

Appendix A

BBFC.online - Scheme Rules Edition 1.0

1 INTRODUCTION

- 1.1 BBFC.online (“the Scheme”) is a service provided by the British Board of Film Classification (“BBFC”) solely to Members of the Scheme and which provides the classification of digitally delivered electronic audiovisual content (the “Online Classification”), the approval of labelling relating thereto, the licensing of the BBFC’s marks, consumer advice and other information relating to audiovisual works classified pursuant to the Scheme.
- 1.2 In order to apply to become a Member of the Scheme applicants will be required to complete the Scheme application form which is available on the BBFC website.
- 1.3 As conditions of membership of the Scheme, Members are obliged to comply with these Rules (“the Rules”).

2 MEMBERSHIP

2.1 Eligibility

- 2.1.1 Application for membership of the Scheme shall be open to all:
 - (a) producers or rights holders of audiovisual works to be distributed and displayed by electronic means and which are not subject to the Video Recordings Act 1984 (“VRA”) (“Content Providers”); and
 - (b) online retailers or electronic distribution channel providers of audiovisual works which are to be digitally distributed and displayed by electronic means and which are not subject to the Video Recordings Act 1984 (“Aggregators”).
- 2.1.2 For the purposes of these Rules references to audiovisual works has the same meaning as ‘Video Works’ under the VRA and includes works without sound
- 2.1.3 Membership of the Scheme shall only be open to Content Providers and Aggregators marketing content in or into the United Kingdom or from the United Kingdom to elsewhere in the European Economic Area
- 2.1.4 Membership shall only be open to Content Providers and Aggregators deemed to be established in the United Kingdom, as defined under the Audiovisual Media Services Directive 2007/65/EC
- 2.1.5 Membership of the Scheme shall be for a minimum period of twelve months renewable annually for subsequent 12 month periods. Membership fees and terms of payment are set out in clause 10 and Schedule 1. The membership year shall commence annually on 1st June, and the Membership fee shall be payable pro-rata for any part thereof.
- 2.1.6 Admission to Membership of the Scheme shall be at the sole discretion of the BBFC.

- 2.1.7 The BBFC reserves the right to terminate or suspend membership if compliance standards are not maintained by the Member (see clauses 11 and 12 (Compliance and Compliance Failures) and clause (16) (Termination)).

2.2 Types of Membership

- 2.2.1 Companies may apply to join the Scheme as either “Aggregator Members” or “Content Provider Members”. Unless specified otherwise, all rules apply to both Aggregator Members and Content Provider Members (“Members”).

- 2.2.2 All Members agree to adhere to these Rules, the Online Licence (referred to in Clause 2.2.3) and all such practice guidelines that may be issued by the BBFC from time to time. All such practice guidelines shall be deemed to be incorporated into and form part of these Rules, and shall be reasonably issued to improve, augment, explain, supplement or adapt the Scheme (such practice guidelines will normally be issued with thirty days notice). On acceptance, Members will also be granted (and must comply with) a licence to use the BBFC Extranet.

- 2.2.3 In addition, Members will be required to enter into a separate Content Provider or Aggregator version of the Online Licence at Schedule 2, together with any supplemental terms agreed therein as attached.

- 2.2.4 Content Provider Members who engage in supply of audiovisual material direct to the public must also take out Aggregator Membership and enter into an Online Licence (Aggregator Version) in respect of each distribution channel if such distribution channel is to claim membership of the Scheme and if such distribution channel is to make use of licensed materials other than the Electronic Black Card.

2.3 Aggregator Members

- 2.3.1 Aggregator Members are entitled to make use of the Licensed Materials (as defined in the Online Licence) in relation to works which have been issued an Online Classification under the Scheme, provided such use is in accordance with these Rules and the Online Licence.
- 2.3.2 A separate membership fee is payable for each distribution channel controlled by an Aggregator Member
- 2.3.3 A separate Online Licence shall apply to each membership granted under 2.3.2

2.4 Content Provider Members

- 2.4.1 Content Provider Members are entitled (but not obliged) to apply for Online Classifications in respect of audiovisual works which are to be distributed or displayed digitally and not subject to the VRA.,
- 2.4.2 Content Provider Members shall not attach an Electronic Black Card to an audiovisual work granted an Online Classification of ‘R18’ other than for distribution by an Aggregator Member of the Scheme

- 2.4.3 Subject to the restriction in 2.4.2, Content Provider Members are entitled to attach an Electronic Black Card to each audiovisual work granted an Online Classification, in accordance with the Online Licence

2.5 Subsidiaries

Where a Member has joined the Scheme and signed an Online Licence that Member may, subject to the prior written approval (such approval not to be unreasonably withheld) of the BBFC to the identity of the Subsidiary concerned:

- a. In the case of content provider members only, register Online Classifications in the name of any of its Subsidiaries without such registration constituting a “change of distributor” under the Scheme Rules; and
- b. permit its Subsidiaries to use rights pursuant to the Online Licence;

provided that in either case the Member procures due compliance by such Subsidiary with the Scheme Rule, the Online Licence and any Practice Guidelines such that references in the Scheme Rules, Online Licence and Practice Guidelines to “the Member” or “the Licensee” shall be deemed to include reference to such Subsidiary.

