

CINEMATOGRAPH ACT, 1970

No. 73



of 1970

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AN ACT TO REGULATE THE MAKING AND EXHIBITION OF CINEMATOGRAPH FILMS, FOR THE LICENSING OF CINEMAS AND FOR PURPOSES INCIDENTAL THERETO AND CONNECTED THEREWITH.

Date of Assent: 29.12.1970

Date of Commencement:

ENACTED by the Parliament of Botswana

PART I – PRELIMINARY

Short title and commencement

1. This Act may be cited as the Cinematograph Act, 1970, and shall come into operation on such day as the Minister may, by notice in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“admitted” means admitted whether on payment or gratuitously;

“Board” means the Board of Censors established by section 10;

“certificate of approval” means a certificate issued by the Board under section 15;

“cinema” means any building, premises or place at which films are publicly exhibited, whether for one or more performances;

“exhibit” means give or make, or cause or permit to be given or made, or

take part or assist in the giving or making of any exhibition;

“exhibition” means the projection of a film or other optical effect by means of a cinematograph or similar apparatus;

“film” means a cinematograph film, and includes any commentary (whether spoken and whether the person speaking appears in the film or not), and any music or other sound effect, associated with the film, and any part of a film;

“licensing authority” means a licensing authority appointed under section 18;

“making of a film” means the acts of photographing, performing or otherwise taking part in or arranging any scenes or episodes for the purpose of the production of a film;

“poster” means any poster or other advertisement advertising a film or exhibition;

“public exhibition” and “public performance” means respectively an exhibition and a performance to which the public are admitted, whether on payment or gratuitously.

PART II – MAKING OF FILMS

No film to be made without filming permit

3. (1) Subject to the provisions of section 9, no film shall be made within Botswana for public exhibition or sale either within or outside Botswana except under and in accordance with the terms and conditions of a filming permit issued by the Minister under this Part.

(2) Where any film is made in contravention of subsection (1), the producer, proprietor, promoter and photographer thereof, and every other person engaged in the making of the film, shall be guilty of an offence.

Application for filming permit

4. Every application for a filming permit shall be made to the Minister in writing and shall be accompanied by a full description of the scenes in, and the full text of the spoken parts (if any) of, the entire film which is to be made, notwithstanding that part of the film is made or to be made outside Botswana:

Provided that the Minister may, in his discretion in any particular case, accept an application notwithstanding that it is not accompanied by such description and text if he has been given such other information as he requires for the determination of the application.

Filming permits

5. (1) The Minister may issue a filming permit for which application has been made to him under this Act, or may issue it subject to the condition that a person appointed for the purpose by him shall be present at the making of the film, and to such other conditions as he may think fit.

(2) Before granting a filming permit, the Minister may require the applicant to enter into a bond, with or without sureties in such sum (not exceeding \$500) as the Minister may require, to ensure that the film, so far as it is made, is made in accordance with —

- (a) the conditions (if any) contained in the filming permit; and
- (b) the description, text and other information supplied to the Minister, with any alterations and additions for which permission has been granted under section 6.

Alterations and additions to films

6. (1) Where it is desired to make any material alteration or addition to the text, synopsis or scenes of a film which is to be made and in respect of which a filming permit has been issued, the holder of the permit shall apply in writing to the Minister for permission to make the alteration or addition, and the application shall be accompanied by the filming permit and by particulars of the proposed alterations and additions.

(2) The decision of the Minister on the application shall be endorsed on the filming permit, and if permission is granted there shall also be endorsed any condition which is attached to the permission.

Films to be made in accordance with furnished particulars

7. (1) No film shall be made otherwise than in accordance with the particulars furnished to the Minister under sections 5 and 6.

(2) Where any film in respect of which a filming permit has been issued is made in contravention of subsection (1), the producer, the proprietor, the promoter and the photographer thereof, and every other person engaged in the making of the film, and, where the holder of the filming permit is not one of the aforesaid persons, such holder also shall each be guilty of an offence.

