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Ministry of Information and Broadcasting  
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### **COMMENTS ON THE DRAFT BROADCASTING SERVICES (REGULATION) BILL, 2023**

The Asia Video Industry Association (AVIA) welcomes the opportunity to provide comments on the consultation regarding the *Draft Broadcasting Services (Regulation) Bill, 2023 (the “Draft Bill”)*. 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.

AVIA appreciates the opportunity to comment on the important issues covered in this consultation paper. This is a comprehensive consultation, covering a number of issues. However, AVIA notes that this consultation paper was issued only days after the deadline for comments on the Telecommunications Regulatory Authority of India (TRAI)’s own pre-consultation on formulating a National Broadcasting Policy (NBP) at the Ministry of Information and Broadcasting (MIB)’s behest. AVIA, along with a number of other associations and companies, have submitted detailed feedback on the concepts which should form the basis of a new NBP. The NBP should outline a long-term vision and policy map for the broadcasting industry, laying out a framework for future regulatory changes. It would therefore seem prudent to finalise the consultation process for the NBP prior to seeking input on a Broadcasting Services (Regulation) Bill. Indeed, there is real risk that having two consultations running in parallel may cause confusion and potentially overlap existing regulations, leading to policy uncertainty.

Additionally, we note that the Telecommunications Bill was passed by Parliament on 24 December 2023, with the provisions coming into force on such date as may be notified. Likewise, there are multiple TRAI consultations which, although now closed, contain a number of outstanding recommendations which may impact the direction of any NBP or Draft Bill. These include “*Regulating Converged Digital Technologies and Services – Enabling Convergence of Carriage of Broadcasting and Cable services*”, “*Issues relating to Media Ownership*”, “*Review of Regulatory Framework for Broadcasting and Cable services*” and “*Regulatory Mechanism for*

*Over-The-Top (OCC) Communications Services, and Selective Banning of OCC Services*". The outcomes of these could provide valuable input in the development of the Draft Bill and we recommend that comments and recommendations to these consultations should be taken into account in any Broadcasting Services Bill. Indeed, in the Explanatory Memorandum to the Draft Bill it states that "A streamlined regulatory framework will bring clarity, consistency, and flexibility to regulations, while strengthening consumer protection and promoting ease of doing business".

In specific relation to the proposed regulation on online content, AVIA would suggest that the Draft Bill, as currently written, appears to be inconsistent with the IT Rules, 2021, which currently regulates Online Curated Content (OCC) content. Under the IT Rules, 2021 the online content industry has been growing, leading to an increase of nearly 20% of original content being produced for streaming platforms in 2022 compared to 2021. India is currently the fifth largest media and entertainment market in the world and feedback from the industry and Government suggests that the IT Rules, 2021 have been working very effectively to foster this economic growth whilst balancing consumer welfare and artistic freedom. We would recommend therefore that an IT Rules, 2021-style structural separation be brought into the Draft Bill's framework, i.e. with a separate chapter within the Draft Bill which would mimic the IT Rules, 2021. This should envisage a similar mechanism, where the regulation of two distinctly different activities is housed within the same regulation but with watertight separations, as the IT Rules do in their treatment of social media intermediaries and such Online Content Curated Content Platforms (OCCPs). Furthermore, harmonisation with the IT rules would mitigate the chances of regulatory uncertainty or confusion.

Online streaming services are a very different style of content platform, offering consumers a push vs pull method to access their content, distinct from traditional TV broadcasting. Broadcast television delivers content to mass audiences/viewers as per a pre-determined programming schedule. On OCC services, consumers make informed decisions on what they want to watch, when they want to watch and on what type of device, they want to watch it on. As these are distinct activities, they require distinct regulatory approaches and such OCCPs should not be clubbed with conventional broadcasters to avoid overlap and confusion. Transposing legacy broadcasting regulations onto digital services would affect ease of doing business and hinder the segment's growth. It would also hamper the prospects of achieving the Prime Minister's vision of making India a five trillion dollar economy by 2025.

We also note that recently the Telecom Disputes and Settlement Appellate Tribunal (TDSAT) held that OCC services are not the same as TV channels<sup>1</sup>. As stated above, OCC services are already regulated under the IT Rules, 2021 and there is no evidence of any market or regulatory failure which would now necessitate OCC services to additionally be brought under the Draft Bill. Indeed, we note that even whilst including OCC services in the Draft Bill, specific caveats are included just for OCC services which suggest that they cannot be treated the same as other broadcasting types of services and thus cannot be regulated under existing broadcasting

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<sup>1</sup> [https://tdsat.gov.in/Delhi/services/daily\\_order\\_view.php?filing\\_no=NDM2MzM=](https://tdsat.gov.in/Delhi/services/daily_order_view.php?filing_no=NDM2MzM=)

regulations. If OCC services are to be included, AVIA recommends that they should be clearly defined and treated differently with differentiated, light touch regulations, consistent with global best practice. Further, to foster industry growth, all digital platforms engaging in systematic content dissemination, regardless of news or non-news, including websites and social media, should operate under a level playing field and consistent regulatory/compliance framework, and that OCCPs ought not be singled-out.

At any particular moment in time, online catalogues carry vast amount of content, both domestic and global. Introduction of a need for pre-certification by a Content Evaluation Committee (CEC) creates uncertainty around existing catalogues and introduces additional layers of regulation, inconsistent with PM Modi's Ease of Doing Business goal. The requirement for a CEC would disproportionately impact smaller businesses as they would need to redistribute resources allocated for content innovation towards meeting this regulatory requirement. It also potentially delays content's time-to-market, thereby opening the door to piracy.

