

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

Film and Publication Board (FPB)

Applicant

and

MUBI

1st Respondent

Efe Cakarel

2nd Respondent

Case No: 008/2025/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 in terms of Rule 9(3) of the Enforcement Committee Rules for investigation and adjudication of allegations of non-compliance with the Films and Publications Act No.65 of 1996 as amended (the FP Act) by the Respondents.

[2] It was alleged that the first Respondent, an online distributor of films, had contravened section 18(1)(a) and 18(1)(b) of the Act in that it failed to register as a distributor of films with the Film and Publication Board ("FPB/Board") and that it failed to submit its films to the Board for classification, respectively.

THE PARTIES

[3] The Applicant is the Film and Publication Board ("FPB"/"Board"), established in terms of section 3 of the Films and Publications Act 65 of 1996 as amended ("The FP Act").

[4] The first Respondent is Mubi, an online distributor of various films to the public in South Africa. MUBI has its physical address as 1 Newburgh Street, London, England, W1F 7RB with email addresses: hell@mubi.com and

support@mubi.com . Its telephone number is unknown. The second Respondent is Efe Cakarel, who is believed to be the founder and CEO of the first Respondent.

CONDONATION APPLICATION

[5] At the outset, the Applicant sought a condonation application for the late filing of the referral to the Enforcement Committee. The application shall be discussed in due course.

RELIEF SOUGHT

[6] The Applicant sought default judgment against the Respondents in the following terms:

- a. That a condonation application for the late filing of the referral to the Enforcement Committee be granted.
- b. That a sum of R150000 (one hundred and fifty thousand rand) be imposed as a fine on the Respondents for the failure of MUBI to register as a distributor with the Film and Publication.
- c. That a sum of R500000 (five hundred thousand rand) be imposed on the Respondents for failure to submit MUBI's films to the Board for classification.

RESPONDENTS' RESPONSE

[7] There was no meaningful response from the Respondents. It was, therefore, not surprising that there was no appearance on their behalf.

[8] Consequently, the proceedings went ahead in the absence of the Respondents with the applicant asking for default judgment against them. Details of the application shall be discussed in due course. It is convenient, at this stage, to discuss circumstances that led to the complaint that is before the Enforcement Committee.

FACTUAL BACKGROUND

[9] On 22 May 2024, Mr. Rajesh Vishnu, a Compliance Officer in the employ of the FPB conducted a compliance inspection on the website of MUBI which is <https://Mubi.com/en/za> to monitor and enforce compliance in terms of the FP Act.

[10] The purpose of the inspection was to monitor compliance with the FP Act and to recommend appropriate enforcement action to ensure compliance with its provisions.

[11] During the inspection, the Compliance Officer established that MUBI distributes films by way of streaming on their website without being registered with the Board as a distributor of films as required by the FP Act.

[12] On 15 August 2024, the Compliance Officer issued MUBI with a Notice of Compliance which was served per the email addresses support@mubi.com; hello@mubi.com; and huey@mubi.com.

[13] In terms of the Notice of Compliance, MUBI was granted 30 days within which to remedy the alleged noncompliance or ask for an extension of the date, if necessary.

[14] On 4 April 2025, a Notice of Contravention and a Cease-and-Desist Letter were issued and served on various key members of MUBI. This included Mr. Efe Cakarel, “who is believed to be the Chief Executive Officer and founder of MUBI.”

[15] On 5 April 2025, Ms. Lisa Antonini from MUBI responded and confirmed receipt of the letter dated 4 April 2025.

[16] Ms. Antonini undertook to revert to the FPB as soon as she had heard from MUBI's legal department which was, apparently, handling the matter, at the time.

[17] Despite the undertaking above, and despite a number of attempts by the FPB to engage MUBI further, (as can be seen in copies of the trail of email correspondence from 4 April to 17 June 2025 which were attached), MUBI failed to get back to FPB. In addition, MUBI failed to remedy the non-compliance within 30 days or to ask for an extension to enable it to comply.

[18] On 6 August 2025, Mr. Vishnu conducted a follow up inspection on MUBI website <https://Mubi.com/en/za> and established that MUBI was still distributing films without being registered with the Board as a distributor of films as required by the FP Act. MUBI had also failed to submit its films to the Board for classification.