Power of appointed person at making of film

8. (1) Where a filming permit is issued subject to the condition that a person appointed for the purpose shall be present at the making of the film, such appointed person may in his discretion, having regard to any special or general directions given to him by the Minister, intervene, and order the cessation of the making of any scene which in his opinion endangers the safety of any person or property (other than property in the possession or disposition of the producer, the promoter or any other person engaged in the making of that film) or which is cruel or causes unnecessary suffering to an animal, or which he has reason to believe is being made in contravention of this Act, or of any of the conditions contained in the filming permit.

(2) Where such person intervenes as aforesaid, he shall forthwith notify the Minister of such intervention and of the reasons therefor, and the Minister

may either permit the making of the film to be resumed or having first given the holder of the filming permit an opportunity of being heard, allow the making of the film to be resumed on such conditions as he may think fit or refuse to allow the making of the film to be resumed.

(3) Any person who obstructs or hinders any person in the exercise of his duties under this section or who continues to make a scene after an order has been given to cease under subsection (1) and before the Minister has given his decision under subsection (2), or who contravenes any conditions that the Minister may lay down under subsection (2), shall be guilty of an offence.

(4) Where, after such intervention as aforesaid, the making of a film is resumed without the permission of the Minister or in contravention of any condition imposed under subsection (2), the producer, the proprietor, the promoter and the photographer of the film, and every other person engaged in the making of the film, and, where the holder of the filming permit is not one of the aforesaid persons, such holder also, shall each be guilty of an offence.

Power to exempt films

9. The Minister may, by notice in the Gazette, exempt from the provisions of this Part any film, or any class of films, generally or by reference to the persons or class of persons making such film or films.

PART III – EXHIBITION OF FILMS

Establishment of Board of Censors

10. (1) There is hereby established a Board of Censors (who shall be appointed by the Minister) which shall comprise a Chief Censor to be appointed by the Minister, and a panel of such number of examiners as the Minister shall deem expedient.

(2) At any meeting of the Board a quorum shall consist of the Chief Censor and any two other members:

Provided that, where the Minister is satisfied that the Chief Censor is unable to be present at a meeting of the Board, he may in writing appoint some other member of the Board to act for and to exercise the functions of the Chief Censor at such meeting.

(3) The Board shall carry out the duties as may be assigned to it, from time to time, by the Minister.

Restrictions on exhibitions

11. (1) No person shall exhibit any film at an exhibition to which the public are admitted unless the Board has issued a certificate of approval in respect thereof approving it for such exhibition.

(2) Where the Minister is of opinion that any film or any class of film, should not be exhibited at all (that is to say, neither publicly nor privately) without a certificate of approval having been issued in respect thereof, he may, by notice in the Gazette, order that such film, or class of film, shall not be exhibited at all, either publicly or privately unless the Board has issued a certificate of approval in respect thereof, and thereafter, no person shall exhibit the film, or, as the case may be, any film of that class at any exhibition whatever unless the Board has issued a certificate of approval in respect thereof, nor otherwise than in accordance with its terms and conditions:

Provided that, if the Minister has reasonable cause to believe that the film, or class of films, will be exhibited before a notice can appear in the Gazette, he may cause the notice to be served personally on any proposed exhibitor, and such notice shall have, in relation to such person, the same effect as if notice had been given in the Gazette.

(3) Any person who exhibits any film in contravention of subsection (1) or (2) shall be guilty of an offence.

Restrictions on display of posters

12. (1) No person shall display, or cause or permit to be displayed, in a public place, or so as to be visible from a public place, any poster, unless the Board has first approved the poster for public display.

(2) Where under section 13 (1) (b), the Board has directed that a description only of a poster need be furnished, and a poster advertising the film or exhibition is displayed in a public place or so as to be visible in a public place, an authorised person may, if he considers that the poster is objectionable or does not conform to the description furnished under the said paragraph (and on production of his authority if so requested), require any person displaying the poster, or causing or permitting it to be displayed, to remove it or to obliterate a specified part thereof.