Prime Minister's vision of "Minimum Government Maximum Governance" lays out a goal to create a system where administration and good governance are run without unnecessary interference, something self-regulation models deliver. The proposed framework in the Draft Bill is overly prescriptive and unnecessary; broadcasters and OCC services already have in-house teams that evaluate content.

The existing self-regulatory framework, including Standard & Practices (S&P) teams within media companies, content grievance officers and industry-level associations (like BCCC and IDMIF), has demonstrably proven effective in handling the vast majority of content-related issues. In this regard, it may be noted that S&P teams diligently review and sanitize content, and the low complaint rate speaks volumes about their success. Additionally, the grievance redressal mechanisms provided at entity level as well as by industry associations, with their suo-motu powers and/or ability to handle escalated complaints, offer a robust and efficient solution. Moreover, the constitution of these voluntary grievance redressal mechanism aligns with recommendations laid out by both the Ministry of Information & Broadcasting (MIB) and the Ministry of Electronics & Information Technology (MeitY) including in CTN Rules as well as IT Rules. Therefore, mandating additional CECs under the Draft Bill is inter-alia unnecessary and potentially burdensome, and the existing self-regulatory framework is well-equipped to address content concerns effectively.

Introducing bodies such as the Content Evaluation Committee (CEC) or the Broadcast Advisory Council (BAC) for all types of broadcast services appear to overlap and potentially undermine existing systems as it can create implementation challenges and harm creative freedom. As this can severely impact the self-regulation mechanism, not only can it negatively impact creative freedom, but it can lead to delays in content production, affect the diversity of content OCCPs can offer and impede the growth of the industry. As noted above, all platforms currently perform their own due diligence and practice accountability, addressing grievances that may arise through self-regulation mechanisms in place. Therefore, the implementation of a CEC or

BAC runs contrary to the goal of “Minimum Government” and does not support the Ease of Doing Business principles.

AVIA would like to offer some specific comments on the current draft of the Draft Bill, 2023:

- The Draft Bill does not clearly outline the two distinct activities of providing carriage/distribution services and content/programming services which require differing regulatory approaches. Rather, the Draft Bill works on the principle of an entity-based classification for “broadcast network operators” and “broadcasters”. Global best practice separates the regulation of content from the regulation of carriage, and we recommend that the same principles should be applied in the Draft Bill, with clear obligations stated for each.
- The Draft Bill defines broadcasting networks and broadcasting network operators and includes over-the-top broadcasting service operators within this ambit, along with traditional broadcasters like radio, Direct to Home, and local cable operators. This has potential to lead to the regulation of starkly different activities by the same rules. *Inter alia*, this can also have concerning consequences like requirements of compulsory transmission of certain channels and even CDN regulation. Thus, to avoid encountering such issues, we would propose that OCCPs (and each sub-industry) be regulated under the Bill by being encapsulated in a separate chapter altogether, and any redundancies and overlaps that may arise due to this be removed. Each chapter will cover complete and separate regulatory frameworks for each sub-industry to avoid overlap and confusion.
- The Draft Bill does not clarify the extent of the TRAI’s powers; whilst the need to separate content regulation from carriage regulation has been under discussion for a number of years and, in practice, while the separation partially exists, with the TRAI regulating carriage and the MIB regulating content, it is not enshrined in law. This Draft Bill would be a good opportunity to finally codify this separation and bring much-needed clarity to the broadcasting industry.
- The Draft Bill relies on a number of pieces of delegated legislation, including a Programme Code and Advertisement Code, but does not set out any principles to shape these Codes, simply leaving them to the delegated executive. This carries the risk of Codes being simply imported from previous pieces of legislation with no ability for consultation prior to implementation and no consideration taken as to existing Codes which might already be in effect.
- Instead of imposing a programme and/or advertising code on OCC platforms, we advocate for a statutory requirement that prohibits content that violates applicable laws. This approach aligns with the distinct nature of OCC technology and respects viewer choice. Age-rating and content descriptors already empower viewers to make informed decisions, rendering additional programming and advertising codes

unnecessary. These legacy codes, designed for linear television, are less relevant within the on-demand, personalized viewing experience offered by OCC platforms. In view of the above, the Draft Bill should do away with codes, and instead, specify that no content ought to be transmitted that is in violation of applicable laws in the country.

Finally, we note that for the growth of the industry, policy stability and certainty is of key importance. The Draft Bill has created new frameworks, concepts and terminologies which can lead to confusion and problems in the industry. Examples of these new concepts and terms include:

- Use of the term OCC Broadcasters instead of OCCP; OCCP is a term introduced in the 2021 IT Rules and has become widely used.
- Broadcasting Advisory Council (*Section 27 and 28*) instead of an Inter-Departmental Committee;
- A Programme Code instead of Code of Ethics. The Code of Ethics is already prescribed in the IT Rules, 2021, and sets out principles-based, light touch obligations applicable to OCCPs in regard to content whereas the Programme Code, as currently drafted in the Draft Bill, states that different Programme Codes will be developed for different broadcast mediums, with no clarity on what this might look like.

AVIA recommends that consistency of language and approaches from the IT Rules 2021 are applied in the Draft Bill, rather than creating confusion with new terminology or approaches, some of which remain as yet undefined. Indeed, having the Code of Ethics continue, something the MIB Joint Secretary has recently stated work well, would ease compliance and regulation.

AVIA welcomes the Ministry of Information and Broadcasting's engagement with industry on these issues and we continue to advocate for ongoing discussion and dialogue. We remain ready to provide further input as needed.