

## Market Summary – India

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06/10/2021

## [Section 31D, Copyright Act](#)

As you may recall from the recent R-AP meeting, there has been a longstanding debate in India about whether content delivered via over the top (OTT) services (and in our case, specifically, online curated services) falls within the scope of S31D of the Copyright Act, 1957. This provision has traditionally permitted the grant of statutory licences to allow "broadcasting organisations" to broadcast or communicate a *literary work* or *musical work* and *sound recording* (that has previously been published) subject only to (i) prior notice being given to the copyright owner (in the manner set out within the enabling provision) and (ii) payment of a fee, as determined by the Intellectual Property Appellate Board of India. Recently, the Department Related Parliamentary Standing Committee on Commerce ("DRPSC"), in submitting its report on its review of the IP regime in India, has recommended that S31D be amended to bring "OTT platforms...or digital broadcasters" within the scope of the legislation, apparently with a view to create "a level-playing field".

Given the focus of this DRPSC proposal pertains primarily to audio and additionally, there may not have been common interest amongst our members, we have decided not to lodge a submission.

## [TRAI Tariff Order 2.0 \(Part 1\)](#)

You will recall that TRAI has attempted, with NTO 2.0, to introduce conditions on channel bouquet formation and impose maximum retail prices for individual channels (from Rs19 per month to Rs12 per month). The Supreme Court was due to hear the case at the end of September. It has refused to stay the Bombay High Court's 30 June order and has postponed the hearing to 30 November 2021.

03/11/2021

## [TRAI consultation paper on Market structure/ Competition in Cable Television Services \(Part 1\)](#)

The history of this paper goes back to 2012 when MIB sought recommendations from TRAI on market dominance concerns within the cable television sector. MIB has reached out again more recently to TRAI to ask it to conduct a fresh review and provide recommendations on market competition given the rapid emergence of digital delivery and the expansion of the media and entertainment sector in general. TRAI issued the consultation paper on October 25 2021, and has invited comments from stakeholders to be submitted via email by **22 November 2021**. A [link](#) to the consultation paper is attached here. We will be reviewing the report and circulating draft comments as soon as possible.

06/12/2021

## [TRAI Consultation Paper on Market Structure/Competition in Cable Television Services \(Part 2\)](#)

I circulated a summary calling for comments given that much of the input required was in relation to the experience of commercial negotiation on the ground. We have not had any feedback from our members and submissions are due today. We hope that there will be additional opportunities in which to comment.

## [TRAI Consultation Paper on establishment and regulation of earth station satellite gateways](#)

In order to submit our comments as part of a consolidated SIA response. We were due to send these over last Friday to SIA. That opportunity has now passed but please do let me know if you have any comments on some of the questions raised and circulated to those with relevant interest in the establishment of earth station gateways.

03/03/2022

## [The proposed Personal Data Protection Bill \(Part 1\)](#)

It has been met with much resistance from global technology companies who state that they are "united by the need to process, protect and transfer proprietary data" within the countries that they operate in, including India. The inclusion within the bill of non-personal data, restrictions on cross-border data transfers and requirements for data localisation are therefore of particular concern. Suggestions from various stakeholders who have provided comment have suggested that additional stakeholder consultations be conducted to ensure the proposed legislation is in line with global trends and practices.

## [New Tariff Order 2.0 \(Part 2\)](#)

TRAI has extended the time for implementation of the *New Tariff Order 2.0* to 1 June 2022. You will all recall that the previous extension granted was until April 2022. The Supreme Court case brought by broadcasters to challenge the tariff order, has been formally withdrawn although we understand that TRAI has indicated its willingness to "address broadcasters' grievances" through consultation.

## [Guidelines for Advertising and Promotion of Virtual Digital Assets and Services - ASCI on Crypto and NFT](#)

The Advertising Standards Council of India (ASCI) last week published "guidelines for advertising and promotion of virtual digital assets and services." The guidelines are applicable to all advertisements related to virtual digital assets (VDA) which are "commonly referred to as crypto or NFT [non-fungible token] products," ASCI explained.