(3) Any person who contravenes subsection (1) or who fails to comply with any requirement of an authorised person under subsection (2) shall be guilty of an offence.

(4) In this section, "an authorised person" means a person who is in writing authorised by the Board for the purposes of this Part.

Application for certificate of approval

13. (1) Every application for a certificate of approval shall be made to the Board and shall be accompanied by —

- (a) a synopsis of the film to which the application relates, and such other particulars and descriptions as may from time to time be prescribed by the Board; and

- (b) a copy of every poster intended to be publicly displayed in connection with the film or its exhibition, or else, where the Board in any particular case so directs, a full description thereof and of the visual and verbal contents thereof.

(2) For the purpose of considering an application under subsection (1), the Board may require the applicant to submit to it the film to which the application relates, or project it for inspection by the Board at such time and place as the Board may determine.

Duty of Board

14. It shall be the duty of the Board to examine every application for a certificate of approval, and every poster or description of a film, submitted to it under this Act with a view to deciding whether, and if so in what manner, it should be approved for exhibition:

Provided that, and notwithstanding section 15, if the Board is satisfied that the film or poster has been examined and passed by the censorship board of another country, it may approve a film or poster for exhibition to the public without any examination.

Certificate of approval

15. (1) On completion of the examination of a film the Board may —

- (a) approve it for exhibition to the public;
- (b) approve it for exhibition to the public subject to such excisions as it thinks proper;
- (c) approve it for exhibition to persons not between the ages of 5 years and 16 years old;
- (d) refuse to approve its exhibition; or
- (e) where the film is the subject of a notice under section 11 (2) —
 - (i) approve it for exhibition by such persons, to such persons or in such places as the Board thinks proper; or
 - (ii) refuse to approve its exhibition.

(2) Where the Board has —

- (a) approved a film for exhibition to the public, with or without excisions, under paragraph (a) or (b) of subsection (1) it shall issue a certificate of approval for universal exhibition;
- (b) approved a film for exhibition under paragraph (c) of subsection (1) it shall issue a certificate of approval subject to the condition that no person

between the ages of 5 years and 16 years shall be admitted to the exhibition thereof.

(3) On completion of the examination of a poster, the Board may —

- (a) approve it for public display;
- (b) approve it for public display subject to such deletions or alterations as it thinks proper; or
- (c) refuse to approve it for public display.

(4) The ruling of the Board under subsection (1) shall be mentioned on all advertisements and on all posters of the film concerned, and announced on the cinema screen immediately before the film is exhibited.

(5) If the Board approves a film subject to excisions therefrom the Board may itself make the excisions and retain in its possession the excised parts.

(6) The Board shall not approve any film or poster if it is satisfied that such film or poster represents in an offensive manner —

- (a) impersonation of the President;
- (b) scenes holding up to ridicule or contempt the Botswana Police or any member thereof;
- (c) scenes tending to disparage public characters;
- (d) scenes calculated to affect the religious convictions or feelings of any section of the public;
- (e) scenes tending to disparage persons on the grounds of race or colour;
- (f) scenes suggestive of immorality or indecency;
- (g) executions, murders or other revolting scenes;
- (h) scenes of debauchery, drunkenness, brawling or any other habit of life not in accordance with good morals and decency;
- (i) successful crime or violence; or
- (j) scenes which are in any way prejudicial to the peace, order or good government of Botswana.

Offences

16. (1) Where the Board has approved a film or poster under section 15 subject to excisions, deletions or alterations any person who —

- (a) exhibits such film from which the parts which the Board directed to be excised, deleted or altered have not been excised, deleted or altered in accordance with the Board's direction; or
- (b) displays or causes or permits to be displayed in a public place, or so as

to be visible from a public place, such poster from or on which the parts which the Board directed to be excised, deleted or altered, have not been excised, deleted or altered in accordance with the Board's direction, shall be guilty of an offence.

