Committee is granted.
- 45.2. The Respondent shall pay a fine in the amount of R150000 (one hundred and fifty thousand rand) for failure to register as a distributor with the Film and Publication Board.
- 45.3. The Respondent shall pay a fine in the amount of R500000 (five hundred thousand rand) for failure to submit its films to the Film and Publications Board for classification.
- 45.4. The Respondent shall pay costs in respect of the proceedings.

29/07/2026

TWMasipa

ENFORCEMENT COMMITTEE

Judge Thokozile Masipa – Chairperson

Ms Nalini Maharaj – Member

Dr. Adv Nzumbululo Silas Siphuma – Member