20/04/2022

## [Personal Data Protection Bill \(Part 2\)](#)

You will recall that when we last updated you all, the Personal Data Protection Bill had been met with much resistance from the global technology industry insofar as it sought to (i) include non-personal data, (ii) impose restrictions on cross-border data transfers and (iii) require data localisation for certain forms of sensitive data. Recent speculation in the press suggests that India is looking to set aside this bill and draft a completely new privacy bill which more effectively addresses the changing technology landscape. Stakeholders appear to agree - the proposed bill was due to be tabled in Parliament in the budget session in February 2022 – that has not been done.

## [Media Ownership consultation paper \(Part 1\)](#)

On 12 April 2022, TRAI published a lengthy [consultation paper on media ownership](#). The premise is that a concentration of media ownership may restrict the freedom of speech and expression which is enshrined in article 19 of the Constitution and that it is accordingly incumbent upon the State to prevent media concentration and thereby, promote "viewpoint plurality". Special mention is made of vertical integration within the broadcasting sector and the potential negative impact that may have on competition. TRAI had been asked to examine the landscape in the past and found no reason to propose restrictions. MIB has asked TRAI to revisit the study given the advent of digital technology and TRAI has, in turn, called for comments from stakeholders on the need, nature and level of safeguards required with respect to horizontal and vertical integration in the broadcasting- and distribution media sectors.

The paper acknowledges the resistance from some local players to State intervention given recent news content partnership agreements signed between local news providers and Google, but TRAI argues that tech giants may in the future "become digital players themselves", suggesting that some

regulatory regime needs to be put into place now. In addition, concern is expressed about the financial power these tech giants have to acquire smaller, local players and so reduce media pluralism.

The paper goes on to set out the roles of (i) the Competition Commission, (ii) Securities Commission, and (iii) National Company Law Tribunal in India and how they each contribute to the creation of a level playing field in India. In addition, it makes reference to the appointment of an advisory committee by the Department for Promotion of Industry and Internal Trade to curb digital monopolies and the implementation of the Government's IT rules of 2021 with its three-tiered grievance system. All of these serve to ensure fair competition but TRAI argues that self-regulation within media is not enough and that some form of enforcement tool/power is required. Specific questions for stakeholders range from whether there is a need to monitor (i) cross-ownership (acknowledged as a pure economic interest) and (ii) control (the power to influence decisions in a company) to whether there a self-regulatory regime should even exist? TRAI further invites suggestions on the criteria to measure ownership and control, how to enforce those criteria and whether certain entities should be restrained from entering the media sector on the basis of public interest. It then proceeds to highlight the fact that some named media companies control several channels across genres which impact local culture and belief systems and questions which media (tv, print, OTT) best encourages viewpoint plurality and which genres should be regulated to ensure viewpoint plurality.

A technical analysis of what constitutes "market" and "concentration" in that market, follows with an invitation for suggestions on how to regulate that concentration. TRAI asks whether an entity should even be allowed to have an interest in both broadcasting- and distribution entities and what the ceiling of equity should be to measure "control". Finally, it examines whether the introduction of additional mandatory disclosures for media companies might be effective in monitoring cross-media ownership, what the nature of these disclosures should be and for what periods of corporate operation. Submissions are due by 10 May 2022 and we would welcome any feedback you may have on the questions posed in the consultation paper.

### [Recommendations on Auction of Spectrum in Frequency Bands identified for 5G](#)

TRAI, on 11 April, also published its "*Recommendations on Auction of Spectrum in Frequency Bands identified for 5G*" based on the stakeholder consultation is conducted and which expired on February 15, 2022. I have included the [link](#) to its recommendations below.

### [TRAI's consultation paper on Ease of Doing Business in the Telecom and Broadcasting Sector in India \(Part 1\)](#)

We made a [submission](#) on TRAI's consultation paper a few months back. A public consultation will be held tomorrow (21 April 2022) should anyone wish to attend. Either Clare or I will attend that briefing and share any key points with the R-AP members afterwards. Should you wish to join kindly register. Sign in time is 1030am (IND time)

07/06/2022

### [Media ownership consultation paper \(Part 2\)](#)

You will recall that I shared with you all a summary of the Media Ownership consultation paper proposed by TRAI on April 20 2022. [Submissions](#) were initially due on 10 May 2022 but the deadline was extended until 7 June . Clare sent you a reminder a few weeks back – a big thank you to those of you who have shared their comments/insights. I am incorporating the last few member comments and will lodge the document later today.

