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The Role of Kenyan Government in Video-on-Demand Regulation: A Case Study of the Kenya Film Classification Board

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ABSTRACT

Consumption of Video on Demand (VoD) content in Kenya has been on the rise for the past few years fuelled mainly by good internet connectivity and availability of hand-held mediated communication devices. Consumption of this kind of content spiked during Covid-19 Pandemic due to containment measures which restricted movement of people. The study looked, in details, at the role played by the Kenya Film Classification Board (KFCB) in this new frontier of media regulation. The study focused on aspects of regulation such as strategies employed or that are still at the formulation stage to regulate the sector, the current regulatory frameworks that Kenya is implementing in reference to the sector and various VoD platforms operating in the country, both local and foreign and their monetization models. The researcher adopted a mixed method, combining survey and in-depth interview to generate both quantitative and qualitative data. For the Survey, a sample size formula calculator was used to achieve a sample of 357 film producers from a target population of 5,000. A management representative from respondent for KFCB was selected using purposive sampling to be interviewed for insights on the research topic. The research engaged a two-way ANOVA technique and the results summarized and analysed in terms of types of regulations, policy and strategy frameworks engaged and monetization models. Being a study on media regulation, the Authoritarian Theory of mass media was used. The findings of this research will be significant in informing policy, not only in Kenya, but also within the African continent where such audio-visual regulatory challenges are a commonplace. The harmonization of content regulation in Africa debate is running concurrently with the narrative of creating a borderless Africa under the aegis of the African Continental Free Trade Area (AfCFTA). In view of this, this research will help Kenya, the region's economic hub, to craft a strong memorandum to table at AfCFTA and argue its case on why harmonized content regulation is important in the wake of the envisaged borderless and digitized continent. Monetization models highlighted will help operating VoD platforms and aspiring start-ups in Kenya to ascertain the best monetization model to adapt in order to reap maximum commercial benefits from the business. To scholars, this research will help in unearthing new knowledge in the world of audio-visual content regulation in the era of internet. The study recommends an urgent need for review of the existing VoD regulatory policies to be in tandem with the changing regulatory environment fuelled by the internet and a robust engagement with key stakeholders that KFCB regulates. The study also recommends further research on the interconnectedness of consumption of VoD content by young people and cultural imperialism. The research concludes by highlighting legislative gaps in the current laws on film regulation in Kenya to match the changes brought by VoD consumption.

Keywords: Cultural Imperialism, Content Quota, Regulation, Video-On-Demand

I. INTRODUCTION

The internet has necessitated many changes in the audio-visual sector in the way content is created, distributed and consumed. Consumers are now shifting to real time broadcasting and pay TV platforms have been overtaken by Video on Demand (VoD) platforms. Zink (2005) gives an apt definition, terming this type of content distribution as True VoD in the sense that it allows users to watch a certain video at any desired point and still offer what the traditional Video Cassette Recorder (VCR) can do. Regulation of media has been around for some time. On one side, there exists radical libertarians who believe in a totally unregulated media. Others believed in technocratic control of the media to safeguard the vulnerable society. Davis and Baran (2009) opine that early proponents of technocratic control of the media included Harold Lasswell and Walter Lippmann, who argued that media practitioners could not be trusted to communicate or use media effectively to serve public good.

It is noteworthy that Lasswell and Lippmann's view on media regulation was during an era when content creation and distribution via internet was not there. In the past few years however, governments have been enacting legislations to make audio-visual content regulation feasible in a rapidly changing digital space. In 2023, the United Kingdom's (UK) department for Culture, Media and Sports, for instance, came up with the draft media Bill. According to Neafcy and Pinto (2023), the draft Bill includes a raft of legislative interventions geared towards regulating VoD service providers. However, whereas VoD regulation is defined by a legal framework, some jurisdictions seem to grope in the dark. In India for instance, the government, in 2022 announced that it would regulate content on VoD platforms but did not issue any guidelines to that effect (Phartiyal, 2022).

Politics of media regulation play a crucial role in platform governance. Reviewing the European Audio-Visual Media Services Directive (AVMSD), Vlassis (2021) opines that global VoD platforms trigger governance challenges for policy makers. Although VoD platforms have become a major enabler of flow of cultural content, the availability of on-demand content presents a challenge both for policies expected to protect national and local and for media governance related to production, distribution and consumption of cultural content (Albornoz & Leiva, 2019). This fear of cultural imperialism, especially for African nations, is what has led to the rising advocacy for government direct regulation of VoD content. Countries in Western Civilization are the major producers of media content such as films, news and comics which is exported as a cultural product to other continents. Singh (2018) defines media regulation as the entire process of government and other political and administrative entities controlling or guiding various media operations through set policies and procedures. Therefore, according to Singh (2018), regulation is always a possibility for intervention in continuing activity, usually to further some declared "public interest" objective but also to meet market demands.

