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Film and Publication Board
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FPB CLASSIFICATION OF 'THE SPEAR' ARTWORK

01 June 2012

Members of the Media
Fellow South Africans
Ladies and Gentleman

As you know, the Film and Publication Board has been engaged in a classification process with regards the artwork by Mr. Brett Murray, titled 'The Spear'. The Classification Committee that has been mandated with classifying this particular piece and has since come to a decision.

Before I proceed with the matters before us, let me acknowledge the fact that we mark Child Protection Week this week and as the FPB we are closely linked to government's programme of promoting the safety of children under the theme ***'Working Together for Protection of Children'***. Child Protection is at the heart of our mandate and we exercise our duties with interests and needs of children in mind.

Let me take this opportunity to highlight a few matters of importance relevant to this matter that we believe are important to be communicated as a basis for the decision we are here to communicate.

These relate to the Film and Publications Act (Act No. 65 0f 1996) and its provisions, the jurisdiction of the FPB and the application of the guidelines in the classification of content.

The Film and Publication Board is established by the Films and Publications Act (Act No.65 of 1996); Section 2 of the Act mandates the FPB to perform the following functions:

1) Provide consumer advice to enable adults to make informed viewing, reading and gaming choices, both for themselves and for children in their care.
2) Protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences; and
3) Make the use of children in and exposure of children to pornography punishable.

Whilst the FPB Act is the mandating legislation, the FPB is required by law to make use of guidelines and regulations that are developed in consultation with the public for use in the classification of content.

It is equally important to also set out the distinction between the Film and Publication Board as an organization and the Classifiers of the FPB who are independent persons appointed by the Council of the FPB in consultation with the Minister of Home Affairs, following a public nomination process.

The FPB Management provides administrative support to the classification process and classifiers; and enforces compliance with the decisions of the Classification Committees. In

making classification decisions, the classification committees are guided by the classification guidelines, the Films and Publications Act and Section 33 (1) of the Constitution of the Republic of South Africa and the Bill of Rights.

It is these guidelines and the afore-mentioned laws that empower our classifiers to effectively and efficiently perform their duties as required by the Film and Publications Act in the classification of all content submitted to the Film and Publication Board.

Once a decision is made by the Classification Committee it becomes a decision of the Film and Publication Board as stipulated in the Film and Publications Act.

The Film and Publications Act in Section 3(1)(c) establishes an independent Appeals Tribunal whose duties are to hear and adjudicate on appeals relating to classification committee decisions. Section 20(1) of the Film and Publications Act sets out the rights of affected or interested parties to appeal decisions of the Classification Committee with the Appeals Tribunal.

I must apologize for dwelling on these matters as they may read as simple, reasonable and known processes to many, but I do so because there have been suggestions made that have sought to question the integrity and independence of the FPB and our Classification Committees.

Secondly, I wish to express myself on matters pertaining to the jurisdiction of the Film and Publication Board over newspapers that subscribe and adhere to the Press Code and the complaints received which have led to the classification of 'The Spear' in particular.

The Film and Publication Board received numerous complaints from members of the public via social media, telephone and e-mail concerning the artwork 'The Spear' and its exhibition, publishing and broadcasting in various media platforms.

Two of those complaints subscribed to the procedure set out in the Film and Publications Act and thus formed the basis for our decision to send a group of classifiers to the Goodman Gallery on 21 May 2012.

The complaints received related to the painting and its appropriateness to be exhibited, published and broadcast in public platforms where children and sensitive viewers could be exposed without prior warning.

At this stage, I wish to make it clear that no complaints were received from any political parties or leading political figures on this matter, as some in the media circles have sought to suggest. Allow me to add however that nothing would have been untoward should complaints have been received from political parties or figures as they enjoy the same rights as ordinary members of society in terms of our Act and the Constitution. We would have dealt with such complaints in the same manner as we have dealt with the two received from members of the public, without fear or favour.

Section 16 of the Film and Publications Act as amended, provides that any person may request for a publication, other than a bona fide newspaper, to be classified in terms of the same section.

For your information and background, Section 1(aa)(iii) of the Film and Publications Act defines a publication to include *'any drawing, picture, illustration, painting.'* The subject matter in this particular case is thus covered by the FPB Act (Act No. 65 of 1996).

It is this section of the Film and Publications Act that has been applied in pursuing a classification of the work of Brett Murray 'The Spear' informed by the requests viz-a-viz complaints received.

Briefly, allow me to state that the complaints as they relate to the City Press Newspaper were made in relation to the publishing of the 'The Spear' on its online publication and once more the complainant was concerned with the exposure of children to potentially harmful content.

I wish to place it on record that the City Press was never requested or subpoenaed by the FPB to come and make representations before the Classification Committee.

It is the City Press, through its legal representatives and on its own accord that made a request to make representations to the Classification Committee on 'The Spear' having heard media reports of the visit by the Classifiers to the Goodman Gallery to classify the artwork.

In line with Section 19 of the Film and Publications Act permission to the above request was granted in order to ensure that in exercising our mandate we are democratic, transparent and in line with our establishing legislation.

The Film and Publication Board has at no stage sought to undermine the Office of the Press Ombudsman and the Press Code through which City Press and bona fide newspapers are regulated.

We believe that reports to the contrary have been specifically designed to defame the Film and Publication Board, question its integrity, competence, credibility as well as formulate as a reality the false notion that the state seeks to silence and censor the media by all means possible and with total disregard for accepted procedures and principles.