For this purpose, “Subsidiary” shall mean any company which by the exercise of voting rights or otherwise, the Member can secure compliance with the Scheme Rules, Online Licence and Practice Guidelines.

Where any Subsidiary ceases to be a Subsidiary as defined above such Subsidiary shall cease to be entitled to the rights afforded above and the Member shall procure that such Subsidiary ceases to so exercise them.

3 CLASSIFICATION & USAGE PROCEDURE

- 3.1 Content Provider Members may apply for Online Classifications for audiovisual works which have previously been classified for distribution as a video recording (‘Catalogue Works’) or for works which have not previously been classified (‘New Works’). New Works will be classified under current BBFC published guidelines for VRA submissions, available at www.bbfc.co.uk.

3.2 New Works

- 3.2.1 Whenever a new video classification certificate is applied for under the VRA in respect of a video work the applicant will be entitled to apply in addition for an Online Classification in respect of that work pursuant to the Scheme.
- 3.2.2 New works must be submitted using the standard BBFC DVD submission form, requesting an Online Classification using the box provided
- 3.2.3 An Online Classification will not be granted unless and until the work has successfully completed all relevant stages of the VRA

classification procedure, and will in the first instance be granted in the name of the applicant for the VRA classification certificate.

- 3.2.4 An Online Classification will not be granted unless the applicant is a Member of the Scheme.
- 3.2.5 On grant of an Online Classification the BBFC will provide the applicant with an Electronic Black Card and an Online Classification number (with the prefix 'OFC') in respect of the audiovisual work.
- 3.2.6 The fee for a new VRA video classification certificate will include the grant of the Online Classification.
- 3.2.7 This procedure and payment of the VRA classification fees apply even if no VRA video certificate is required.

3.3 Catalogue Works

- 3.3.1 Where a work has already received a video classification certificate under the VRA the entity in whose name such certificate is registered may apply for an Online Classification in respect of that work in accordance with Schedule 4, provided that such entity is a Content Provider Member of the Scheme.
- 3.3.2 Where a work has already received a video classification certificate under the VRA in the name of an entity other than the Content Provider Member, a Content Provider Member to whom the electronic distribution rights have passed, or to whom the right to distribute by electronic means has been granted, may apply for a combined distributor change / Online Classification in respect of that work in accordance with Schedule 4.
- 3.3.3 Where an Content Provider Member wishes to distribute electronically a work in a different aspect ratio to that of the work which obtained the original Online Classification then provided that the content is identical to the original work in all other respects, and provided that such aspect ratio change would not lead to a variation in classification, and provided that the ratio change results in no increase in visible picture, the aspect ratio change will not cause the work to be treated as a new work for the purposes of the Online Classification.
- 3.3.4 A fixed charge will be made for the grant of each catalogue work granted an Online Classification for a catalogue work, as set out in Schedule 1.

3.4 Aggregator Members

- 3.4.1 Aggregator Members may access information and materials required to create and display the Licensed Materials referred to in the Online Licence by means of a dedicated extranet service provided by the BBFC but only in respect of audiovisual works to which an Online Classification has been granted and in relation to which an Aggregator Member has digital delivery distribution rights.
- 3.4.2 The grant of rights to use the Licensed Materials referred to in the Online Licence in respect of the classified audiovisual work shall be

personal to the Aggregator Member applicant and shall give the Aggregator Member applicant the right, in respect of the audiovisual work to which the Online Classification relates, to use the Electronic Black Card, the BBFC classification symbols and all other intellectual property rights of the BBFC as set out in and in accordance with these Rules, the terms of the Online Licence entered into with the BBFC and any practice guidelines that the BBFC may issue from time to time, and by applying to become a Member of the Scheme each member agrees to comply with such Rules, Online Licence and practice guidelines.

3.5 Content Provider Members

3.5.1 Content Provider Members may access electronic data required to create and display the Licensed Materials referred to in the Online Licence through the BBFC extranet but only in respect of audiovisual works to which an Online Classification has been granted (or transferred to such Content Provider Member under Clause 3.3.2) and which are registered in the name of said Content Provider Member.

3.5.2 The grant of an Online Classification in respect of a classified audiovisual work shall be personal to the Content Provider Member and shall give the Content Provider Member the right, in respect of the audiovisual work to which the Online Classification relates, to use the Electronic Black Card as set out in and in accordance with these Rules, the terms of the Online Licence entered into with the BBFC and any practice guidelines that the BBFC may issue from time to time, and by applying to become a Member of the Scheme each member agrees to comply with such Rules, Online Licence and practice guidelines.

3.6 Transfer and Assignment

3.6.1 A Member who has been granted an Online Classification or rights to use an Online Classification (whether in respect of a new work or catalogue work) shall not be entitled to transfer, assign, sub-licence, subcontract or dispose of any interest, right or obligation in respect of:

- (a) an Online Classification;
- (b) its rights under these Rules and/or the Online Licence (save as expressly set out therein).