In Africa, harmonization of content regulation is driven by South Africa, Kenya, Nigeria, Lesotho, Swaziland, among other countries. This has been informed by the fact that there is proliferation of unfiltered content distributed through the internet that poses danger to vulnerable populations such as children.

The Kenya Film Classification Board (KFCB) established by the Films and Stage Plays Act, CAP 222. Notably, KFCB is the oldest among the three media regulatory agencies in Kenya. These are the Communications Authority of Kenya (CA) and the Media Council of Kenya (MCK). Even though Kenya seems well up when it comes to media regulation, there have been concerns regarding what this portends for the industry, especially in creating confusion on which body is supposed to regulate which category. Otieno et al. (2019), for example finds it confusing when it comes to discerning who regulates conduct and practice and wonders whether Kenya needs all these regulatory bodies in the era of convergence. However, some players see the mandate of media regulation as being encapsuled only within CA and MCK, leaving out KFCB perhaps because its regulatory work is in the actual content moderation. Such players include the Association of Media Women in Kenya (AMWIK) which cites the Media Council Act, 2013 and Kenya Information and Communication Amendment Act, 2013 as the two laws guiding media operation in Kenya. The global and local creative economy is undergoing rapid transformation driven largely by digitalization, ubiquitous internet access and fast developments in Information and Communications Technologies (ICTs).

As of January 2023, the number of internet users in Kenya stood at 17.86 million with a penetration rate of 32.7% of the total population and a total of 10.55 million users of social media networks (Kemp, 2023).

1.1 Statement of the Problem

From a social perspective, Web 2.0 is a term invented at a conference of Web experts that followed the dot-com clash of 2001. With the help of internet technologies, anyone with a computer may become an author, filmmaker, or musician by remixing material from many sources. This is known as the highly participatory and dynamic Web 2.0 (Rodman, 2010). However, this has given government entities mandated to regulate media content a nightmare. Recently, a petitioner presented his petition to the Kenyan parliament to ban TikTok on the premise that content posted on the platform was sexually explicit. Bob Ndolo told parliament in his submission that the explicit content displayed on TikTok promotes sexual violence, hate speech, and vulgarity which undermines Kenya's moral fabric. Following that pressure for the government and non-government players, TikTok was forced to adopt stronger measures to remove offensive content from the platform (Mwangi, 2023; Ngigi, 2024). As Ong'ong'a (2020) contends, in a world dominated by new media, it is becoming increasingly easy for children to access adult content and also subject them to online abuse which calls for apt policy intervention. In the year 2024, the role of internet particularly X and TikTok to mobilise and fundraise was evident when, in a revolution style, young people came out in large numbers across the country to protest and demand for changes in government.

Baker (2007) holds that media regulation takes many forms ranging from clauses in national constitutions and laws to administrative procedures and technical specifications, and that it can be internal or external. Internal regulation refers to where internal controls are applied especially in response to criticism from outside. Local studies focus on media regulation as per the dictates of the Constitution of Kenya, 2010, augmented via the Media Council Act and Kenya Information and Communication Act (Kenyan Const., art. 33 § 34).

From the reviewed works, it is evident that crucial data is lacking on VoD operations in Kenya. The research into the effects of VoD on different segments of population, especially children and youth has also been identified as a research area that needs more attention. This being a relatively new area of study, more work needs to be done especially to help regulatory bodies in regulating this space, as negative effects of on-demand content consumption.

Locally, Githinji (2020) looked at the role of film policies in the growth of Kenya's film industry, with a case study of the film and Stage Plays Act, Cap 222. Nguma (2015) looked at internal and external factors affecting the Kenyan film industry, focusing on the film production aspect. Nyutho (2015) evaluates the Kenyan film industry from a historical perspective. A number of authors have recognized a policy gap in the country when it comes to revitalizing the film industry. Githinji (2020), for instance, while looking at the Film and Stage Plays Act, Cap 222, the primary legislation which establishes KFCB, found out that there is need to urgently implement the proposed National Film Policy. Simiyu (2022) found out that different political regimes in Kenya have not given a lot of impetus to film industry in terms of policy development to ensure that the industry is well regulated. He argues that although the Kenyan Constitution, 2010 ensures freedom of expression under Articles 32, 33, 34 and 35, this freedom is limited and extends to film production (National Council for Law Reporting, 2010). This denies filmmakers freedom to express themselves in form of freedom of artistic creativity as provided for in article 33 (b). Regulating the film industry can therefore, be interpreted to mean curtailing freedom of artistic creativity.

With these multimedia enabled devices, citizens are able to generate and share content through social media (User Generated Content). Whereas there is no law that governs usage of UGC, the Kenya Film Classification Board (KFCB) whose enabling legislation dates back to the 1960s enables it to regulate audio visual content but has not given it capacity to regulate VoD content. However, with the public outcry for both UGC and content shared through commercially established VoD platforms, there is need to find out what is the government doing in this regard despite lack of an enabling legal framework. How, for instance, is content that is distributed in Kenya via Netflix handled by the regulator? Are there established mechanisms in the intervening period, and if yes, what are these mechanisms?