(2) Any person who exhibits any film, at an exhibition to which the public are admitted in respect of which a certificate of approval has not been granted, or in contravention of any condition imposed under section 15 or who displays or permits to be displayed in a public place, any poster, or publishes an advertisement which contravenes, or who otherwise fails to comply with section 15 shall be guilty of an offence.

Effect of adding matter after approval

17. If any matter other than the certificate of approval (and the prohibition or ruling of the Board as aforesaid) is added to a film after it has been approved by the Board, the film shall be deemed, for the purposes of this Act, to be a film in respect of which a certificate of approval has not been given.

PART IV – LICENSING OF CINEMAS

Appointment of licensing authorities

18. The Minister may, by notice in the Gazette, appoint a local authority, a town council or a District Commissioner to be the licensing authority for the purposes of this Part, for such area as he shall specify.

Cinema licences

19. Any person who uses, or causes or permits to be used, any premises for the public exhibition of any film shall, unless a current and valid licence hereinafter called a "cinema licence", has been issued in respect of the premises by the licensing authority under this Part, be guilty of an offence.

Application for licence and issue thereof

20. (1) Application for a cinema licence shall be made to the licensing authority having jurisdiction in the area in which the premises are situated.

(2) The licensing authority, on application and payment of the prescribed fee being made therefor, may issue or refuse to issue a cinema licence or may grant it subject to such terms and conditions as the licensing authority may think desirable in the manner hereinafter set out.

(3) The licensing authority may grant a cinema licence either generally or in respect of any specified exhibition or exhibitions or for such period not exceeding twelve months as the licensing authority may think fit.

(4) A cinema licence may be revoked or suspended by the licensing authority at any time if, in the opinion of the licensing authority, the safety, health or convenience of persons attending any cinematograph exhibition is not adequately provided for.

(5) Where the licensing authority is a local authority, all fees referred to in the preceding subsections shall be retained by the authority and shall form part of its revenues.

Supervision to ensure safety

21. (1) The licensing authority may grant a cinema licence upon condition that the cinema shall not be used for the purposes specified in the licence except under the supervision of some officer or person designated in the licence and, in such case, it shall be lawful, at any time, for the officer or person so designated to order an exhibition to cease or to give any other direction which he may think necessary for ensuring the safety of the cinema and of the audience.

(2) Any owner, licensee or manager of a cinema or other person responsible for the exhibition of any film who fails to comply with any order given as aforesaid shall be guilty of an offence.

Licensing of cinema for other entertainments

22. (1) The licensing authority, on the application of any interested person, may grant or endorse a cinema licence under this Act, authorising the use of the cinema for the performance or presentation of any stage play or public entertainment in addition to the presentation of cinematograph exhibitions, if the licensing authority is satisfied that the cinema also conforms with all the requirements prescribed for theatres by any other written law.

(2) For the purposes of this section "cinema" means any building, premises or place whose main use or principal function is the public exhibition of films.

Power to exempt premises

23. Notwithstanding the provisions of this Part, a licensing authority may, by notice in the Gazette, exempt any premises or class of premises within the area of its jurisdiction from the provisions of this Part.

PART V. - GENERAL

Appeals

24. Any person who is aggrieved by a decision of a licensing authority or the Board may appeal within the prescribed period and in the prescribed manner to the Minister, who may, subject to the provisions of this Act, confirm, vary or reverse the decision, and may give such directions in the matter as may be necessary, and whose decision shall be final and shall not be questioned in any court.

Revocation of permits, etc., by Minister

25. Any permit or permission granted by the Minister or any certificate of approval, approval or permission issued or given by the Board under this Act

may be revoked by the Minister or the Board, as the case may be, at any time by notice in writing served personally or by post on the person to whom it was issued or given.

Power of entry, etc.