3.6.2 Membership of the Scheme is not assignable and no rights of membership are transferred by virtue of a change in distribution rights of any classified work.

4 MANAGEMENT OF THE SCHEME

4.1 The BBFC will be responsible for making arrangements for the management of the Scheme.

4.2 The BBFC will hold an annual Members' conference to report on the Scheme's progress with such further meetings, seminars or training sessions as determined by the BBFC.

- 4.3 BBFC staff will be available during business hours (10am-5pm on UK business days) for general assistance and enquiries. All non-urgent enquiries should be made by email in the first instance.

5 PUBLICITY

- 5.1 The BBFC shall be entitled to make public the names of any and all Members of the Scheme in accordance with practice guidelines.
- 5.2 No statement, note or record of proceedings of meetings, seminars or training sessions may be passed to any third party without permission of the BBFC.
- 5.3 Members will have access and permission to use certain promotional materials for advertising and marketing purposes pursuant to and as set out in Schedule 5.
- 5.4 All marketing content (including pack shots) must meet the presentation and information standards set out in Schedule 5.
- 5.5 Use by Members of any promotional material and marketing content pursuant to clause 5.2 and 5.3 shall include a clear acknowledgement of the copyright and other intellectual property rights of the BBFC.

6 CONDUCT

- 6.1 Rules on conduct either contained in these Rules, the Online Licence or practice guidelines apply to audiovisual content which is being supplied or offered for supply with the licensed materials, or any other information, attached or displayed in such a way as to indicate or suggest that the audiovisual content has been classified under the Scheme, or is being supplied or offered for supply in accordance with these Rules.
- 6.2 Point of Sale Information**
- 6.2.1 The obligations in this Section apply to works awarded an Online Classification under the Scheme.
- 6.2.2 Aggregator Members must use all BBFC classification materials and point of sale information in the ways set out in these Rules, BBFC practice guidelines and the Online Licence.
- 6.2.3 Aggregator Members must display on the distribution channel the BBFC.online logo and the text set out in Schedule 6.
- 6.2.4 Aggregator Members must ensure that point of sale information includes, in relation to each audiovisual work, the relevant BBFC category symbol and content advice ('Consumer Advice'), either in the form of a mini-certificate (eg. a 'white card') or other form agreed with the BBFC, in accordance with the Online Licence.
- 6.2.5 Rule 6.2.4 shall not apply to adverts or trailers.
- 6.2.6 Trailers and adverts which have been granted an Online Classification and which are presented as such should display the appropriate BBFC classification symbol in a manner which makes it clear that the trailer or advert has been classified in that category.

- 6.2.7 Where a work is being marketed (but not sold) in advance of a release date, it is acceptable for a 'TBC' caption to be used. This must be replaced with the official classification symbol before the work is released and sold.

6.3 Classification Information Attached to Content

- 6.3.1 Members must ensure that, in respect of each audiovisual work granted an Online Classification which is to be distributed electronically under the Scheme, the relevant Online Classification is attached or otherwise displayed.
- 6.3.2 Members must ensure that the content of the digitally-distributed work supplied by that Member is identical to that awarded the Online Classification and must contractually require the same of any aggregator (Member or non-member) to whom a sub-licence is granted under the terms of the Online Licence and these Rules.
- 6.3.3 The Online Classification must remain attached to the content to which the online classification has been granted, either in the form of an Electronic Black Card or other form agreed with the BBFC, in accordance with the Online Licence.
- 6.3.4 Paragraph 6.3.2 shall not apply to trailers and adverts.

6.4 Gate-keeping

- 6.4.1 Aggregator Members shall use reasonable endeavours to ensure that age-restricted works (those works classified '12', '15', '18', or 'R18') are not normally supplied to persons below the specified age.
- 6.4.2 Aggregator Members agree to ensure that appropriate age verification and gate-keeping mechanisms are in place.

6.5 Distribution of 'R18' material

- 6.5.1 Distribution mechanisms for 'R18' material must include suitable parental controls, identifying them as such and allowing parents to block access to such distribution channels by parental control systems or other appropriate means.
- 6.5.2 Clear and unambiguous gateways and warnings must be in place to limit the risk of underage or unintentional exposure to sexually explicit text or sexually explicit still images promoting audiovisual works including the R18 classified audiovisual work itself
- 6.5.3 Where a distribution channel offers material classified 'R18' and material classified '18' or lower, and the main gateway to the distribution channel does not comply with 6.5.2, the 'R18' material must be separated from non-'R18' material by the following means:
- 6.5.3.1 Clear and unambiguous warning captions and gateways from non-'R18' displays
 - 6.5.3.2 Any search function on the distribution channel should have a 'safe search' default setting, excluding 'R18' results
 - 6.5.3.3 'R18' material or pack shots must not appear on non-'R18' headline pages, or as 'recommended titles' on general pages.

- 6.5.4 Any deep linking to other distribution channels featuring 'R18' material or equivalent should also feature a clear and unambiguous gateway and warning, and parental controls as set out in 6.5.1 and 6.5.2.