1.2 Research Objectives

i. To find out strategies that KFCB has employed to regulate VoD market in Kenya;
ii. To find out monetization models available for the VoD platforms in Kenya;
iii. To explore the usage of net neutrality in regulation of audio-visual sector in Kenya and;
iv. To investigate the operational audio-visual regulation model in Kenya

1.3 Research Questions

i. What are the strategies is the Kenyan government employing to regulate VoD content?
ii. How has the current regulatory framework affected KFCB's regulatory work?
iii. What are the monetization models available for VoD platforms available in Kenya?
iv. What type of audio-visual regulation exists in Kenya?

II. LITERATURE REVIEW

2.1 Theoretical Review

2.1.1 Authoritarian Theory (AT)

This study is based on Authoritarian Theory (AT) of mass media of mass media which argues for technocratic control of the mass media. It was advanced by Fred S. Siebert and it is discussed in detail in a book he co-authored with Theodore Peterson and Wilbur Schramm called *Four Theories of the Press* (Siebert et al., 1963).

The Authoritarian idea was the driving force behind the professionalization of journalism throughout the 1920s as public demand for media regulation grew by leaps and bounds. Joseph Pulitzer (famed for coming up with the Pulitzer Awards) and William Randolph drove this demand in the USA and established professional awards. The lobbying by leaders in the newspaper industry at the time saw the establishment of professional schools to train journalists. In 1923, the American Society of newspaper editors (ASNE) adopted the first set of professional standards as we know them today. This was the birth of *The Canons of Journalism* and subsequent introduction of Press Councils to enforce these canons.

The AT postulates that the government should censor media to ensure that what goes out to the public benefits them. While advancing this theory, Siebert (1963) argues that human societies naturally develop systems of societal control where the relations of individuals and institutions are adjusted and common interests and desires are secured. Siebert (1963) further uses the works of W.J. Shepard to describe these systems as those that spring directly from common sense and those that are guided by definite institutional organization and operate through a legal mandate, i.e., institutions that are legally mandated to exercise authoritative regulatory control over the media, such as the Media Council of Kenya (Media ethics enforcement), the Communication Authority of Kenya (Telecommunication and broadcast Regulator) and the KFCB (audio visual content regulation – which is supposed to include such content distributed over the VoD platforms). Siebert (1963) argues that AT is a theory under which the press, as an institution, is controlled by an organized society through another institution, the government.

The tenets of the Authoritarian theory of mass media have been used by the past repressive regimes in Kenya to muzzle the press and punish journalists who supposedly rubbed officialdom the wrong way. Section 194 of the Penal Code and the Law of Contempt were largely used by President Moi's regime in the 1990s to silence perceived anti-government voices. David Makali and Bedan Mbugua are some of the veteran pundits who fell victims of these authoritarian approaches to govern the media. In 1999, Tony Gachoka lit a touch paper by accusing top officials of Kenya's second president, Daniel Toroitich Arap Moi, of complicity in the Goldenberg scandal together with senior members of judiciary. He was charged with criminal libel for his scurrilous attacks (Mutiga, 2005).

2.2 Empirical Review

According to Ball (n.d), video streaming services started in the 90s in California, USA, when Xerox streamed live the performance of the Band Severe Tire Damage. By 1996, the first public video call via the internet was made. It continued to gain traction with advent of interactive Web 2.0 in the 2000s (Rodman, 2010). Today, what used to be social media sites have transitioned into Advertising Video on Demand sites offering users who post their content compensation depending on a number of parameters, key among them the number of views. Facebook Watch is an example of social media VoD which is embedded on the Facebook platform. It rides on UGC but also allows users with Facebook accounts to share content.

Owing to the immense contribution of the creative industries to the Gross Domestic Product (GDP), several countries have developed strategies to bolster their grow. Howkins (2001) contends that creativity is using an idea to generate another idea, and that it is an endless cognitional and emotional process of creation, exploration and innovation. Caves (2000), examines the economics of arts, focusing specifically on how arts come to the market and how artists get renumerated for their work. He identifies the principal characteristics of creative activities, such as the uncertainty of demand, the "arts for art's sake" attitude for artists, or the infinite variety of products.

Observing it from a policy level, governments also impose stricter regulatory measures such as content quotas to ensure that VoD platforms offer a greater percentage of content from the host country with a view of promoting local creative economies. Going back to the European Audio-Visual Media Services Directive, Donders, et al (2018) observe that in countries such as France, Germany, Italy Poland, Denmark and the Flemish Community, there are obligations that foreign VoD platforms must adhere to in provision of VoD audio visual media services. Such obligations include a compulsory contribution to the Polish Film Institute which was also a policy measure to cushion the Polish film industry from the vagaries of Covid-19.