As the FPB, we believe we have a cooperative working relationship with the Office of the Press Ombudsman and understand very well our mandate, its limitations and intentions.

We must however advise *bona fide* newspapers that their jurisdictional exclusion from the Film and Publications Act does not limit the FPB from filing concerns and complaints with the Office of the Press Ombudsman, where we may have evidence and a classification on a potential error of judgment in the execution of their responsibilities.

At this stage I wish to turn to the decisions of the Classification Committee in relation to 'The Spear'.

Firstly, let me state that as the FPB we are cognizant of the fact that 'The Spear' in its original form, has fallen. By this I mean it no longer exists and has been defaced and removed from the Gallery.

Equally, representatives of the City Press and the Goodman Gallery in their representation alluded to the fact that this artwork had been defaced, removed from the gallery and removed from the website of the City Press newspaper. We have also since learnt that the same is also removed from the website of the Goodman Gallery.

I wish to impress upon you that as the FPB we have felt it necessary and pursuant to our mandate to continue with the classification of 'The Spear' despite these developments. This is informed by the fact that the complainants have not withdrawn their complaints; also there is continued publication and exhibition of images of the artwork on other platforms and the need to make South Africans aware of the importance of us protecting children from premature exposure to adult or potentially harmful content. Equally, the protection of the sensitive adult viewer from similar exposure is paramount. The FPB has a responsibility to continuously provide consumer advise and educate members of the public on the matters related to its mandate; and we wish to exercise this responsibility without intimidation.

In making this decision, the Classification Committee has considered provisions of the Constitution of the Republic, the Films and Publications Act and the classification guidelines that are used in the classification of content.

The general constitutional framework in terms of which the FPB operates may be described as follows:

Section 16 of the Constitution provides:
Everyone has the right to freedom of expression, which includes –

a) Freedom of the Press and other Media;
b) Freedom to receive and impart information or ideas;
c) Freedom of artistic creativity;
d) Academic freedom and freedom of scientific research

The section does not extend to propaganda for war, incitement of imminent violence or the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. This modification means that expression falling within these categories is unprotected and can be modified, restricted and even prohibited. Expressions falling outside these categories are regarded as protected.

The freedom of expression, like all other rights in the Bill of Rights, is subject to a general limitation clause which allows rights to be limited in terms of a law of general application provided that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The Film and Publications Act is a law of general application. The Act read with the guidelines seeks to balance the importance of the freedom of expression and the need to regulate such expression, and in some instances to impose age restrictions in order to protect the interests of children.

It is important therefore that debate as to the appropriateness of a classification decision be conducted within the legal framework highlighted above and with specific reference to the Film and Publications Act of 1996.

It is also important to understand that classification guidelines cannot be comprehensive in their identification of all potentially disturbing and harmful materials. In addition, there may be materials which may not be disturbing or harmful but may be age-inappropriate and unacceptable to the community in general.

I also wish to state that in making the decision on the classification of 'The Spear' the Classification Committee noted with much interest that whilst our mandate is primarily to protect and safe-guard the interests of children, in the case before us, it has been the adult and sensitive viewers that have raised the most objection to the work and who have been at the forefront in opposing the artwork.

The Classification Committee considered all representations made and the submissions of the complainant that the artwork be classified as X18. The decision we are about to communicate is the most reasonable and legally sound decision that our classifiers, with all the facts before them could come to.

The Film and Publication Board therefore presents to you that a classification rating of **'16N'** has been decided upon by the Classification Committee for the artwork by Brett Murray titled 'The Spear' in its uncensored form. This classification is legally restrictive and dictates that persons below the age of **16** may not be exposed to this artwork. Secondly, **'N'** represents nudity and is an advice impressed upon sensitive adult viewers who may make the choice to avoid exposure to nudity as content.

Any persons or entities wishing to publish and exhibit images and/or replicas of this specific artwork will in future have to put in place mechanisms to regulate access to this piece of art by members of the public below the age of 16.

It might also be worth noting that the said content has invoked a mixture of emotions from diverse sections of the populace and exhibitors would be advised to be cognizant of both the manifest and latent reactions that this specific content has drawn.

Indeed the painting has gone viral and may be difficult to police and contain; however that does not mean we must fold our hands and allow for further exposure of children and sensitive viewers who have not yet been exposed. It is our intention to engage our local and international partners including the Internet Service Providers Association (ISPA), Wireless Application Service Providers Assosciation (WASPA), Press Ombudsman, search engines etc. in seeking avenues to enforce this decision going forward.

We are also encouraging self-regulation by parents and care-givers of children above 16, to make an informed and considered decision on whether to expose those in their care to this specific content; and content of similar nature in future.

The full report of the Classification Committee will be made available on the website of the FPB and will be shared with the complainants and those parties that made representations to the Committee in writing.

In conclusion, as the Film and Publication Board we have applied our minds and legislation to the best of our ability in coming to the above decision. We are confident that all requirements and principles as spelt out in the Film and Publications Act and the

Constitution of the Republic have been considered and applied alongside the Classification Guidelines.

We also wish to state that should the affected parties be dissatisfied with this decision, they have the right to appeal to the Appeals Tribunal of the FPB within 30 days from today, in line with the provisions of the Film and Publications Act.

Ladies and Gentleman, that concludes our statement on the matter and we trust our decisions and those made by some of the affected parties preceding this decision will contribute towards making South Africa a better place for children and promoting social cohesion.

Thank you!

Issued by the Film and Publication Board.
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