

INDIA'S DRAFT BROADCASTING (REGULATION) BILL, 2023 – AN UPDATE

By: N. Raja Sujith, Partner and Head of South India, and Mohit Bothra, Associate, Majmudar & Partners

Last month, the Ministry of Information and Broadcasting (the “MIB”) released the draft Broadcasting Services (Regulation) Bill, 2023 (the “Bill”) proposing a consolidated framework to regulate all modes of broadcast, including digital cable TV, Over-the-Top (“OTT”) content and digital news, as well as introducing contemporary definitions and provisions for emerging technologies like Direct-to-Home (“DTH”) and Internet Protocol Television (“IPTV”).

Background

The Bill seeks to replace the thirty (30) year old Cable Television Networks (Regulation) Act, 1995 (the “1995 Act”) and proposes changes to other policies governing the broadcasting sector in India. Further, the Bill explicitly provides that it will operate as an additional legislation to the Information Technology Act, 2000 and the Telecom Regulatory Authority of India Act, 1997, and will not override or otherwise curtail the applicability of these statutes in any manner.

Key provisions of the Bill

Broadcasting, broadcasting network and broadcasting network operator

The 1995 Act regulated cable networks only and did not include OTT platforms. However, the Bill has broadened the definition of “broadcasting” to include “one-to-many” transmission of audio, visual or audio-visual programmes using a broadcasting network. As a result, OTT platforms like Netflix, Amazon Prime, and others will be covered by the Bill. Similarly, the term “broadcasting network” will now include satellite broadcasting networks, internet broadcasting networks and terrestrial broadcasting networks, apart from cable broadcasting networks. Further, the definition of “broadcasting network operator” will cover any person who operates a broadcasting network and has been granted a registration, licence or permission, including telecom and internet service providers.

Programme and advertising code compliance

The Bill proposes a programme and advertising code (the “Code”) that will be prescribed by the Central Government (the “Government”) to regulate the services provided by various broadcast network operators. Any programme or advertisement transmitted or re-transmitted as broadcasting services must be in conformity with the Code. The Code will also extend to OTT broadcasting networks and will include persons who broadcast current affairs programmes through an online paper, news portal, website, social media intermediary, or other similar mediums. However, it excludes newspaper publishers and their e-newspapers which come under their systematic business, professional, or commercial activity.

Self-classification of programmes and access control measures by broadcasters

The Bill proposes that broadcasters must classify their programmes into different categories based on the rating system prescribed by the Government depending on the context, theme, tone, impact, and target audience of the content. These classifications must be displayed to the users at the beginning of the programme in the form and manner prescribed by the Government. Further, the broadcasting network operator must implement access control measures for programmes that are classified for restricted viewing (e.g., adult content).

Accessibility guidelines for persons with disabilities

The Bill states that every person with a disability is entitled to access programmes, platforms and equipment of broadcasting services in a form feasible to such person. Further, the Bill proposes that every broadcaster or broadcasting network operator must incorporate mandatory measures such as subtitles, audio descriptions for the blind, translating audio content into sign language, etc., in a bid to make broadcasting services smoothly accessible to persons with disabilities. Additionally, the bill requires the broadcaster or broadcasting network operator to submit an annual accessibility audit report to the Government. The Bill also directs the Government to appoint a disability grievance redressal officer to address any complaints of contraventions of the accessibility guidelines.

The regulatory regime

The Bill proposes a three-tiered structure of self-regulation; first, by broadcasters and broadcasting network operators; second, by Self-Regulatory Organisations (“**SRO**”); and third, by the Broadcast Advisory Council (“**BAC**”), to ensure compliance with the Code and to address any grievances or complaints.

(i) Self-regulation by broadcasters and broadcasting network operators

The Bill proposes that every broadcaster should constitute one or more Content Evaluation Committees (“**CEC**”) consisting of eminent individuals representing different social groups, child welfare organisations, scheduled tribes, scheduled castes, minorities and women. Further, the Bill proposes that the broadcasters must only broadcast programmes that are duly certified by the CEC, except for specific programmes that may be exempted by the Government.