Kenya does not have content quota tailor-made for VoD platforms but a Programming Code for Broadcasting Services. The code specifies that Free to Air (FTA) broadcasters should ensure at least 40% of their station's programming is local content, excluding news and advertisements (CA, 2024).

Other notable policy interventions include a case whereby the European Court of Justice (ECJ) has rejected Netflix's protest about payment of fee to the Federal Film Board. In rejecting, ECJ opined that because California VoD platform's content is available in Germany, then Netflix is obliged to the National Film Fund (Albornoz & Leiva, 2020).

Evens (2014) contends that the use of distinct, innovative consumer models has sharply driven the adoption of OTT services. The study by Evens (2014) established that players such as Netflix, Hulu and Amazon have used distinctive and innovative consumer models thus leading to the adoption of multi-screen devices. The study found out that Ad formats has given users more control of their ad exposure. Further, platforms like Netflix and YouTube had driven TV broadcasters to collaborate to reduce costs. While examining the various factors that lead users to utilize over-the-top (OTT) services, Sujata et al. (2015) discovered that because OTT players were exempt from Telkom regulations, they were able to offer their customers inexpensive or free services, which resulted in an increase in their customer base. A related study from Sawe (2015) in Kenya, which found that net neutrality has made it possible for VoD platforms to flourish there, bolstered this one. Net neutrality refers to a form of internet regulation that gives priority to some URLs while subduing others (Ganley & Allgrove, 2006).

A series of other recent studies highlight various monetization models being used by VoD platforms. Kandari (2023) for instance, classifies the models into various categories based on subscription, advertising, transaction, premium and membership. Kandari (2023) cites Advertising-based Video on Demand (AVoD), as the most common model, whereby viewers can access as much content as they want as long as they watch advertisements that come with them. One such platform is YouTube, where content creators upload User Generated Content (UGC) to the platform's servers and monetize it with advertisements via the YouTube partner programmes (Ericson, 2019). In August 2024, Meta announced that Kenya creators could earn money through ads when streaming their videos and eventually earn money through the AVoD model. The advertisements may also be easily integrated into Facebook reels, a short-form video feature that Meta debuted to take on TikTok and YouTube clips. More than 30 languages, including Swahili, are supported by the monetization option (Nzomo, 2024). Other monetization models include Subscription Video-on-Demand (SVoD) and Premium Video-on-Demand (Kandari, 2023).

III. METHODOLOGY

3.1 Research Design

The study adopted a descriptive research design. This type of design is mostly concerned with describing the characters of a phenomenon (Kothari, 2004). Data for this study was collected using questionnaires and in-depth interview, making it a mixed-method design for it yielded data both in quantitative and qualitative forms. The data collection procedure employed adequate safeguards to avoid bias and overall unreliability.

3.2 Target Population

The study targeted 5,000 film producers/content creators based in Nairobi County and one Management representative of KFCB (the CEO) in order to get insights guided by the research questions. Most of the film producers in this group also have production companies and act as fixers for foreign companies who want to film in Kenya. These content creators produce content which they commission for mainstream media houses, VoD platforms or upload it on UGC reliant platforms such as YouTube. Compliance with the industry's regulator - the KFCB - is supposed to start from pre-production stage where they are required to apply for filming license all the way to post production whereby they are required to submit content for rating/classification to determine age appropriates. They therefore, formed a crucial part of this study.

3.3 Sample Size

There are basically two types of universes when it comes to sample design; these are the finite and infinite. In finite universe, the number of items is fixed or known, but for infinite universe, the number of items in unknown (Kothari, 2004). The population of a country is for instance finite since the data can be obtained from the concerned bodies, e.g. KNBS but the number of stars in the sky is infinite, i.e., no statistical record is available for this. The sample size for this study was carefully selected such that is neither too large nor too small, i.e. an optimum sample. From a population of 5,000, a sample size of 357 was obtained using a prescribed formula from calculator.net.

3.4 Sampling procedure and technique

Deliberate/purposive sampling techniques were used to deliberately select the CEO of KFCB as the interview respondent by virtue of his position as the management representative and also because of the institutional memory he possesses. For the second target population, that is, Film producers based in Nairobi with a population of five thousand (5,000) members in a WhatsApp Group called Nairobi Film Directors Hub (NFDH). Admittedly, getting a target population from a WhatsApp group is not easy because of limited studies done using this methodology. However, Systematic Random sampling can be suitable for such population. According to Kothari (2004), random numbers are used to select a starting unit for the sampling process, which adds a random element and helps the procedure reach the intended sample size. The researcher picked a random point in the list and then every *n*th element was selected until the desired size is achieved. To get the desired sample size, the researcher used a formula that provided a confidence level of 95%. The margin of error/confidence interval is defined as the amount of error that the findings can tolerate. The most commonly used margin of error is **5%** and the researcher used this to determine the sample size. A standard deviation of **0.5** was used to ensure that the sample size represents the population **357** respondents for the survey. The formulae below adopted from calculator.net was used to get the desired sample:

$$n' = \frac{n}{1 + \frac{z^2 \times \hat{p}(1-\hat{p})}{\varepsilon^2 N}}$$

Where z is the score, ε is the margin of error, n' is the population size and $\hat{p}$ is the population proportion. Using this formula, the researcher achieved a sample size of 357 respondents out of a population of 5000 film producers.