6.6 Distribution other than through an Aggregator Member

- 6.6.1 Subject to clause 6.6.3, Content Provider Members licensing audiovisual content with an Online Classification for distribution by an aggregator who is not a Scheme Member may attach the Electronic Black Card to the audiovisual content but must ensure that the audiovisual content is not supplied or offered for supply using licensed materials (other than the Electronic Black Card), or any other information, attached or displayed in such a way as to indicate or suggest that the audiovisual content is being supplied or offered for supply in accordance with the rules of the Scheme
- 6.6.2 Content Provider Members licensing audiovisual content with an Online Classification of '12', '15' or '18' for distribution by an aggregator who is not a Scheme Member, and which is being supplied with the Electronic Black Card attached to the audiovisual content, must contractually require of such aggregators that they comply with the Scheme Rules in as much as that such age-restricted works are not normally supplied to persons below the specified age.
- 6.6.3 Content Provider Members must not attach an Electronic Black Card to an audiovisual work granted an Online Classification of 'R18' if that work is to be distributed other than via an Aggregator Member of the Scheme

7 LOSS OF DISTRIBUTION RIGHTS

- 7.1 An Aggregator Member's rights to use an Online Classification and the other rights afforded to it pursuant to the Scheme in respect of a video work shall cease if the Aggregator loses the electronic distribution rights to that audiovisual work.
- 7.2 Any Aggregator Member who survives the existence of the licensing Content Provider, may, subject to English law, continue to use the Online Classification and the other rights afforded to the Aggregator Member pursuant to the Scheme for the works they were entitled to use, provided that:
- (a) the Aggregator continues to have the distribution rights to those works; and
 - (b) the Aggregator continues to be a Member of the Scheme.
- 7.3 An Aggregator shall not lose its rights to use any pre-existing Online Classification and the other rights afforded to it pursuant to the Scheme by reason of the licensing Content Provider ceasing to be a Member of the Scheme.

8 LACK OF AGGREGATOR

The lack of an Aggregator shall not prevent the licensing Content Provider from being registered under the Scheme, but the Content Provider must comply with the restrictions in the Scheme rules and the Online Licence.

9 APPEALS REGARDING CLASSIFICATION DECISIONS

The grant of an Online Classification shall take place (in accordance with these Rules) after a work has received a video classification certificate under the VRA, and accordingly any request for reconsideration or appeal in respect of a classification must take place pursuant to the VRA procedure. There is no separate right to appeal the grant of an Online Classification. The relevant provisions relating to requests for reconsideration and appeals under the VRA are set out on the BBFC's website.

10 FEES

10.1 Classification Fees

10.1.1 Fees for the work will be taken from funds held on account by the BBFC.

10.1.2 BBFC operates a prepayment system for all works submitted. Customers may operate on a pro-forma invoice basis, or send money on account, which is run down as works are received and topped up as necessary.

10.2 Membership Fees

Membership fees shall be payable annually in advance by direct debit or as agreed in advance with the BBFC. Fees may also be subject to discounts currently applied to a Scheme Member at time of admission.

10.3 Variation of Fees

Current fee information is set out in Schedule 1 and on the BBFC's website. The BBFC reserves the right to vary its fees at any time by giving the Members at least 30 days' notice before the variation is to take place. Such notification is to be given on the BBFC's website only.

10.4 Late Payment

If any fees are not paid on the due date for payment interest shall be payable on the outstanding amount from the due date until the date of actual payment (whether before or after any judgement) at the rate of 3 per cent above the base rate of Barclays Bank plc from time to time, such simple interest to accrue on a day to day basis.

10.5 VAT

All fees are exclusive of VAT and other applicable sales taxes which, if applicable, shall be payable in addition.

11 COMPLIANCE

11.1 Aggregator Member's distribution channels shall be subject to compliance checks to ensure that there is full adherence to all aspects of the Scheme, the Rules and the Online Licence. These shall be carried out at the discretion of the BBFC on their own initiative and at BBFC cost.

11.2 All works classified and distributed under the Scheme shall be subject to compliance checks to ensure that there is full adherence to all aspects of the Scheme, the Rules and the Online Licence. These shall be carried out at the discretion of the BBFC on their own initiative and at BBFC cost and shall be

carried out on a proportion of the works submitted by each Content Provider Member.

- 11.3 Compliance checks may also be executed at BBFC cost on receipt of complaints from Members of the public. (See Clause 14 'Complaints')
- 11.4 Issues examined at compliance shall include (without limitation) confirmation that:
- (a) works offered through online distribution channels are identical to those originally classified by the BBFC;
 - (b) the Licensed Materials (as defined in the Online Licence) (including but not limited to all BBFC symbols, text and links) are displayed in accordance with the Scheme rules and practice guidelines and the terms of the Online Licence;
 - (c) appropriate age checking and gate-keeping mechanisms are in place.
- 11.5 Members shall supply to the BBFC free of charge such hardware, passwords, codes, software and access rights as will allow the BBFC to audit fully any Member's compliance without notice.

12 COMPLIANCE FAILURES

- 12.1 Any failure to comply fully with all aspects of the Scheme, the Rules, the Online Licence and/or the BBFC's practice guidelines is serious and may entitle the BBFC to terminate a Member's membership of the Scheme. Notwithstanding this the BBFC will normally view compliance failures as falling into one of three categories as follows:
- Simple mistakes
 - Fundamental Issues
 - Gross abuse of Scheme

Examples of each type of issue are set out in Schedule 3.