## [TRAJ Tariff Order 2.0 consultation paper \(Part 3\)](#)

We prepared a draft which we circulated for comment and have lodged the submission, which was due last week on 30 May 2022. A [copy of the final submission](#) is available on our website.

## [TRAJ's consultation paper on Ease of Doing Business \(Part 2\)](#)

A further public consultation was held on April 26 after submissions were lodged. Nothing material came of that consultation save for stakeholders repeating the content of their written submissions. It does however appear that many of the stakeholders present shared our concerns about the impact on innovation, growth and investment if business continued to hamper by regulatory barriers.

25/07/2022

## [New Draft Regulations from Guidelines for Child Adolescent Participation in the Entertainment Industry and any Commercial Activity \(Part 1\)](#)

We also wanted to draw your attention to new draft regulations which have been proposed by the National Protection of Child Rights in India, and which relate to the participation by children in the entertainment industry. We are in the process of finalising the draft submission which we will circulate shortly however, given that it was brought to our attention very late and the very tight turnaround time, it is our intention to lodge it by **5pm on Monday 25<sup>th</sup> July (India time)**. We have requested an extension and will advise members if that is granted should some of you wish to provide additional comments. It is our intention to address those provisions which would make production infinitely more cumbersome in terms of process as well as those where compliance would be virtually impossible to achieve. No distinction has been drawn in these guidelines between a live entertainment show and a 6-month on location shoot – needless to say, that is something which will need to be addressed. A short summary of the core provisions of these draft guidelines is set out below:-

*The draft 'Regulatory Guidelines for Child Participation in the Entertainment Industry' covers television programmes, including reality shows, TV serials, news and informative media, movies, content on OTT platforms and social media, performing arts, advertising or any other kind of involvement of children in commercial entertainment activities.*

*The stated aim to protect child artistes from physical and psychological stress, while ensuring a healthy work environment for them.*

*The draft requires that:*

- Producers obtain permission (to involve a child in a shoot) from a district magistrate located in the shoot location and additionally requires that a disclaimer be included on the actual content itself confirming that the child has not been subjected to abuse or exploitation.
- No child should be allowed to work for more than 27 consecutive days.
- The child shall participate in one shift each day with a break after every three hours and not be made to enter into an agreement for rendering any service as a bonded labourer under the Bonded Labour System (Abolition) Act, 1976.
- The producer must ensure that the school education of children engaged in the shoot is not affected. A child excused from school attendance because of engagement in the entertainment industry shall be taught by a private tutor appointed by the producer.
- At least 20 per cent of the child's income from the production or event has to be directly deposited in a fixed deposit account in a nationalised bank in the name of the child to be credited on becoming an adult.
- A child shall not be cast in a role or situation that is inappropriate or causes distress while stating that the age, maturity, emotional or psychological development of the child must be taken into consideration.

- Production units have to ensure that the work environment is safe and the children are not exposed to harmful lighting, irritating or contaminated cosmetics.
- Production facilities must be appropriate, taking into account the age of the child and children should not be required to share dressing spaces or rooms with adults, especially of the opposite sex. Children should not be exposed to ridicule or behaviour that could affect their emotional health.
- Children should not be shown imbibing alcohol, smoking or indulging in any anti-social activity and delinquent behaviour.
- No child should be engaged in any situation involving nudity and programmes based on victims of child abuse should be sensitively handled.
- Media and production houses shall ensure that child victims of rape, other sexual offences, trafficking, drug abuse, elopement, organized crimes, and children used in armed conflicts are guaranteed anonymity for life.
- An advertisement for junk foods, including chips, carbonated beverages and such other snacks and drinks shall not be advertised during a program meant for children or on a channel meant exclusively for children.
- Every person involved in the production, who may be in contact with child artists, will be required to submit a medical fitness certificate to confirm that he/she is not carrying an obvious contagious disease before attending a shoot with children and police verification checks of such persons shall be undertaken.

Strict penal provisions, including fines and imprisonment, shall apply in instances where the guidelines are breached.