3.5 Data Collection Methods and Instruments

In order to gather first-hand insightful data for this study, primary data collection methods were used. This data went a long way in informing the outcome of the study based on the target population. The survey method was used to collect data from film producers based in Nairobi County, Kenya. The data collection tools to be used for this are the questionnaires. One of the key advantages of questionnaires is their ability to reach a high number of respondents at minimal cost and also enable researchers to collect information from a sizable and varied sample, offering a more comprehensive portrayal of the intended audience. This improves the findings' external validity and generalizability (Lindemann, 2024). In-Depth interview is the second data collection method which was used. Unlike other qualitative research methods, this is a discovery-oriented methodology and involves the researchers spending a substantial amount of time in conversational format with the participant (Rutledge & Hogg, 2020). Rutledge and Hogg (2020) further observe that in-depth interviews are capable of boosting quantitative studies when they add the participants' subjective experience and motivations represented by the quantitative data. For instance in their study titled self-esteem and use of Online Network Sites, Steinfeld, Ellison, and Lampe did their study titled Social Capital, they used in-depth interviews to supplement survey data (Rutledge & Hogg, 2020b).

3.6 Data Analysis and Presentation

The mixed method design led to generation of both quantitative and qualitative data. The Delve Software was used to code the in-depth interview data. The recorded interview was first transcribed. Transcription, according to Guion et al. (2011) is creating verbatim text of the interview by writing out each question and the interviewee's response and it also includes the interviewer's side notes which were not in the recorded audio. The researcher analysed the transcript and come up with codes which assisted in further analysis of the data.

The software allows transcribed interview data to be imported to it and various codes created, e.g. for this case, the researcher used codes such as monetization, regulation, strategies, and so on. After generating sufficient codes, the researcher then went through the transcript, sentence by sentence assigning different codes to them. The software also allows one to assign codes to individual words, sentences, a certain phrase or paragraphs. It is also possible to assign various sentences texts multiple codes ensuring that data is micro-analysed. When done, the researcher was able to click on special codes to aggregate them. All the data under that code would appear underneath it. This data was presented through narration, with interjections of direct quotes form the interview.

The interoperability of Google forms with other data handling software such as Microsoft Excel and Google Sheets informed the researcher's choice of this method to administer questionnaires. Data collected through the questionnaires was imported to Microsoft Excel where more analysis was done. This data was presented in form of pie charts and tables.

IV. FINDINGS & DISCUSSION

4.1 Response Rate

The study targeted 5,000 film producers and film content creators based in Nairobi County and one management representative of KFCB. A systematic random sampling technique was then used to get a desired sample size of 357 participants. Data was obtained from self-administered questionnaires completed by 238 of the contacted participants (n=238), a 66.7% response rate. A total of 256 questionnaires were received, however, only 238 of them were usable for this study and met the required inclusion criteria as discussed in the previous chapter. The high acceptance to participate in this study is justified by the tech-savvy nature of video producers and content creators and their willingness to participate in online research projects. Of the 18 questionnaires deemed unusable, 16 respondents did not complete the questionnaire and two or more subsections of the questionnaire were omitted. Two respondents reported that they do not know any of the existing KFCB regulatory work regarding VoD use and platforms.

4.2 Demographic Characteristics

The study gathered data from 238 film content creators and one regulatory official. The first sections of the questionnaires listed questions aimed to collect data about the demographic characteristics of respondents including gender, age, education, and years of work.

Table 1

Shows the Demographic Distribution of Demographic Characteristics

Demographic Characteristics		Frequency	Percentage
Gender	Male	137	57.6%
	Female	101	42.4%
Age	20-30	54	22.7%
	31-40	104	43.7%
	41-50	41	17.2%
	51-60	39	16.4%
Education	Diploma	76	31.9%
	Bachelor's degree	104	43.7%
	Post Graduate Degree	53	22.3%
	Doctorate Degree	5	1.4%
Work Experience	1-3 Years	28	11.8%
	4-10 Years	83	34.9%
	11-20 Years	98	41.1%
	21-30 Years	29	12.2%

Based on the regression results, the independent variable age was found to be a significant predictor of the perceptions towards KFCB's regulations with a positive coefficient ranging from 1.02 to 1.05 for the different age groups. Hence, it implies that older respondents tend to have a more favorable view of KFCB's regulatory interventions on VoD platforms. This may be associated with the fact that these people have a more conservative outlook on content regulation and would prefer a more radical approach to VoD regulation, specifically Government Regulation.