- 12.2 The standard procedures (which can be varied at the BBFC's reasonable discretion) for how each of these types of failure are dealt with are set out below.
- 12.3 The BBFC will consult as necessary the British Computer Society and refer such matters to it as the BBFC considers appropriate for determination and advice. The administration costs of such adjudication shall be met by the BBFC.online Scheme.

13 Mistakes

13.1 Simple mistakes

Remedy: The BBFC will issue a correction notice by email as soon as a simple mistake becomes apparent. Members should normally take action to correct the mistake within five working days. Where a correction is disputed, notification and reasons must be supplied to the BBFC within five working days of issue of the correction notice.

NB: **Multiple unresolved** simple mistakes may be counted as 'Fundamental Issues'.

13.2 Fundamental Issues

Remedy: The BBFC will undertake more thorough compliance, auditing either a larger percentage of the Content Provider Member's classified works or a greater proportion of the Aggregator Member's distribution channel. Charges reflecting administration and labour will be made for this work.

In addition the BBFC shall be entitled to suspend any hyperlinks to the BBFC website without notice.

NB: The Member will also be put on notice that recurring or unremedied fundamental breaches may lead to the Member being considered in gross abuse of the Scheme. Such notice may be disputed by the Member within five days of issue, and provide any submissions supporting their case for reconsideration by the BBFC within 15 working days. The result of such reconsideration shall be notified to the Member within a further ten working days.

13.3 Gross Abuse of Scheme

Sanction: The Member will be served with a notice of termination of membership of the Scheme and cancellation of its Online Licence. It will state the full reasons for such notice, and (where appropriate) set out the events that have led to the termination. The Member may dispute such notice by within five days of issue, and provide any submissions supporting their case for reconsideration by the BBFC within 15 working days. The result of such reconsideration shall be notified to the Member within a further ten working days.

In addition the BBFC shall be entitled to suspend any hyperlinks to the BBFC website without notice.

13.4 Reporting Back on Compliance Failures

The BBFC may issue a full compliance report to the Member, covering any or all of those issues covered in Schedule 3.

14 COMPLAINTS

14.1 The BBFC will make available via its website details of the Scheme for perusal by members of the public. This will include a complaints procedure for use by members of the public.

14.2 As set out in 6.2.2, Aggregator Members must display the text set out in Schedule 6, which identifies the appropriate complaints procedure a member of the public should follow

14.3 Classification Complaints

Where a complaint is received by a Member from a member of the public regarding the BBFC's classification decision for any classified work, the Member must refer the Complainant to the BBFC who shall deal with it in accordance with its normal procedures for VRA classification complaints.

14.4 Complaints to Members about the Scheme

- 14.4.1 Complaints received directly by Members may be dealt with them direct in the first instance, if they involve any resolvable 'Simple Issue'.
- 14.4.2 A record should be kept of all complaints and the outcomes. Should the complaint not be resolved to the complainant's satisfaction, the Member must refer the complainant to the BBFC within five working days. (see 14.5)
- 14.4.3 Subject to data protection legislation, the Member shall, upon request of the BBFC, make available a log of all complaints received regarding the Scheme.

14.5 Escalation

14.5.1 Where a complaint:

- a) cannot be resolved between the Member and the complainant; or
- b) possibly amounts to a 'fundamental issue'; or
- c) possibly amounts to a serious breach of the Scheme Rules;

the complainant must be referred to the BBFC within five working days, acknowledged with the text set out in schedule 7 (as appropriate)

- 14.5.2 The BBFC will deal with any such complaint as if it were a potential compliance failure and consider the complaint in accordance with the provisions of clause 13.

14.6 Preservation of items / artefacts

Where a complaint is made, all necessary steps must be taken to preserve all items that are the subject of the complaint, regardless of whether a decision is taken by the Member to remove immediately from its website(s) the items subject to complaint.

14.7 Identification

Aggregator Members shall also make the following information easily, directly and permanently accessible to the recipients of the service at least the following information:

- 14.7.1** the name of the Aggregator Member;
- 14.7.2** the geographic address at which the Aggregator Member is established
- 14.7.3** the details of the Aggregator Member, including its email address or website, which allow for it to be rapidly and directly contacted

15. LIABILITY

- 15.1 The BBFC shall have no liability to a Member in respect of the grant or failure to grant any Online Classification, provided such grant or failure to grant is made according to the BBFC guidelines, these Scheme Rules and practice guidelines, and applicable law..
- 15.2 Save in relation to BBFC.online compliance fees BBFC shall have no liability for any loss or damage incurred by any Member or third party as a consequence of any advice or any recommendations provided by the BBFC at the request of a Member.

