

14 September 2022

National Commission for Protection of Child Rights  
5th Floor, Chanderlok Building,  
36, Janpath  
New Delhi-110 001  
Via e-mail : cp.ncpcr@nic.in

Dear Sir/Madam

**Draft Regulatory Guidelines for Child participation in the Entertainment Industry**

AVIA welcomes the opportunity to comment on the “Draft Regulatory Guidelines for Child Participation in the Entertainment Industry”, as issued by the National Commission for Protection of Child Rights (NCPCR/the Commission). AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly-expanding consumer demands and investing in India’s communications and creative industries.

Our members acknowledge and appreciate the efforts of the Commission to ensure that adequate safeguards are in place to protect children, as encapsulated by the relevant provisions within the Indian Constitution. Our members are however concerned that the draft regulations go quite a way beyond what may be reasonably necessary to achieve the intended objective. We also note that a clear distinction may need to be drawn between different forms of production – the logistics which accompany a one-day live entertainment event, are likely to differ substantially from those which are in evidence in longer production shoots. In particular, our members wish to draw the Commission’s attention to the following issues:-

1. The creation of a parallel framework of regulation when existing regulation is already in place to safeguard the needs of child artists, will inevitably create confusion within the industry. Our members are of the view that it is incorrect (as asserted within the cover note to the draft regulations) to state that no relevant legislation exists to protect child artists. On the contrary, our members point specifically to existing provisions within the Child Labour (Prohibition and Regulation) Act, 1986, statutes like the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012, all of which serve to protect children’s welfare and are applicable to all commercial entertainment activities. In our humble opinion, any attempt to create a distinct, but parallel framework, will only serve to create business uncertainty in a market which has, of late, been advocating tirelessly for the ease of business processes in an attempt to bolster innovation and investment.
2. The draft regulations propose the introduction of safety measures which not only run contrary to the Indian government’s commitment to single-clearance systems but which ultimately, due

to their wide scope, could render compliance unachievable. One such safety measure is the requirement for content creators, in compliance with Clause 4 of the Draft Guidelines, to register child artists with the district magistrate. We would suggest that this not be designated as a separate process but instead be integrated into the standard production application process. Furthermore, we are of the opinion that a centralised digital system of registration would go a long way to facilitate ease of reporting especially in those circumstances where multiple locations are utilised within a production – procuring the permission from the magistrate of each local area would not be as efficient as registration with a centralised online system.

A second proposed safety measure relates to the requirement that all persons involved in the production, who have contact with the child artist(s), be required to provide a certificate to confirm that he/she is not carrying an infectious disease (Clause 7(c)). Police verification of all staff interacting with children, shall also be conducted. Given the wide exposure any artist would ordinarily have to crew, fellow actors and indeed, the wider public, in case of outdoor shoots, limiting the interaction of a child to certain designated individuals would make compliance with this provision almost impossible to achieve. We would accordingly suggest that the implementation of these provisions be revisited to ensure that they are practicable and achievable and not overly burdensome. With respect to the police verification requirement, we would contend that all productions generally tend to engage professionals, most of whom have been vetted in advance by the producers. In addition, Clause 7(a) already requires producers to implement staff guidelines for interactions with children – this should provide a good degree of comfort in terms of the steps to be taken by producers to ensuring a child artist’s safety.

3. The draft regulations could potentially compromise content creators’ freedom of creative expression and their ability to tell powerful stories as a result of the restrictions imposed on the depiction of child artists on screen. Clause 5(c) of the Draft Guidelines highlights that “no child should be shown to be imbibing alcohol, smoking or using any other substance or shown to be indulging in any sort of antisocial activity and delinquent behaviour.” This is apparently in reference to Section 77 of the Juvenile Justice Act, 2015 however s77 only creates a criminal offence where children are given these products not where children are depicted using these products within a creative work on screen. In addition, Clause 7 (b) states that “A minor, especially below the age of 6 years, shall not be exposed to harmful lighting, irritating or contaminated cosmetics.” It is unclear as to what might be construed as “harmful” or “irritating”. Clear definitions of these terms will be required to ensure that producers fully understand their obligations when engaging child artists.
4. Clause 6(c) requires the attendance at all times of a registered nurse or midwife (alongside a parent or legal guardian) in scenarios where an “infant” is allowed to participate for more than one hour on a single day. It would be very helpful to our members if the term, “infant” could be defined but, in the interim, we would also humbly suggest that, given the fact that the parent or legal guardian is required to be present, there should be no need for an additional person to attend provided of course that medical facilities are available and reasonably accessible to ensure the infant’s continued health and well-being.
5. Clause 8(c) states that “The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be more than six hours, including the time spent in waiting for work on any day. No child shall be made to work overtime or between 7 p.m. and 8 a.m.” This is a

clear example of the need for a distinction to be drawn between a live entertainment show and a production shoot, which may span several months. Work hour restrictions are not always practical in respect of these latter productions as schedules are often hampered by unforeseen circumstances and subject to change. In addition, night-time shoots will require filming outside daylight hours and restrictions on the timing of a shoot could severely impact the authenticity of production. We would urge the Commission to consider what objectives these provisions seek to attain and how best to ensure that the child's safety is maintained while not inadvertently compromising the scheduling flexibility that productions necessarily require.