In contrast, gender and work experience were not statistically significant predictors where $p>0.05$ suggesting that these factors do not significantly influence perceptions of VoD regulations in this sample. Such findings indicate that opinions on VoD regulation are not deeply divided along gender lines, nor are they shaped significantly by years of experience in the video content production industry.

Looking at education level, the data was marginally significant, with respondents holding higher education qualifications such as postgraduate degrees showing a more critical view of KFCB's regulations. These findings could be attributed to the fact that individuals with higher education levels are more likely to be informed about global regulatory trends and may advocate for more liberal content regulation policies. They cited conduct as the reason as to why government should exercise strict regulatory control over VoD platforms because foreign content has the capability of diluting the moral fiber of the Kenyan society.

Those with lower levels of education did not seem to understand VoD regulatory concepts such net neutrality. Those with higher levels of education, however, suggested that net neutrality is a possible avenue for the Kenyan government to explore in future, should it want to effectively regulate VoD platforms operating in the country.

The multiple regression analysis provided valuable insights into the demographic factors influencing perceptions of KFCB's regulatory interventions on VoD platforms. The resulting significant factors were age and education with older respondents and those with advanced degrees demonstrating distinct attitudes towards the effectiveness of these regulations. These findings suggest that KFCB may need to consider these demographic insights when crafting future regulatory policies to ensure they align with the expectations of different population segments**.** In summary, while KFCB has made significant strides in regulating VoD platforms, several areas require attention. Consistent enforcement, keeping up with technological advancements, and better support for local content are key areas for improvement. Future strategies should focus on increasing public awareness and collaboration with VoD providers to promote Kenyan culture and protect consumers.

4.2.1 Strategies for Regulation of VoD Platforms in Kenya

According to the findings, KFCB has employed a number of strategies to regulate the VoD platforms operating in the country, despite this not governed by any legislation, The first policy measure according to the respondent seeks to address the legal and regulatory inadequacies. For this, the respondent pointed out that the Act did not contemplate new forms of media platforms, such as the VoDs under investigation. This aligns with some of the authors view that the Film and Stage Plays Act, Cap 222, the primary legislation which establishes KFCB, need to urgently implement the proposed National Film Policy (Githinji 2020). This is also mirrors Simiyu (2022) view that different political regimes in Kenya have not given a lot of impetus to film industry in terms of policy development to ensure that the industry is well regulated.

> *"Lately, digitization and the high internet penetration have resulted in an exponential increase in the volume audio visual content production as well as real time broadcast, distribution and exhibition. This has resulted in the distribution of content that has not been rated by the Board".* (Respondent, KFCB Ag. CEO).

In this case, the interviewer probed further to know what KFCB is doing in the intervening period before an appropriate legislation put into place: Here is the excerpt from the interviewee:

> *"The law in its current form, anticipates a situation where content broadcasters, distributors and exhibitors submit film content for classification prior to dissemination. However, the emergence of new services and digital transformation in the sector have witnessed an expansion of the content created. This is beyond the Board's capacity. Imagine a situation where all content creators submit content for the Board to classify? This cannot be possible especially for VoD platforms such as Netflix which depends on global releases. Even a co-regulation framework will not work here because it will mean a 50/50 collaboration…. that content is still a lot for KFCB to classify minute by minute*" (Respondent, KFCB Ag. CEO).

There is a draft film policy in place and it has already undergone Public participation as required by the Constitution of Kenya, 2010. There is also the Kenya Film Bill which, together with the aforementioned policy, seeks to revitalize KFCB's regulatory role by tuning it to the requirements of the digital age. Legislation is a lengthy process. However, VoD platforms continue to operate with content that is has not been subjected to rating. It was found out that KFCB has, in the interim, instituted other measures to deal with the regulation of VoD content.

The study found out that it has been difficult to develop legislations that could benefit the sector in the past mainly because government policy priority areas change from regime to regime. However, the respondent said that the current government has identified the creative sector as an area that could be explored to counter the unemployment crisis which could see goodwill from the current regime to revise the laws governing the sector.

> *"To this end, the Board is pursuing various strategies to enhance the regulation of the Film Industry with the context of a rapidly evolving technological developments. These includes the review of the legislative framework. In the Financial Year 2022/2023 the Board developed two and reviewed three statutory instruments*". (Respondent, KFCB Ag. CEO)

The study established that the reviewed instruments include Films and Stage Plays (Film Censorship) Regulations, 2023, Films and Stage Plays (Film Censorship) Regulations, 2023, Films and Stage Plays (Self-Classification) Regulations, 2023, Films and Stage Plays (Cinematograph Films) (Forms and Fees), Regulations, 2023, Films and Stage Plays (Film Classification) Guidelines, 2023

On whether KFCB regulates User Generated Content, the interviewee revealed that KFCB has made efforts towards this even though it is also not specified in the law.