[19] It was this failure of the Respondents, to show any interest in resolving the matter amicably, that triggered the referral of the matter to the Enforcement Committee.

CONDONATION APPLICATION FOR THE LATE FILING OF THE REFERRAL

[20] The Applicant made a condonation application for the late filing of the referral.

[21] Explaining the delay, Applicant painted a picture of a serious shortage of Human Resources (see attached a judgment in respect of a series of condonation applications heard recently). The staffing problems were affecting the FPB's performance and its ability to meet deadlines.

[22] In addition, the Applicant correctly submitted, in our view, that its prospects of success in the main application were extremely good and that it was in the public interest that, despite a prolonged delay in referring the matter for adjudication, the application should be granted and the matter be finalised.

[23] The Enforcement Committee also agreed with the Applicant that the Respondents would suffer no prejudice if the application was granted.

[24] On the other hand, there was a likelihood of prejudice to the Applicant and the general public, in the long term, if the application were to be refused. More importantly it would serve as a blow to the objectives of the FP Act. This means that children would be left unprotected against dangers posed by age-inappropriate content.

[25] For all the above reasons, the condonation application must succeed.

DISCUSSION AND ANALYSIS OF THE MERITS

[26] The Applicant presented evidence in support of the allegations against the Respondents.

[27] The evidence included screenshots of MUBI's website showing "cult classics" and other sensitive content which may not be appropriate for certain audiences, including children.

[28] It is, therefore, serious cause for concern that MUBI continues to distribute such content without being registered as distributor and without submitting the films to the FPB for classification.

[29] The evidence against MUBI is formidable as statements made under oath were supported by various annexures which showed not only the nature of the business of MUBI, but also that it was noncompliant with the provisions of the FP Act.

[30] None of the evidence was contradicted and the Enforcement Committee found no reason to reject it. It follows, therefore, that the application must succeed.

APPLICATION FOR A DEFAULT JUDGMENT

[31] Before proceeding with the finding, it is necessary to briefly say something about the default judgment that the Applicant sought.

[32] Since there was no appearance for the Respondents, the Enforcement Committee had only the version of the Applicant to decide the issue.

[33] The Applicant made an application for a default judgment against the Respondents.

[34] For a default judgment to be successful, the decision maker must be satisfied that the party against whom the default judgment is sought knows about the proceedings.

[35] In the present case, the Applicant served documents to MUBI and key people at MUBI. One, Ms. Lisa Antonini, responded and acknowledged receipt of the documents. She then undertook to get back to the FPB once their legal unit had given her a go ahead. And despite several attempts by the FPB to obtain an update from her, Ms. Antonini failed to get back to the FPB.

[36] MUBI ignored correspondence from FPB at its own peril.

[37] The Applicant did all it could to communicate with MUBI and afforded it an opportunity to remedy the noncompliance within 30 days.

[38] The period within which the Respondents could remedy the noncompliance was unintentionally extended to a year when the Applicant conducted its follow up inspection only a year later. Sadly, the Respondents failed to take advantage of that delay.

[39] Having considered all the facts in this matter, the Enforcement Committee is satisfied that the Applicant has made out a case for a default judgment application against the Respondents.

FINDING

[40] The Enforcement Committee makes the following findings:

40.1 The Respondent, MUBI, 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 Publication Board.

40.2 MUBI 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 Publication Board for classification.

ORDER

[41] Accordingly,

41.1 Condonation application, for the late filing of the Notice of Referral, is granted.

41.2 Default judgment is granted in the following terms:

41.2.1 The Respondents shall pay an amount of R150000 (one hundred and fifty thousand rand), as a fine for failure of the first Respondent to register as a distributor with the Film and Publishing Board.

41.2.2 The Respondents shall pay an amount of R500000 (five hundred thousand rand), as a fine for the failure of the first Respondent to submit its films to the Film and Publication Board for classification.

41.2.3 The Respondents shall pay costs in respect of the proceedings.

TMMasipa

ENFORCEMENT COMMITTEE

Judge Thokozile Masipa – Chairperson

Ms Nalini Maharaj – Member

Dr. Adv Nzumbululo Silas Siphuma – Member

29/07/2026