- 15.3 All warranties, terms and conditions, whether implied or arising under statute or common law, custom, trade usage or course of dealing between the parties or otherwise, shall be excluded to the fullest extent permitted by law.
- 15.4 The BBFC's liability to a Member shall be limited to exclude altogether liability, howsoever arising, for damage to software, damage to or loss of data, loss of profits or contracts, loss of business or of anticipated savings, loss of goodwill, loss of reputation and for any other type of indirect, incidental or consequential loss or damage.
- 15.5 The BBFC's maximum aggregate liability to a Member in respect of claims based on events in any calendar year arising out of or in connection with the Scheme whether in contract or tort (including negligence or otherwise) shall not exceed £100,000
- 15.6 Nothing in these Rules shall operate to exclude or limit the BBFC's liability for:
- 15.6.1 death or personal injury caused by its negligence; or
 - 15.6.2 fraud; or
 - 15.6.3 any other liability which cannot be excluded or limited under applicable law.
- 15.7 Save in respect of the grant of a VRA or Online Classification for a particular work, each Member shall at all times keep the BBFC, its officers and servants effectively indemnified against all actions, proceedings, costs, charges, claims, expenses and demands whatsoever which may be made or brought against the BBFC, its officers or servants by any third party in respect of any actual injury, loss, damage or expense arising out of or in connection with a breach of the Scheme Rules or Online Licence by that Member..

16 TERMINATION

- 16.1 Any Member may terminate its membership of the Scheme by giving thirty days written notice to the BBFC but no refund of the annual membership fee shall be payable.
- 16.2 The BBFC may terminate any Member's membership of the Scheme by giving the Member 3 months' notice at any time.
- 16.3 Notwithstanding the provisions of clause 13 (Compliance Failures), the BBFC may terminate a Member's membership of the Scheme immediately at any time by written notice to that Member if:
- 16.3.1 the Member commits any material or persistent breach of its obligations under these Rules which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied;
 - 16.3.2 the Member's Online Licence is terminated;
 - 16.3.3 that Member:
 - (a) ceases to trade; or
 - (b) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to it; or
 - (c) compulsorily or voluntarily enters into liquidation (except for the purposes of a bona fide reconstruction or amalgamation and with the prior written approval of the BBFC, (not to be

- unreasonably withheld);
 - (d) has an administrator, receiver or manager appointed over the whole, or substantial part of its undertaking or assets; or
 - (e) is subject to a a change of its control which, in the opinion of the BBFC, materially affects the ability of that party to carry out its obligations under these Rules; or
 - (f) ceases or threatens to cease to carry on its business;
 - 16.3.4 in the opinion of the BBFC, that Member's use of the BBFC's materials licensed to it under the Online Licence bring the BBFC into disrepute; or
 - 16.3.5 for the purposes of this clause 'control' shall mean the ability to direct the affairs of that Member, whether by virtue of the ownership of shares, contract or otherwise
- 16.4 The BBFC shall be entitled to terminate the Scheme and each Member's membership of it at any time upon giving 3 months' written notice to the Members.
- 16.5 Upon the expiry of the notice of termination of membership the Member will immediately:
- 16.5.1 cease to have the right to use any Online Classification granted to it or any other rights afforded to it pursuant to the Scheme save as permitted by the Online Licence;
 - 16.5.2 cease to refer to the Scheme or its membership of it on any website or in any promotional or other materials;
 - 16.5.3 comply with the terms of the Online Licence applicable on its termination.

17. EFFECT OF TERMINATION

- 17.1 On termination of a Member's membership of the Scheme all provisions of these Rules shall cease to have effect in respect of that Member, except that any provision which can be reasonably inferred as continuing, or is expressly stated to continue, shall continue in full force and effect.

18. FORCE MAJEURE

- 18.1 The definition in this clause applies in these Rules.

“Force Majeure Event” any event arising that is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

- 18.2 Where the BBFC or a Member becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay to perform its obligations under these Rules it shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay shall continue. The affected party shall take reasonable steps to mitigate the effect of the Force Majeure Event.
- 18.3 The parties accept no responsibility for breaches of these Rules occurring as a

result of a Force Majeure Event.

19. CONFIDENTIALITY

19.1 The definition in this clause applies in these Rules.

“Confidential Information”

all information, whether technical or commercial (including all specifications, drawings and designs disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified at the time of disclosure as confidential; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

19.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

19.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

19.4 The obligations set out in this clause shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 19; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement.

19.5 The obligations of confidentiality in this clause shall not be affected by the expiry or termination of this Scheme or any Member's membership of it.

19.6 The BBFC shall be entitled to disclose information as is necessary for the efficient operation of the Scheme, which shall include disclosure:

19.6.1 to the public, of details of all works which have received an Online Classification;

19.6.2 to Aggregator Members, where a work to which they hold digital

distribution rights has not yet received an Online Classification, of information regarding the status of those works; and

- 19.6.3 to Content Provider Members, of information relating to the ability of their licensed Aggregator Members to use the Licensed Materials and to Aggregator Members, of information relating to the ability of the Content Provider Members to make the Licensed Materials available to such Aggregator Members under the Scheme (e.g. technical specifications)

20. NOTICES

20.1 Save where otherwise expressly stated in these Rules, a notice given under these Rules:

- (a) shall be in writing in the English language (or be accompanied by a properly prepared translation into English);
- (b) shall be sent:

In the case of the BBFC:

Address: 3 Soho Square, London W1D 3HD

For the attention of: BBFC.online Manager

Fax: 020 7440 0291

Email: bbfc.online@bbfc.co.uk

or such other address as the BBFC may specify for this purpose on its website.