> *"User Generated Content has been a thorn in the flesh and hard to regulate, because first the law stipulates that KFCB regulates only pre-recorded content, which leaves live TikTok videos outside the regulatory purview of the Board (KFCB). Secondly, Live Content automatically disappears once the user exits the live feature. However, going by the interest UGC especially that shared on TikTok recently, it is an option the government is considering. Recently, the ICT Ministry informed Parliament that instead of banning the platform altogether, policies measures should be put in place to regulate it*". (Respondent, KFCB Ag. CEO).

The respondent said that during a recent engagement with TikTok which is the biggest UGC sharing platform in Kenya, they agreed to review their live videos function to ensure that content that advocate for sex, obscenity and nudity, violence, occult and other extreme classifiable elements does not feature in live and non-live content.

> *"Through our constant engagements, TikTok has been able to revise their community guidelines so that users posting nudity or content that goes against our moral values such extreme nudity and LGBTQ+. Such content can easily hegemonize the dominant culture of a nation. We have also partnered with them (TikTok) in our sensitization programmes like Parental Digital Literacy Programme I mentioned earlier. We organize forums whereby we educate parents, guardians and caregivers on the safety nets available on these platforms they can use to protect children from the vagaries of the internet".* (Respondent, KFCB Ag. CEO).

4.3.2 Monetization Models for the VoD Industry in Kenya

The study established that the most preferred monetization models for VoD platforms operating in Kenya and Content creators/film producers are the advertisement based VoDs (AVoD) and Subscription based VoDs (SVoD). AVoD was preferred by film producers who argued that since it depends on adverts to raise revenue, there was almost a guarantee they could get paid if their content received substantial number of views. This is affirmed by Kandari (2023) who cited Advertising-based Video on Demand (AVoD), as the most common model, whereby viewers can access as much content as they want as long as they watch advertisements that come with them. Ericson (2019) while giving an example of YouTube which largely utilises the AVoD model, said YouTube partner programmes allow adverts to run alongside or in between creators' content and the profits are shared with the creators.

4.3.3 Net Neutrality and Content Quotas as a Regulatory Consideration

The study established that net neutrality is not familiar with film producers, especially those with lower levels of education. However, those with higher levels of education are familiar with it and would recommend it since they advocate for total government regulation of the VoD sector. From the regulator's perspective, it was established that net neutrality is not yet enforced by the ICT government agencies in Kenya yet. However, it was established that Kenya enforces content quotas for traditional broadcast channels (60% of local content), but does not enforce the same for VoD platforms. The study established net neutrality and content quotas for VoDs might be considered for future regulatory purposes.

4.3.4 Operational Audio-Visual Regulatory Model in Kenya

The answer according to the respondent is that KFCB envisages a self-regulated VoD market where the players classify their own content adhering to the guidelines issued by KFCB. This is the kind of framework that KFCB has developed.

In 2022, KFCB developed the Film and Stage Plays Self Classification Regulations. These Regulations apply to broadcasters and providers of VoD services in Kenya. Here, the applicable entity (VoD platform) will avail its content classifiers for training by the KFCB team. The classifiers will then be responsible for classifying and rating content on their platform. The platform is required to open its library to KFCB for periodical monitoring and evaluation of compliance

The findings suggest that Kenya is transitioning from a fully government regulated VoD sector to a self-regulated sector (from government to self-regulation).

4.4 Discussion

The role of KFCB to regulate film and broadcast content in Kenya has faced a myriad of challenges occasioned by technological advancements as already observed from the findings. However, as a Regulatory agency, the government of Kenya expects so much from it that they have to be innovative enough to circumvent the current situation without an enabling legislative framework. The findings have established that KFCB has in the recent past tried to review its legislative framework and has also come up with several Regulations to enable it regulate the sector. This is because the current VoD government regulation whereby content creators required to submit content for classification is no longer tenable due technological advancements and hight rate of content production and new form of distribution channels, including VoDs. Data collected revealed that KFCB has already developed a self-classification framework. The study revealed that among the regulations that have been developed and have been taken through the public participation as is required by Kenyan law us the above-mentioned framework. (Films and Stage Plays - Self Classification).

The investigation revealed that other legal instrument developed in this regard are the Film and Stage Plays (Film Censorship – Amendment Regulation 2023) which seeks to introduce a PG 13 rating. This was informed by the fact that there is a big age gap between the currently existing PG 10 (content that contains scenes unsuitable for children under age 10) and 16 (content unsuitable for children under 16). To bridge this gap, data collected through the in-depth interview shows that KFCB seeks to introduce PG 13 rating (content marked PG 13 is unsuitable to children below 13 years) through this amendment. Further, the study established that KFCB has drafted the National Film Bill and Policy based on the fact that the industry has been adapting well to technology while embracing global changes, there is no singular, systematic, goal-oriented vision to guide it. Without such a policy, the overall gains realised from the sector will be lost and regulating VoD platforms will not be feasible. The study established that collaborating with VoD platforms in educating parents and caregivers is another strategy being utilised by KFCB in consumer awareness campaigns to ensure that those who take care of young ones (parents, caregivers and guardians) are aware of dangers that lurk online. However, a look at the stakeholders' awareness in regards to film producers, more effort is required by KFCB threw this achievement off course because most of them attested to not having knowledge of KFCB's regulatory efforts.