18/08/2022

## [Guidelines for Child Adolescent Participation in the Entertainment Industry and any Commercial Activity \(Part 2\)](#)

You will all recall that I shared with you, at the end of July, a draft submission with respect to the proposed NCPCR regulation on child artists. A copy of that draft submission is attached for ease of reference. The deadline was cancelled after lobbying by industry. A meeting for interested parties has now been called by NCPCR for the 23<sup>rd</sup> August. Consensus within the industry is that submissions will need to be filed once that meeting has taken place. Our consultant in India will attend that meeting on our behalf. We will share with you a summary of those discussions as well as any revised submission (we will include any additional comments received) prior to lodgement.

06/09/2022

## [Guidelines for Child Adolescent Participation in the Entertainment Industry and any Commercial Activity \(Part 3\)](#)

A discussion was held on 23 August 2022 between industry stakeholders and the NCPCR about the recent proposed regulation around the participation of child artists within the media industry. As you may recall, our draft submission was shared with you in our last update, circulated on 18 August 2022. The key takeaway seems to be that the regulator was at pains to point out that these are not “regulations” per se only “recommendations”. This is obviously a fairly important development as several of our members had pointed out that they were of the view the intended ‘regulations’ were ultra vires. Unless any of our members have any additional comments on the draft submission we shared, we will proceed to formally lodge the submission by the end of this week.



## [Personal Data Protection Bill \(Part 3\)](#)

As we advised you previously, the Indian government withdrew the PDPB after extensive pushback from industry. A recent article in the press quoted the Ministry of Electronics and Information Technology (MEITY) as saying that the new bill “was only a few months away”. He drew a clear distinction between privacy and data protection, stating that the PDPB was about how companies collect-, store- and process data and that the purpose of the PDPB was not “to do anything with privacy”. The Minister went on to indicate that the government’s exemption from compliance with the PDPB will remain on the basis that the government is not “monetizing” the data but instead using the data for a different purpose i.e. governance and public service.

TRAI consultation at 1100am (IST) on Thursday 9 September 2022 – You may recall that we drafted and lodged a submission on the consultation paper entitled, *Issues related to New Regulatory Framework for Broadcasting and Cable services* dated 07.05.2022. A copy of that submission is attached for ease of reference. An open house discussion is being held this coming Thursday. AVIA will attend and share with you any key discussion points, but should you prefer to attend, please register in advance via the TRAI website on the OHD notification page at the [URL](#).

23/09/2022

## [Telecommunications Bill 2022 \(Part 1\)](#)

A [new consultation paper](#) on telecommunications regulation, has been issued by the Department of Telecommunications – see below. We have not yet had an opportunity to review the draft or assess its impact on our industry but will do so as soon as possible. So far, we understand that the intention is to regulate internet-based communication services, requiring platforms to obtain a license to operate in India. The draft bill seeks to consolidate and update three old rules — Indian Telegraph Act, 1885, Indian Wireless Telegraphy Act, 1933 and The Telegraph Wires (Unlawful Protection) Act, 1950. Concern is being expressed about how this new bill will fit with the existing IT Act as well as the revamped Information Technology Act (The Digital India Act) and the upcoming Personal Data Protection (PDP) Bill.

IMTF, an Inter-Ministerial Group, has issued a paper on recommended regulations for the online gaming sector - attached above. This report includes advice from MIB on advertisements around online gaming content. While not directly applicable to many of our members, the measures have clearly been introduced with a view to protecting India’s youth from the impact of certain content.

12/10/2022

## [Telecommunications Bill 2022 \(Part 2\)](#)

The Ministry of Communications had initiated a public consultative process to “develop a modern and future-ready legal framework in telecommunication”. The Ministry has now prepared the draft Indian Telecommunication Bill, 2022. An [explanatory note](#) produced by MIC is attached.

The key reasons advanced for the new draft are (i) technology has evolved and a new, future-ready regulatory framework is required; (ii) there is a need to address the use and assignment of spectrum and (iii) an acknowledgement of the importance of cybersecurity. The Ministry also recognises in the Preamble that telecommunication is a key driver of socio-economic development and ensuring affordable, reliable and secure services for users should be a priority.