In the case of a Member for the attention of the person, and to the address, fax number or e-mail address given by them in their application to become a Member, or such other person, address, fax number or e-mail address as the Member may have notified to the BBFC; and

- (c) shall be:
 - (i) delivered personally; or
 - (ii) sent by fax or e-mail; or
 - (iii) sent by pre-paid first class post, recorded delivery or registered post; or
 - (iv) (if the notice is to be served by post outside the country from which it is sent) sent by registered airmail.

20.2 A notice is deemed to have been received:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of fax or e-mail, at the time of transmission, provided a confirmatory copy is sent by pre-paid first-class post or by personal delivery before the end of the next Business Day; or
- (c) in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
- (d) in the case of registered airmail, five days from the date of posting;

or

- (e) if deemed receipt under the previous paragraphs of this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), when business next starts in the place of receipt.
- 20.3 To prove service, it is sufficient to prove that the notice was transmitted by fax to the correct fax number or e-mail address of the relevant party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

21. ASSIGNMENT

No Member may assign, transfer, sub-licence or sub-contract any of its rights or obligations under these Rules without the prior written consent of the BBFC. The BBFC may assign, transfer, sub-licence or sub-contract its rights and obligations under these Rules without consent, provided that it gives advance notice to the Members.

22. WAIVER

Any failure or delay by the BBFC to exercise or enforce any right conferred by these Rules shall not be deemed to be a waiver of such right.

23. ENTIRE AGREEMENT

- 23.1 These Rules (incorporating the Online Licence and any BBFC practice guidelines) represent the entire agreement between the BBFC and each Member concerning the subject matter of these Rules. The terms of these Rules (incorporating the Online Licence and any BBFC practice guidelines) supersede all prior purchase orders, written terms and conditions, written or verbal representations, advertising or statements relating in any way to the subject matter of these Rules (incorporating the Online Licence and any BBFC practice guidelines).
- 23.2 Each Member acknowledges that in agreeing to enter into these Rules it has not relied on any representation, warranty, undertaking, promise or other assurance (whether contractual or otherwise) given by or on behalf of the BBFC except those set out in these Rules (incorporating the Online Licence and any BBFC practice guidelines), and waives all rights and remedies, which, but for this clause might be available to it in respect of such representation, warranty or other assurance, provided that nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.

24. SEVERABILITY

- 24.1 If any provision of these Rules is found to be invalid or unenforceable by a court of law of competent jurisdiction, such a finding shall not affect the other provisions of these Rules and all provisions of these Rules unaffected by such a finding shall remain in full force and effect.
- 24.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or

legal if some part of it were deleted or modified, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

25. VARIATIONS

These Rules may only be varied in writing by means of variation signed in writing by the BBFC. The BBFC will give the Members 6 weeks' notice of any changes to the Rules, such notification to be made on the BBFC's website.

26. TIME NOT OF THE ESSENCE

Time shall not be of the essence in connection with any of the materials or services to be provided by the BBFC under these Rules, and the BBFC shall not be liable for any delays in the supply of materials and service by it or any losses whatsoever due to any such delays, howsoever caused.

27. RELATIONSHIP

28.1 Nothing in these Rules shall constitute, or be deemed to constitute, a partnership between the BBFC and any of its Members nor shall it constitute, or be deemed to constitute, any Member as the agent of the BBFC for any purpose.

28.2 Nothing in these Rules or otherwise gives any Member any rights of ownership in the Scheme which shall remain the sole property of the BBFC.

28. THIRD PARTY RIGHTS

28.1 These Rules are made solely for the benefit of the BBFC and the Members to it and are not intended to benefit, or be enforceable by, any other person.

28.2 The right of the parties to terminate rescind or agree any amendment, variation, waiver or settlement under these Rules is not subject to the consent of any person who is not a party.

29. GOVERNING LAW AND JURISDICTION

29.1 The terms and conditions of these Rules will be governed by and construed in accordance with English law and the members irrevocably agree that the English courts shall have jurisdiction to settle any dispute or claim that arises out of or in connection with these Rules and the Members irrevocably submit to such jurisdiction

29.2 Each member irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

29.3 Any member who is not established in England for the purpose of service of proceedings shall appoint, and notify to the BBFC on applying to become a member, a person being a partner in a firm of solicitors in England to accept service of all legal process arising out of or connected with these rules and the online licence and service on such person (or any substitute subsequently notified to the BBFC) shall be deemed to be service such member. Except upon such a substitution any such member shall not revoke any such authority or appointment and shall at all times maintain an agent for service of process in England and if any such agent ceases for any reason to be an agent for this purpose shall forthwith appoint another agent and advise the BBFC accordingly.