The Monetization model most preferred according to the findings of this research is the Advertising Video on Demand AVoD model. This model is the most preferred by content producers since it presents a win-win situation whereby the platform shares the revenue from advertisers with the content owners therefore making this lucrative. The content consumers are attracted to the channel because this model, unlike the subscriber model, e.g. Netflix, the content consumers don't have to pay a subscription fee to access content.

Net neutrality is a stop gap measure that can be used to curb distribution of content by blocking unauthorised Internet Service Providers (ISPSs) from distribution of content. In the entire film industry value chain, there is no time that film distribution has become disquieting to authorities like now. This however, does not seem like the Kenyan authorities are willing to travel any time soon. The study established that some of the safeguards guaranteed by the constitution of Kenya in the Bill of Rights like the freedom of expression tie the Kenyan governments hands.

The research also sought to establish the current regulatory regime for VoD platforms in Kenya. established that the current operational model is that the government technocratically regulates the VoD market in Kenya through KFCB. VoD platforms are required to submit content to KFCB for rating. This control is supported by early proponents of government control of the media as advanced by early media scholars like Harold Lasswell and Walter Lipmann. This also goes to augment the tenets the Authoritarian Theory which is used as framework for this research. However, this is not practical in the current media landscape and the study revealed that the Kenyan government is now shifting to a more accommodative self-classification models which takes a more collaborative regulation approach between government and media.

V. CONCLUSIONS & RECOMMENDATIONS

5.1 Conclusions

While web 2.0 has overhauled the way people communicate and consume mediated messages, it is agreeable that it has also presented its dark side.

The recommended policy intervention can only be delivered by players in government such as through collaboration. KFCB is mandated to protect children from exposure to harmful film and broadcast content and also to ensure that the country culture is protected. The study has established that there are concerted efforts by KFCB which works closely with players such as TikTok to ensure that content that may corrupt the morals of children is not shared through the platform.

The study has found that a key hindrance to KFCB fully achieving its mandate is lack of an enabling legislative framework that takes into consideration advancements in technology and content creation and consumption.

Notably, KFCB has made efforts to counter this by revising the current regulations and developing self-classification framework. This framework will see the body move from state regulation of content on VoD platforms to self-regulation with regular checks and balances from KFCB. Already, Netflix and a few local VoD platforms, including ViuSasa and Safaricom Baze. The regulations need to be gazetted and the National Film Bill fast tracked.

5.2 Recommendations

This study recommends that the Cabinet Secretary in the Ministry of Youth Affairs, Creative Economy and Sports where KFCB is domiciled to immediately ensure that the National Film Bill is enacted into Law. This will see the repeal of Film and Stage Plays Act, Cap 222 which is the current operative law. The Cabinet Secretary is also recommended to ensure gazettement of key legislative instruments mainly the self-regulation framework. will give KFCB a legal muscle to classify content distributed via the VoD platforms.

Robust stakeholders' engagement with content creators is needed to ensure that they understand the government's regulatory role for VoD platforms. Those responsible for content regulation need to be informed about what is expected of their content in regards to regulatory activities like film classification. They need to be briefed on why their content should not expose children to harmful content and why it should also conform with Kenyan moral standards, cultural norms and national values.

To authorities regulating the ICT sector, it is recommended that technocrats get down to work and start crafting net neutrality policies to enable the country be able to control what platforms are allowed to operate in the country in future. On the continental front, the self-regulation framework, if implemented, will act as a benchmark for other African countries struggling with regulating audio-visual content in the digital age. Policy crafters should start thinking of developing a fit-for-purpose all self-regulation framework factoring in one borderless continent under the aegis of the African Continental Free Trade Area (AfCFTA) and harmonization of content regulation in Africa initiatives.

To other stakeholders, Advertisement-based VoD and are the most preferred monetization models for VoD platforms in Kenya. To entrepreneurs wishing to start online content distribution business, this study recommends that these monetization models due to their economic viability as established by the findings. Finally, one of this research findings was that KFCB regulates content to safeguard the country's culture. This speaks to a strong corelation between culture dilution and consumption of foreign audio-visual content via VoD platforms. Further study is therefore recommended on the effect of VoD content consumption and cultural imperialism in Africa, picking a conservative nation as a case study. Using the cultural imperialism theory, this study would look into how, for instance, Netflix, an American based VoD platform distributing its content in many African nations has imposed America's pop culture to those nations young people. Lastly, the debate on whether internet should be classified as a public utility has been lingering around for some time now. This study recommends further studies on the topic of net neutrality with a focus on video streaming services. This will inform authorities on the whole issue of internet regulation.

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