



November 2023

MIB releases draft regulations impacting streaming services

The Ministry of Information and Broadcasting (“MIB”) introduced the [Draft Broadcasting Services \(Regulation\) Bill, 2023](#) (“Bill”) on November 10, 2023, seeking to regulate the over-the-top (“OTT”) broadcasting services. The Bill is released for stakeholder comments until December 9, 2023. In the event that the Bill becomes law, OTT platforms will be required to conform with a complex regulatory framework and have their content certified by a content evaluation committee. Some key observations from the Bill are:

1. **Intimation:** While OTT platforms have not been expressly mandated to obtain a registration, they should intimate the government that they are providing OTT broadcasting services if they meet a certain threshold of subscribers/viewers in India;
2. **Definition of Broadcasters:** The Bill expands the regulatory coverage of existing Indian cable regulation laws to include OTT content and digital news media under the ambit of its regulation. To capture emerging technologies, the Bill extends application to “internet broadcasting networks”, which as per its definition includes Internet Protocol and OTT broadcasting services. The Bill defines “broadcasting” as “one-to-many transmission of audio, visual or audio-visual programmes using a broadcasting network, intended to be received or made available for viewing, by the general public or by subscribers of the broadcasting network”;
3. **Programme and Advertising Code:** Broadcasters must comply with the programme code and advertising code. These codes will be prescribed but the Bill states that any programme/advertisement that is transmitted/retransmitted as broadcasting services must also conform to these codes;
4. **Content Classification:** Central government may issue guidelines for Broadcasters to classify their programmes based on “context, theme, tone, impact, and target audience of such content”. The platforms may also be required to provide relevant age rating for such categories based on an assessment of relevant content descriptors specified in the guidelines. This classification must be displayed prominently at the beginning of a programme in the form and manner prescribed in the guidelines;
5. **Access Control:** The Bill also states that Broadcasters must ensure access control measures in relation to programmes which have been classified as being appropriate for restricted viewing as per content classification guidelines. For instance, if a film contains elements of gore or violence and is meant for people over the age of 18 (eighteen) years, the viewer would be provided all that information soon after they start watching. Further, if someone under the age of 18 (eighteen) years attempts to watch the film, they would be denied access to it;
6. **Accessibility Guidelines:** The government may issue accessibility guidelines so that broadcasting services are accessible for persons with disabilities. These guidelines may include - supplementing video programmes with subtitles of specified sizes, fonts and colours; or requiring providers of OTT broadcasting services to use applications that are accessible to persons with disabilities;

7. **Inspection Rights:** Under the Bill, the government (or its agency/authorised officer) has the right to inspect broadcasting networks and services. No prior permission will be required to carry out such an inspection; and
8. **Regulatory Structure:** The Bill suggests a 3 (three) pronged regulatory structure: (a) self-regulation by broadcasters and broadcasting network operators; (b) self-regulatory organisations; and (c) the Broadcast Advisory Council. This 3 (three) tiered regulatory system was previously introduced under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Industry stakeholders are questioning the need to bring OTT broadcasting services under regulation and at par with cable, terrestrial, radio broadcasting services. It is being argued that “OTT” broadcasting services make on-demand or curated programmes available over the internet or a computer resource, which is consumed by a subscriber who makes an account with the provider. While “OTT” broadcasting services provide access to a range of content on its platform to several of its subscribers, viewers retain the autonomy to not consume a programme if they wish to do so. This, arguably, is a direct contradiction to the nature of cable TV or radio services, wherein consumers cannot choose to stop the airing of a programme (even if they may be able to switch channels). Applying stringent rules and codes to “OTT” broadcasting services may increase financial and compliance burden for such broadcasters and negatively impact user experience and cost of content consumption.

Media Practice

JSA has established its practice in the Media and Entertainment providing representation to the entire spectrum of players in these fields, including television networks, entertainment companies, film and television production and distribution companies, music production houses, digital media companies, technology, media and communications companies.

JSA has relationships with almost all film studios, film funds, broadcasters, production houses, media aggregators, trade associations, anti-piracy organisations and VFX and motion capture set-ups in the country today. Its attorneys are actively involved in representing Indian producers and multinational broadcasters in co-production and co-financing transactions with motion picture studios, television networks and television syndicators, and continue to be engaged by clients for their unparalleled skills in negotiating production, distribution, financing and exhibition arrangements.

JSA has assisted clients in the television industry on myriad projects, from structuring trans-national television broadcast ventures to coordinating and contracting for domestic cable distribution of entertainment content. Additionally, JSA has specialised experience in terms of foreign direct investment in the television industry. JSA further provides counsel to developers, producers and distributors of entertainment software, both in India and internationally

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