“Telecommunication” is defined as “broadly as transmission, emission, or reception of **any** messages, whether by wire, radio, optical or other electro-magnetic systems. The definition of “telecommunication services” is similarly wide **and explicitly includes broadcasting services and OTT services made available to users via telecommunication**. Key for our industry purposes is the

recognition of the right of the regulator to issue licenses for telecommunication services, which shall be compulsory for a service provider to obtain. Authorisation is also required from the regulator to utilise wireless equipment, including any wireless transmitter that is capable of use for broadcasting or emission of wireless communication. For providing telecommunication infrastructure, an entity shall only have to obtain a registration, not a license. This will simplify the setting up of infrastructure. (Telecommunication infrastructure includes telecommunication lines, posts, telecommunication towers etc.)

The Draft Bill lays down explicit statutory framework and regulatory clarity for the Central Government to undertake spectrum assignment. The underlying philosophy of the Draft Bill is that spectrum assignment should serve the common good and ensure widespread access to telecommunication services. The Draft Bill provides for assignment of spectrum primarily through auction. For certain specified functions relating to Government and public interest like defence, transportation, research, etc. the Draft Bill provides an enabling framework for assignment of spectrum through administrative process. Business continuity is through the following provisions:

- a. Existing spectrum assigned through auction will continue till the duration of such assignment.
- b. Existing spectrum assigned through the administrative process shall continue to be valid on the terms and conditions on which it had been assigned, for a period of five years from the day the Draft Bill comes into force, or the date of expiry of such assignment, whichever is earlier.

Finally, based on the recognition that digital services are increasingly accessed through telecom services, provisions which prescribe measures to ensure the protection of telecommunication users, are incorporated within the draft to prevent harassment of users from unsolicited calls and messages.

Ultimately, the most surprising development is the fact that the bill seeks to regulate not just the infrastructure that facilitates communication but also the content services that sit on top of that infrastructure.

Comments have been invited and submissions are to be made by 20/10/2022. While we understand many stakeholders have requested an extension, this has not thus far been forthcoming. Please do let me know as soon as possible and in any event by close of business (Singapore time) on Monday 17 October if you have any comments or suggestions for incorporation in an industry submission.

11/11/2022

### [Telecommunications Bill 2022 \(Part 3\)](#)

After releasing the draft Indian Telecommunications bill with a very tight turnaround time, the DoT agreed to an extension. A huge thank you to so many of you for sharing your input and feedback. I collated all the comments and incorporated them into the draft submission we circulated a few weeks back. The final version was formally lodged with DoT India yesterday, 10 November (as per the formal extension granted to stakeholders). A [copy](#) is attached for ease of reference.

As part of our fireside chat with the Secretary of MIB at the summit event last week, the issue of spectrum auction (as addressed within the Draft Indian Telecommunications Bill) and its potential impact on the much anticipated revised uplinking and downlinking rules of television channels, was raised. The new rules have now been published – Please find attached a copy of the rules, the press release and the guidelines. The guidelines are largely aimed at easing business processes e.g. (i) the current one-year approval has been extended to a 5-year permission period for a news agency; and (ii) foreign channels can now be uplinked from Indian teleports. Please note that channels uplinking in frequencies other than C-band, WILL BE REQUIRED to encrypt their channels.



MEITY has notified amendments to the IT Rules. The impact is twofold – to afford users greater protection and to introduce an appellate mechanism for grievance redressal. The original rules only required a company to inform their users of the platform’s rules and regulations, privacy policy and user agreement. Providers are now required to be much more pro-active – they have to make “reasonable” efforts to prevent prohibited content from being shown on their service and must ensure that their users are complying with the rules of the platform. Removal of prohibited content is also now required within 72 hours of a complaint being made. Requiring a platform to protect a user’s Constitutional rights’ extends the obligations of the provider from what was contained within the original rules. The redressal mechanism has been introduced to provide recourse if the complainant is dissatisfied with the grievance officer’s order. The solution offered to complainants is the establishment of a Grievance Appellate Committee (GAC) which will be comprised of a government officer and two independent representatives. A complainant can file an appeal against an order of a grievance officer within 30 days. It remains unclear whether the complainant will still have the option to proceed directly to court following an order or whether this GAC is a required intermediary step before filing a court action post the grievance officer’s determination.

19/5/2023

### [TRAI consultation on “Assignment of Spectrum for Space-based Communication Services”](#)

Last week AVIA made a submission to the TRAI consultation on “Assignment of Spectrum for Space-based Communication Services”. TRAI’s consultation, whilst highly technical in nature revolved around a suggested concept of auctioning satellite spectrum. Based on feedback from our members, AVIA’s submission focused mainly on the lack of demonstrable need to auction spectrum which could potentially fragment the bands in favour of those with more resources, regardless of need and certainly to the disadvantage of the consumer.