6. Clause 8(d) requires that a child be given a minimum of 1 day leave and that such leave be specified in a notice which is to be permanently exhibited on location. It is not specified what the period of working time needs to be before this 1 day leave entitlement is to be activated. We would be grateful if this could be clarified.
7. Clause 9(a) states that "at least twenty per cent, of the income earned by the child from the production or event shall be directly deposited in a fixed deposit account in a nationalised bank in the name of the child which may be credited to the child on attaining majority." Our members are concerned that there may be practical issues with the implementation of this provision not least, as a result of the possibility that the child artist may not in fact have an operational bank account. We would suggest that the Commission share its concerns with the industry in the hope that our members can collaborate with the Commission to find solutions which are both practical and easy to implement.
8. Clause 10(a) sets out a requirement that the producer ensures that the education of a child artist is not in any way compromised by the production. It is our members' view that the producer is unlikely to be privy to any detailed schooling arrangements which have been entered into by the parent/legal guardian on behalf of the child nor is the producer necessarily equipped to assess whether any substitute arrangements, as may have been put into place by a parent or guardian during the production, are indeed sufficient to ensure the reasonable maintenance of the child's education. Our suggestion would be that this provision be redrafted in a way so as to place an obligation on the producer not only to make a parent/legal guardian aware of the provisions of the Child Labour Act, 1986 and the Right to Education Act, 2009 but also to contractually obligate that parent or legal guardian to put suitable arrangements in place which would ensure (i) that the child artist's involvement in the production does not in any way compromise the education of that child artist and (ii) that the child artist maintains the minimum number of attendance days at school as may be required.

Similarly, although Clauses 10 (b) and (c) go on to require that a producer arrange both appropriate facilities and a private tutor for a child artist, we are of the view that this obligation should be tempered to the extent that this will only be necessary if the child artist is engaged in the production for a minimum number of days. We would also humbly suggest that the parent or legal guardian of a child artist be mandated to co-operate with a producer in the securing of appropriate facilities and the engagement of a private tutor, assuming of course that the child artist is to be engaged for the minimum time necessary to trigger this provision.

9. Tuning more generally to the draft guidelines, some of our members have drawn our attention to the fact that the mandate given to the Commission under Section 13 of the Commissions for Protection of Child Rights Act, 2005, also clearly outlines, in Section 13(1)(a) and Section 13(1)(j),

the powers of the Commission. These provisions grant the Commission the power to recommend measures for the effective implementation of existing statutes, powers of inquiry into complaints and the ability to take (*suo motu*) notice of matters relating to non-implementation or non-compliance with existing provisions. However, we understand that these provisions do not grant the Commission the power to issue guidelines that are binding on stakeholders. As regulators, including regulatory bodies in India, move to systems which are more self-regulatory in nature and the successes of implementation become evident, (as we have seen with the adoption of the IT Rules), we would urge the Commission to reconsider whether these guidelines should be drafted in a manner which makes them more akin to recommendations, as opposed to mandatory provisions, the breach of which could result in severe penalties for content producers. The content industry has proven to be a driver of growth for the digital economy but stringent measures which are overly burdensome or which make compliance especially challenging, are likely to discourage content production and the growth of the creator economy in India.

As we noted at the outset of this submission, there are existing frameworks relating to content across different media, including the Cable Television Networks (Regulation), Act, 1995 and the Information Technology (Intermediaries Guidelines) Rules, 2021 which provide guidelines in respect of content of OTT platforms. Additionally, there are well established and recognized self-regulatory frameworks.

- a) Broadcasting Content Complaints Council (BCCC) under the Indian Broadcasting and Digital Foundation (IBDF) for television.
- b) The Digital Media Content Regulatory Council (DMCRC) and Digital Publishers Content Grievances Council (DPCGC) for OTT or online curated content publishers.
- c) The Advertising Standards Council of India (ASCI) for advertisements.

All of these frameworks are in place to effectively deal with content regulation. We would humbly urge the Commission to avoid introducing an additional framework which could add uncertainty for an industry which is at the epicentre of both innovation and the digital economy. Our members are always open to working with regulators to understand concerns and address them in a way that best ensures the continued growth of the local creative industry and the telling of powerful, authentic stories. We stand ready and would welcome the opportunity to answer any questions the Commission may have.

Thank you very much for your consideration,

Sincerely yours,



Louis Boswell  
Chief Executive Officer  
Asia Video Industry Association

AVIA's leading members include: Amazon, AsiaSat, Astro, BBC Studios, Discovery Networks, The Walt Disney Company, WarnerMedia/HBO Asia, NBCUniversal, Netflix, now TV, Star India/Hotstar, TrueVisions, TV5MONDE, ViacomCBS Networks International, A&E Networks, Akamai, Baker McKenzie, BARC, beIN Asia Pacific, Bloomberg Television, Brightcove, Canal +, Signal, Converge ICT, Dolby, Eutelsat, France 24, Globecast, Globe Telecom, Invidi, iQiYi, Irdeto, Intelsat, KC Global, La Liga,



ASIA VIDEO INDUSTRY ASSOCIATION

Limelight, Magnite, Mayer Brown, Measat, MediaKind, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Planetcast, Premier League, Singtel, Skyperfect JSAT, Sony Pictures Television, SES, Synamedia, TMNet, TV18, TVBI, The Trade Desk, Vidio, Viaccess, Viacom18, White Bullet and Zee TV