



Legal Commentary

**Rethinking Regulation of
Content Creators in Kenya**

by GW Rifa Consulting

Can the Kenya Film Classification Board Regulate Creatives? – and Should They?

The Kenya Film Classification Board (KFCB) has had an interesting relationship with content creators in 2024. In May this year, KFCB sent demand letters to several content creators threatening to take legal action against them if they did not comply with the Films and Stage Plays Act, including a provision to take out licenses for the content they produce. However, the letters were quickly revoked, and the content creators were allowed to carry on with their business.

Fast forward to September, and the KFCB embarks on a digital literacy awareness campaign to empower creatives. The campaign dubbed the Creatives in Art and Film Literacy (CAFIL) Program, is aimed at helping creatives in Film and Art create content that upholds the country's moral and cultural values (*whatever this means*). One of the speakers at the event was the acting Chief Manager of Corporate Services, Ms. Nelly Muluka, who encouraged content creators to obtain the requisite licenses. This revived the debate that had started in May: Should Content Creators be Regulated by the Kenya Film Classification Board?

Who is a Content Creator?

It is crucial to understand that the term content creator covers a broad spectrum. Anyone who makes content for distribution through mediums such as websites, blogs, and social media platforms, including YouTube, TikTok, and Twitter, can be termed as a content creator. In the same vein, those who create audio, visual, and audiovisual works for distribution on mainstream platforms are also content creators.

The Film and Stage Plays Act that created the Kenya Film Classification Board was initially designed with traditional forms of media like films and stage productions in mind, where content was distributed through cinemas, television, or public performances. Applying this framework to digital platforms, where individuals can easily create and share content globally, introduces complex challenges.

The pro regulation Arguments

- **Quality Control** – Licensing could theoretically help maintain content quality, ensuring that creators meet specific standards, especially when dealing with sensitive topics like politics, religion, ethnicity, or violence.
 - **Revenue Collection** – Regulating and licensing content creators could help the government track income generated from digital platforms and ensure that creators pay relevant taxes.
 - **Accountability** – Licensing could enhance accountability for online creators, holding them responsible for harmful or misleading content and enabling authorities to take action when necessary.
- ### The anti-regulation Arguments
- **Freedom of Expression** – Content creation on platforms like YouTube and TikTok is often seen as a form of self-expression. Requiring licenses could be viewed as stifling this freedom, especially if regulations are cumbersome or difficult to navigate.
 - **Accessibility** – Digital platforms offer a relatively low barrier to entry for creatives, allowing anyone to share their work. Introducing a licensing regime might deter new creators or smaller-scale influencers who cannot afford or navigate the process.
 - **Global Nature of Platforms** – YouTubers and TikTokers operate in a global space, often creating content for an international audience. Local regulations might not be practical or enforceable in such an environment, and creators might shift to platforms beyond the reach of Kenyan law.
 - **Stifling Innovation and Social Impact:** Content creation is a fast-evolving space where trends change rapidly. Regulatory barriers could slow down creativity and innovation, limiting Kenya's

participation in the global digital economy. This could be particularly harmful in the area of **social impact content**, where creators educate the public on important issues like human rights, voting rights, and governance.

- **Limiting Civic Education** - By imposing licensing requirements on content creators, Kenya risks reducing the availability of crucial and engaging civic education material that contributes to an informed and engaged society. These creators are often the bridge between complex legal or political topics and the general public, and **limiting their reach** could be detrimental to the country's democratic health.

A Middle Ground

A compromise between the two opposing sides might be self-regulation by platforms like YouTube and TikTok, which already have content policies and Community Guidelines that prohibit harmful content. Instead of requiring licenses for every content creator, Kenya could work with these platforms to ensure that local content aligns with national standards without placing an undue burden on creators.

Alternatively, Kenya could develop specific regulations for certain types of online content, such as ethnicity or content aimed at children, rather than applying the full scope of the Film and Stage Plays Act to all creators.

In conclusion, while some form of regulation for online content is worth considering, using the Film and Stage Plays Act to impose licensing on all digital creators could be overly restrictive and

impractical. A more tailored approach that protects public interests while encouraging innovation and creativity would be preferable.

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