The Bill mandates every broadcaster and broadcasting network operator to appoint a grievance redressal officer for the purpose of receiving and hearing complaints alleging contravention of the Code. Additionally, the Bill requires every broadcaster and broadcasting network operator to establish and maintain suitable mechanisms for filing and redressal of complaints and to publish information related to complaint redressal mechanisms.

(ii) SRO

The Bill mandates broadcasters and broadcasting network operators to become members of an SRO. The SROs are delegated with the powers to address grievances which have not been addressed by the broadcasters or broadcasting network operators, hear appeals, and issue guidance or advisories to its members to ensure the compliance of the Code.

(iii) BAC

The Bill mandates the Government to constitute a BAC consisting of a chairperson, five (5) nominated officers and five (5) independent persons to be selected based on various criteria. The Bill delegates the BAC with the powers to hear appeals against the decisions of the SRO regarding violation and contravention of the Code. Further, the BAC must make recommendations to the Government based on the examination of the complaints and grievances received by it. The Government must issue appropriate orders and directions based on such recommendations of the BAC.

Powers of the Government and penalties

The Bill grants various powers to the Government, including powers to inspect and monitor equipment, seize and confiscate equipment, seek information from broadcasters and broadcasting network operators, prohibit the operation of any broadcasting service or broadcasting network provider to safeguard public interest, and delete, modify or prohibit transmission of any programme.

The Bill introduces statutory penalties such as giving advisories, censure and warnings to, and cash penalties against, the broadcasters and broadcaster network operators. Further, in cases of non-compliance where a penalty has already been imposed, a broadcaster or broadcaster network operator's registration can be cancelled after providing a reasonable opportunity to be heard. Furthermore, the Bill provides for imprisonment in cases of serious offences or contraventions of the Bill.

It is noteworthy that monetary fines are to be imposed based on the financial capacity of the person or entity after due consideration of the person or entity's investment and turnover as prescribed in Schedule I of the Bill. The maximum penalty or fine in case of unregistered entities and major category entities is 100% of the penalty prescribed in Schedule 2 of the Bill. However, it is restricted to 50%, 5% and 2% of the prescribed penalty for medium, small and micro category entities, respectively. After determination of the categories, the category that attracts a higher maximum penalty will apply.

Our comments

The Bill envisages a comprehensive regulatory framework for current and future technologies in the broadcasting sector. The focus on self-regulation, including constituting a CEC and the BAC, is significant, and this will impose a greater responsibility on broadcasters and broadcasting network operators to be more rational in their selection of services and programmes to be disseminated to audiences.

However, OTT platforms are skeptical about their inclusion under the Bill and have highlighted that they are inherently different from traditional broadcasters. Traditional broadcasts “push” content to viewers, while OTT platforms allow users to “pull” content based on their personal discretion. OTT platforms are, therefore, arguing that content viewed based on individual discretion must not be regulated by an all-encompassing global statute.

Stakeholders have also expressed concerns on the powers granted to the Government, namely, the ability to prohibit the operation of any broadcasting service or broadcasting network provider to safeguard public interest, and the right to delete, modify or prohibit the transmission of any programme. Such powers can be used by Government officials in an arbitrary manner to the detriment of stakeholders.

Further, the Government has the power to prescribe the size, quorum and other operational details of the content evaluation committees established by every broadcasting platform, which can result in significant control over these bodies. All these powers in the hands of the Government will give it unbridled authority to impose censorship.

The inclusion of digital news under regulatory scope has been another point of criticism, and there is fear that this will curb the freedom of expression of an individual and the free flow of information and ideas resulting in homogeneity and censored content. While the need to address concerns relating to harmful content is valid, measures should be carefully considered to ensure that this does not restrict the free flow of information and ideas.

The effective implementation of the Bill will depend on the balance created between Government regulation and autonomy to authors and broadcasters. The right balance will foster great innovation in ideas and content; however, an imbalance will be inimical for the entire broadcasting sector.