Schedule 1**BBFC.online Fees**

Membership Fees		
Aggregator Membership		£900 per annum
Aggregator Membership (re-skins)		Price by negotiation
Content Provider Membership		£900 per annum
Content Provider Membership (Low User 1)	Maximum of 50 titles	£300 per annum
Content Provider Membership (Low User 2)	Maximum of 100 Titles	£600 per annum
Bursary*	One-off project based membership for first project / final entry from film school (or other AV discipline) students	Free (Maximum of 50 grants per year)
Festival Licence*	One work, one distribution channel, fixed duration (max six months).	Max £250
Registered Charity Discount		35% of appropriate membership fee
Extranet Licence		£100 per annum

* Awarded at the sole discretion of the BBFC.

Classification Fees		
Item	Remarks	Cost
Dual VRA / Online classification	Charges reflect existing VRA submission scale . No extra charge for Online Classification	Handling fee £75 per submission plus £6.00 per minute for full length of work.
Online classification for catalogue work with existing VRA Classification		£45 per title
Distributor change plus Online Classification (running time 15 mins or greater)	Charges reflect existing VRA submission scale	£270 per title
Distributor change plus Online Classification (running time less than 15 mins)	Charges reflect existing VRA submission scale	£195 per title

In addition VAT will be charged on all fees at the prevailing rate

**Schedule 2
Online Licence**

Schedule 3

Compliance Failures

This list is indicative and non-exhaustive.

Default responsibility is indicated by (M) – all Members
(A) – Aggregator Members
(C) – Content Provider Members

Simple Mistakes

Impossible to contact principals (M)
Communication Issues (M)
Dead / Inaccurate links (A)
Display Issues (M)
Minor and inconsequential differences between material as classified and material as supplied (C)

Fundamental Issues

Failure to correct simple mistakes (M)
Multiple or serial simple mistakes (M)
Major or significant differences between material as classified and material as supplied (C)
Lack of appropriate gate-keeping (A)
Placing of inappropriate adverts next to classified content (A)
Linking to sites offering obscene or illegal content, or other content likely to bring the BBFC or BBFC.online into disrepute (A)
Requests to take down material not acknowledged (M)
Lack of appropriate gateways and warnings prior to explicit still image and text (A)
R18 inclusion in searches prior to appropriate gateways and warnings (A)
Mis-labelling (other than R18) (M)
Unauthorised marketing involving BBFC intellectual property (M)

Gross abuse of Scheme

Repeated or continued refusal / failure to handle / forward complaints (M)
Repeated or continued refusal / failure to process compliance changes (M)
Refusal to allow (or delay in allowing) BBFC auditing (M)
Refusal / failure to pay membership or compliance charges (M)
Supplying licensed materials to non-Scheme Members other than in accordance with Scheme Rules (M)
Incorrectly labelled R18 material (M)
Bringing the BBFC or the Scheme into disrepute (M)

NB: This list is not exhaustive and may be altered by the BBFC at any time during the compliance process if any action fails to meet the standards set out in the Scheme rules and the practice guidelines.

Schedule 4

A) Catalogue Works: requests for Online Classification

All requests should be submitted through the BBFC extranet as follows:

- 1 Identify the relevant work
- 2 Click on 'Get Online Classification'
- 3 Enter Purchase order details (if required)
- 4 Click 'confirm'

The work will automatically be given an Online Classification and the Member will receive a notification email in the form a daily digest listing all the works given an Online Classification in the previous 24 hours. An electronic black card will be made available for collection via the extranet. An invoice will be issued to the Content Provider Member.

B) Catalogue Works: requests for distributor change and Online Classification

A copy of the work must be submitted using the DVD submission form and procedure. Please ensure that both the 'Distributor Change' and 'Online Classification' boxes are ticked.

The work will be subjected to a technical comparison. If the work is identical to the previously classified work, new paperwork will be issued with respect to the VRA certificate and the work will receive an Online Classification

Schedule 5

- 1. Promotional Material (Clause 5.2)**
[Intentionally left blank]

- 2. Presentation and Information Standards (Clause 5.3)**
[Intentionally left blank]

Schedule 6

Text to be displayed on Aggregator Member's distribution channel

"We are Members of BBFC.online. This is a voluntary Scheme run by the British Board of Film Classification to give consumers clear information about the content of films, programmes and other video works, using BBFC classification symbols and consumer advice in a way that consumers are familiar with from DVDs and film-going. The Scheme helps people to make informed decisions about their own and their children's internet viewing, and seeks to ensure that works with an age-restricted classification (e.g. '12', '15', '18") are not supplied to any person below that age. If you have any comments about the classification information we have displayed, please contact us at [help@aggregator.com] in the first instance. If you have any comments on the classification of a particular video, please contact feedback@bbfc.co.uk."

Schedule 7

Text for use in acknowledging a complaint forwarded to the BBFC

“Due to the nature of your complaint, it should be dealt with by the BBFC, which oversees the BBFC.online Scheme. Please contact the BBFC with details of your complaint at BBFC.online@bbfc.co.uk”

Or

“Because you remain unsatisfied with our attempt to address your complaint, it should be dealt with by the BBFC, which oversees the BBFC.online Scheme. If you wish to pursue your complaint you can do so by sending details to BBFC.online@bbfc.co.uk”