26. (1) Any person authorised by the Minister in writing in that behalf, may, if he has reasonable cause to believe that an exhibition of a film is being or is about to be made or given on any premises, demand that the person in charge of those premises shall allow him free ingress thereto and afford him all reasonable facilities to ascertain whether such an exhibition is being or is about to be made or given and whether the provisions of this Act, and of the regulations thereunder, and the terms and conditions of any certificate of approval, approval or permission issued or given thereunder, are being, or as the case may be, will be observed.

(2) If such person, after production of his authority to any person reasonably requiring the same, is unable to obtain ingress without unreasonable delay, he may without warrant enter the premises and inspect the same to ascertain the matters aforesaid.

(3) Where any such person as aforesaid is satisfied that an exhibition is being made or given in contravention of any of the provisions of this Act or of any regulations thereunder, or the terms and conditions of any certificate of approval, approval or permission issued or given thereunder, he may order that the exhibition shall stop and shall not be further made or given until all the said provisions, terms and conditions are complied with.

(4) Where an exhibition to which the public are admitted is being made or given, any person as aforesaid may, after production of his authority to any person reasonably requiring the same, demand to see the certificate of approval of the film and unless and until such certificate is produced for inspection he may, for the purposes of subsection (3), act as though no such certificate had been issued.

(5) Any person who prevents or obstructs any person acting under this section in the discharge of his duties thereunder, or who fails to comply with an order given to him under subsection (3), shall be guilty of an offence.

Translations

27. Where, under this Act, any film, script, poster or any other matter whatsoever is in a language other than English, the Board, or the Minister, as the case may be, may require a translation thereof into English certified in such a manner as he or it may determine or may submit the film, script, poster or other matter for the examination and report of such persons as he or it may appoint for the purpose.

Regulations

28. (1) The Minister may make regulations prescribing anything which under

this Act may be prescribed, and generally for the better carrying into effect of provisions and purposes of this Act.

(2) Without prejudice to the generality of subsection (1) regulations may provide for —

- (a) prescribing fees for anything to be done under this Act, generally or in respect of specified areas, and for the purposes of prescribing fees, permits and licences may be divided into different classes and a different fee prescribed for each such class;
- (b) prescribing charges for, or for matters incidental to, the attendance of persons at the making of films under section 8;
- (c) prescribing the procedure for appeals to the Minister under this Act;
- (d) prescribing the periods for which licences shall be issued;
- (e) prescribing the conditions to be observed in regard to the erection, alteration and equipment of any cinema;
- (f) prescribing the conditions to be observed in regard to securing the safety of cinemas from fire or other danger, or the safety and control of persons attending such cinemas; and
- (g) prescribing the constitution and duties of the Board established under section 10.

Penalty.

29. (1) Any person who fails to comply with any of the provisions of this Act or with any of the conditions of any filming permit, certificate or licence issued thereunder shall be guilty of an offence and liable to a fine of R1,000 and to imprisonment for twelve months.

(2) Where any person is convicted of an offence under this Act, then, in addition to or in lieu of any other penalty, the court by which such person is convicted may —

- (a) where the offence relates to the making of a film, order the confiscation and destruction of the film, and revoke the filming permit (if any) relating to the making of the film, whether the person convicted is the holder thereof or not;
- (b) where the offence relates to exhibition, order the confiscation and destruction of the film, and revoke any certificate of approval, approval or permission granted under this Act.

Offences by corporations, societies, etc.

30. Where any offence under this Act or any regulations made thereunder is committed by any company or other body corporate, or by any society, association or body of persons; every person charged with, or concerned or acting

in, the control or management of the affairs or activities of such company, body corporate, society, association or body of persons shall be guilty of that offence and liable to be punished accordingly, unless it is proved by such person that, through no act or omission on his part, he was not aware that the offence was being or was intended or about to be committed, or that he took all reasonable steps to prevent its commission.

Repeal of Cap. 159

31. The Cinematograph Proclamation is repealed.

Passed by the National Assembly this day, the 18th December, 1970.

G.T. MATENGE
Clerk of the National Assembly