### [Guidelines for Child Adolescent Participation in the Entertainment Industry and any Commercial Activity \(Part 4\)](#)

You may recall that last year we made a submission to the National Commission for the Protection of Child Rights regarding proposals to change the draft guidelines for child artists within the entertainment industry. The final guidelines (Guidelines for Child and Adolescent Participation in the Entertainment Industry and any Commercial Activity) have now been published and can be found [here](#). Some of our recommendations were taken into account, including the removal of some of the more onerous requirements on working hours, certificates of contagious diseases etc.

### [TRAI Ease of Doing Business \(Part 3\)](#)

Back in early 2022 AVIA made a submission to TRAI on the Ease of Doing Business. TRAI’s final report on this was issued on 2 May and can be found [here](#). TRAI makes a number of recommendations and whilst there is nothing particularly new or startling in their findings, it is reassuring to note that they do recommend implementation of a user-friendly, transparent and responsive digital single window system with clearly defined timelines. Also recommended is that, where possible, for existing service providers, the relevant Ministry/Department should take an approach of “prior intimation” rather than “prior approval”. For ease, I’ve attached an extract of the report which gives a summary of all the recommendations.

4/8/2023

## [Tobacco Law](#)

On the Tobacco Law, you will recall that the [Ministry of Family Health and Welfare \(MoFHW\)](#) announced on 31 May that by the end of August all OCC services must carry tobacco advisories. Along with a number of other associations, AVIA made a submission to the MoFHW, plus the Ministry of Information and Broadcasting (MIB) and the Ministry of Electronics and Information (MEITY). A copy of the letter to the MoFHW is [attached](#). The key points that we raised were the lack of consultation prior to the announcement, the fact that OCC players are already classifying content, including based on tobacco usage, the issues around how OCC content is consumed vs traditional means, and the challenge for content creators, especially with an international angle. At the time of writing, we have not yet had a response. However, we understand that the MIB hosted a meeting with industry representatives to discuss this issue. They were sympathetic but clear that given the announcement had already been made, there is little that can be done to prevent its implementation, only try to carve out some concessions on, for example, the timeline for implementation, mode of implementation etc. We are engaging with the other associations as to the next best steps.

## [Satellite Spectrum Auction Consultation](#)

For the Satellite Spectrum auction consultation, AVIA made a submission to TRAI noting that auction of such a commodity was not appropriate. Many other associations and companies have also written submissions with a similar argument. TRAI and DoT appear wedded to the concept of auctioning spectrum but, as of now, no formal announcement has been made.

## [Digital Advertising Policy 2023](#)

You may have seen the [MIB announcement](#) from 18 July issuing an advisory regarding a requirement for online curated content platforms to incorporate age classification in all promotions and publicity material. This refers back to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 inter alia require publishers of online curated content to “...strive to include classification rating and consumer advice for their programmes in any print, televised or online promotional or publicity material and prominently display the classification rating specific to each such content.”

Finally, we believe that MIB met with the IAMAI to discuss what they perceive as the *failure of self-regulation*. MIB suggested that IAMAI should work with relevant India providers to develop a proposal for pre-censorship, i.e. requiring all content to be submitted to some form of script review, possibly by the self-governance body, prior to development. Whilst this is not yet a formal regulatory consultation, it is clear that MIB are keen to try to impose some sort of control over what they deem as unsuitable content. We will continue to monitor closely and welcome updates from members as necessary.

12/12/2023

## [TRAI's National Broadcasting Policy & MIB's Broadcasting Services \(Regulation\) Bill](#)

As you may have noticed, India has been especially active in the last few months, with the [TRAI Pre-consultation on Broadcasting Policy](#) and now the [MIB consultation on the Broadcasting Services Bill](#), which we circulated for members in November. I have attached the [submission](#) we made on the TRAI Pre-consultation and am pleased to confirm that MIB has agreed an extension on the Broadcasting Services Bill to 15 January. With thanks to those who have already sent us comments, I'll circulate our draft submission shortly. It is clear, however, that there is a lot of concern with the MIB consultation, as well as some confusion between the TRAI and MIB consultations.

Finally, we were fortunate to have the TRAI Acting Chairperson attend the Policy Roundtable and OTT Summit, as a keynote speaker. Whilst she was unable to offer insights into the TRAI thinking on the Broadcast Policy, it was apparent that there is deep-rooted desire to regulate “OTT” services whilst balancing the new and emerging technologies with consumer safety and ethical standards.

12/03/2024

## [TRAJ’s National Broadcasting Policy & MIB’s Broadcasting Services \(Regulation\) Bill \(Part 2\)](#)

Following my last update on all the recent consultations, I am pleased to attach the [final submission](#) we made to the Ministry of Information and Broadcasting (MIB) on the Broadcasting Services Bill at the end of January. In it we noted that online content is already regulated under the IT Rules, plus there remain a number of outstanding consultations, including a pre-consultation by TRAI on formulating a National Broadcasting Policy, all of which could have an impact on the Broadcasting Services Bill. It is also apparent that having 2 very similar consultations going on at almost the same time, is causing confusion in a lot of media reporting. Since then, there have been a number of senior staff changes at both MIB and TRAI (see below) and we understand that TRAI will shortly release a consultation paper on the National Broadcasting Policy, whilst MIB are seeking consent from stakeholders regarding the release of any comments made with regard to the Broadcasting Services Bill (AVIA agreed that our submission could be made public).

## [Staffing Changes in MIB & TRAI](#)

In terms of staffing changes, the Telecommunication Regulatory Authority of India (TRAI) has finally appointed a new Chairman, Anil Kumar Lahoti, Former Chairman and Chief Executive Officer, Railway Board, Ministry of Railways who will now be in this position for three years. In the MIB earlier this month, the Secretary, Apurva Chandra, was moved to the Department of Health and his replacement has been named as Sanjay Jaju. We will obviously seek to build productive relationships with both as soon as possible, and indeed AVIA is planning to lead a door-knock exercise to New Delhi to meet with MIB and TRAI, amongst others, but this will not take place until after the elections in April/May.

## [Telecommunications Bill 2023 \(Part 4\)](#)

For those of you who joined the Regulatory & Anti-Piracy Committee meeting in December, you may recall that we discussed the Telecommunications Bill which was introduced to Parliament on 18 December. Despite our analysis that it wouldn’t pass through Parliament given the lack of time before it adjourned, I can now report that it actually passed through both houses of Parliament and received Presidential Assent on 24 December. I have attached the [final Telecommunications Bill, 2023](#) for reference.

## [Tobacco Law \(Part 2\)](#)

With regard to another long-standing issue, that of the Department of Family Health & Welfare’s (MoFHW) announcement that OCC providers should start to include various tobacco and smoking advisories pre, post and mid-content, this still remains under discussion. We understand that the MoFHW had initially requested a meeting last week with relevant providers, industry associations and MIB, but due to the timing of FICCI Frames, this meeting was postponed. When it does happen, we will continue to liaise with other key associations including the IMAI and IBDF.

## [Statement on AI-generated Works & Copyright](#)

Finally, for those interested in Generative AI and various regulatory approaches to it, I have attached the [statement](#) from the India Ministry of Commerce and Industry which clarifies that they *will not* be introducing specific copyright legislation for AI content but rather, considers the legal framework under the Patent and Copyright Act is well-equipped to protect AI-generated works and related innovations.

03/07/2024

## [National Broadcast Policy](#)

India, despite pausing for an election, remains one of our busiest markets in terms of ongoing regulatory topics. Some, like the discussion of the National Broadcast Policy has been ongoing for a while, whilst the recent announcement on self-declared ads has caused some consternation. For the National Broadcast Policy, you will recall that the Ministry of Information and Broadcasting (MIB) had initially asked the Telecommunications Regulatory Authority of India (TRAI) for their input into a National Broadcasting Policy. In parallel MIB were seeking inputs into the Broadcasting Services Bill. TRAI asked for comments on a National Broadcast Policy which we submitted in April; this was swiftly followed by an open house discussion hosted by TRAI in May which we again attended and reiterated our key concerns. Following this, on 20 June, TRAI issued the attached [recommendations](#). On the plus side, the recommendations (a summary of which start on page 148) do not specifically recommend that OTT broadcasting services should be specifically regulated, however in the overall vision they do reference the need for a level-playing field with a need to support quality content production and distribution to make India a “Global Content Hub”. In terms of steps to take the TRAI recommends focusing on (amongst other things) improving audience measurement, expanding the reach of affordable television to uncovered households, encouraging streamlining regulatory processes and improving the infrastructure to foster creation and content production. They also focus on the desire to promote local content through co-funding schemes and enhanced distribution. Piracy also is mentioned, with a recommendation to strengthen the enforcement mechanism under the Copyright Act. With the TRAI recommendations now issued, the onus is now on MIB for next steps.

## [Broadcast Services Regulation Bill \(BRSB\)](#)

However, MIB is also working on the Broadcast Services Regulation Bill (BRSB). This has already gone through a few rounds of consultation, receiving a lot of pushback from industry about the plan to include online content. Last month MIB hosted a meeting of key larger platforms, in particular focusing on user-generated content (UGC) and have stated a desire to start regulating this form of digital content, with a key focus on online news and how that can be regulated. Whilst mainstream news is already heavily regulated, online news on platforms such as YouTube has attracted the focus of the government as they believe that this form of news reporting may have impacted the recent election results. As yet a draft has not been published but it is clear from the consultations that MIB are hosting where their focus will lie.

## [Self-Declaration Certificates \(SDCs\) for Advertisements](#)

Elsewhere in India, there has been a flurry of changes in the advertising space with a judgement from the Supreme Court on 7 May which mandated all new ads, whether on tv, digital or in print, to be self-certified that they are not misleading and compliant with regulatory guidelines, as of 18 June. With limited time for implementation MIB endeavoured to create a portal for TV and radio advertisements, whilst the Press Council had a parallel one for print and digital/internet ads. Essentially, all campaigns, ads and creatives published across the internet, TV, radio and print have to have an individual self-declaration certificate. However, rollout has proved challenging with limited guidance to advertisers as to what is needed, increased compliance burdens, unstable technology for submission and no apparent plan for education about the scheme. After the launch MIB received numerous

representations from industry raising concerns about the process, loss of advertising business and requests for an annual submission rather than for each ad, as well as a request to limit the number of categories requiring a certificate. We previously circulated some [guidance](#) issued by the Advertising Standards Council of India (ASCI).

However, after just a few weeks of this being introduced, MIB has now clarified on 3 July 2024 that it will only apply to advertising in the Food and Health sector. Advertisers/ advertising agencies issuing advertisements to products and services related to Food and Health sectors are advised to upload an annual self-declaration certificate on the Broadcast Seva Portal for TV/ Radio advertisements and the Press Council of India for advertisements on print media/ internet and provide proof of uploading the certificate to media stakeholders.

16/12/2024

### Telecommunications Act, 2023

India continues to be an active market when it comes to regulatory change. Last month we made a [submission](#) to TRAI on a [consultation paper on Network Authorisations under the Telecommunications Act, 2023](#). Whilst we don't often engage on Telecoms consultations, this particular one re-visited the question of Content Delivery Networks (CDNs). Although TRAI had previously issued recommendations on how CDNs should be treated in 2022, the new Telecoms Act has afforded the Department of Telecom (DoT) another opportunity to re-open the question. In the consultation, which covered a number of other issues (which we did not offer a view on), the question of whether CDNs should be required to register as a telecom service which would subsequently bring with it a raft of regulatory obligations. AVIA re-stated our position that we made in the earlier consultation, that CDNs are not telecommunications networks, there is no demonstration of market failure and as such there is no requirement for regulatory oversight, nor a need for them to be treated as telecoms networks. At the time of writing, we await the final TRAI recommendations to be issued to the DoT.

### Self-Declaration Certificates (SDCs) for Advertisements (Part 2)

Elsewhere, in a piece of good news, the requirement for self-certification for advertising, which you may recall was hurriedly introduced in June at the behest of the Supreme Court, has been somewhat refined. Whilst the initial approach had been to require certification for all ads, including those on TV and digital platforms, there was a lot of backlash, partly caused by lack of clarity around the scheme, or ability to implement it. Thankfully, only a month after initially implemented, we can confirm that the Ministry of Information and Broadcasting clarified that it would only be applicable to the food and health sectors.